



# Air Resources Board



**Matthew Rodriguez**  
Secretary for  
Environmental Protection

**Mary D. Nichols, Chair**  
1001 I Street • P.O. Box 2815  
Sacramento, California 95812 • [www.arb.ca.gov](http://www.arb.ca.gov)

**Edmund G. Brown Jr.**  
Governor

September 8, 2015

Mr. Ken Alex, Director  
Office of Planning and Research  
Office of Governor Edmund G. Brown, Jr.  
1400 10<sup>th</sup> Street  
Sacramento, California 95814

Dear Mr. Alex:

The Jobs and Economic Improvement through Environmental Leadership Act (Assembly Bill 900, statutes of 2011) authorizes the Governor to certify a leadership project for streamlining under the California Environmental Quality Act (CEQA) if the project meets certain conditions. One condition for certification is that the project does not result in any net additional emissions of greenhouse gases (GHG), including GHG emissions from employee transportation, as determined by the Air Resources Board (ARB).

On August 24, 2015, the City of San Diego (City) submitted an application to ARB with its proposed GHG quantification methodologies and supporting documentation for the proposed Qualcomm Stadium Reconstruction Project (proposed project), as required by the Governor's Guidelines for Streamlining Judicial Review under the California Environmental Quality Act. An addendum to the application with clarifying information was submitted on September 2, 2015. ARB staff conducted an evaluation of the GHG emission estimates and voluntary mitigation submitted by the City, and confirmed that the City's methodology, calculations, and documentation are adequate. Based on the documentation submitted by the City, ARB has determined the proposed project does not result in any net additional GHG emissions for purposes of certification under AB 900.

ARB staff's evaluation and an Executive Order noting ARB's determination are enclosed.

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.*

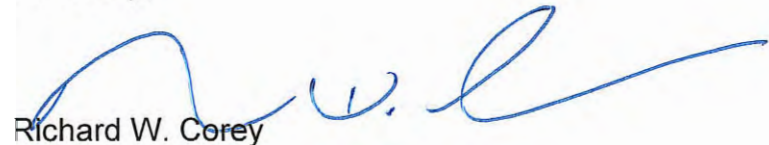
California Environmental Protection Agency

Mr. Ken Alex, Director

Page 2

If you have any questions regarding the evaluation or determination, please contact Ms. Karen Magliano, Chief, Air Quality Planning and Science Division, at (916) 322-5350 or by email at karen.magliano@arb.ca.gov.

Sincerely,



Richard W. Corey  
Executive Officer

Enclosures

Electronic cc:

Mike Hansen, Mayor's Office, City of San Diego  
Kerry Santoro, Development Services Department, City of San Diego  
Kris Shackelford, Public Works Department, City of San Diego  
Carrie Gleason, City Attorney's Office, City of San Diego  
Scott Morgan, Governor's Office of Planning and Research  
Karen Magliano, Chief, Air Quality Planning and Science Division

State of California  
AIR RESOURCES BOARD

**EXECUTIVE ORDER G-15-049**

**Relating to Determination of No Net Additional Greenhouse Gas Emissions  
Under Public Resources Code section 21183, subdivision (c)  
for  
City of San Diego Stadium Reconstruction Project**

WHEREAS, in September 2011, Governor Brown signed the "Jobs and Economic Improvement through Environmental Leadership Act" (AB 900);

WHEREAS, under AB 900, the Governor may certify certain projects for judicial streamlining under the California Environmental Quality Act (CEQA) if certain conditions are met;

WHEREAS, under California Public Resources Code section 21183, subdivision (c), one condition for the Governor's certification is that the project does not result in any net additional emission of greenhouse gases (GHG), as determined by the California Air Resources Board (ARB);

WHEREAS, the Governor's Guidelines for Streamlining Judicial Review Under the California Environmental Quality Act require for purposes of ARB's determination on GHG emissions that an applicant submit electronically to ARB a proposed methodology for quantifying the project's net additional GHG emissions and documentation that the project does not result in any net additional GHG emissions;

WHEREAS, pursuant to the Governor's Guidelines, the City of San Diego (City) submitted its initial proposed GHG quantification methodologies and documentation to ARB on the proposed Qualcomm Stadium Reconstruction Project (proposed project) on August 24, 2015, and clarifying documentation submitted on September 2, 2015 when the application was deemed complete;

WHEREAS, the application submitted for the proposed project estimates the project's net additional GHG emissions as follows:

1. Construction GHG Emissions: 48,270 metric tons CO<sub>2</sub>e emissions from project construction and demolition activities. Construction-generated GHG emissions were estimated from equipment used for construction activities and from both on-site and off-site vehicles and equipment;
2. Operation-Related GHG Emissions: Additional 11,255 metric tons CO<sub>2</sub>e emissions during the first full year of project operation (2020) and declining operational emissions in future years over the lifetime of the project.

WHEREAS, in the application, the City proposes to secure 48,270 metric tons of one-time carbon credits to offset emissions generated during construction and to secure carbon credits on a net present value basis to offset the net increase in emissions generated during project operation through a voluntary carbon credits market from a voluntary credit generator to fully offset these identified construction and operational GHG emissions;

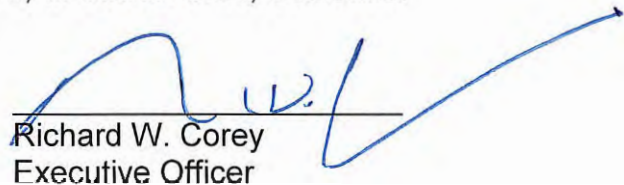
WHEREAS, ARB staff reviewed and evaluated the application in consultation with the lead agency (the City of San Diego);

WHEREAS, ARB staff conducted an evaluation of the GHG emission estimates and voluntary mitigation included in the application submitted by the City and confirmed the documentation provides an adequate technical basis for estimating total GHG emissions and voluntary mitigation for the proposed project;

WHEREAS, ARB's review and determination on the proposed project's GHG emissions is for the limited purpose of the Governor's findings and certification under AB 900 and should not be construed as meeting any other requirement under State or federal law, including CEQA; the lead agency remains responsible for full CEQA compliance for this project;

NOW, THEREFORE, based on ARB Staff's Evaluation (Attachment 1) of the application submitted by the City (Attachments 2 and 3), I determine that the Stadium Reconstruction Project does not result in any net additional GHG emissions pursuant to Public Resources Code section 21183, subdivision (c) for purposes of certification under AB 900.

Executed this 8<sup>th</sup> day of September 2015, at Sacramento, California.



Richard W. Corey  
Executive Officer

Attachments

1. ARB Staff Evaluation of AB 900 Application
2. City of San Diego AB 900 Application
3. Addendum to City of San Diego AB 900 Application

# **ATTACHMENT 1**

**ARB Staff Evaluation of AB 900 Application**

**ARB Staff Evaluation for  
Proposed City of San Diego Stadium Reconstruction Project**

**September 8, 2015**

**I. Introduction**

The City of San Diego (City) proposes to construct a new multi-use sports, entertainment, and recreational stadium, to replace the existing Qualcomm Stadium used by the San Diego Chargers National Football League (NFL) team in San Diego, California. The proposed project would involve construction of a new stadium on a portion of the existing stadium site, and demolition of the existing 48-year old Qualcomm Stadium. The City is the Lead Agency and the Applicant seeking certification for the project under Assembly Bill 900 (AB 900), the Jobs and Economic Improvement through Environmental Leadership Act.

AB 900 provides for streamlined judicial review under the California Environmental Quality Act (CEQA) if certain conditions are met. One condition is that the proposed project does not result in any net additional greenhouse gas (GHG) emissions as determined by the Air Resources Board (ARB). This is the only condition that involves a determination by ARB. ARB staff prepared this technical evaluation of the GHG emissions from the proposed project as part of its determination.

This evaluation includes an executive summary, an overview of the AB 900 zero net additional GHG emissions requirement, a brief description of the proposed project, a technical review and assessment of GHG emissions information provided by the Applicant in its AB 900 application, and ARB staff's recommendation on the AB 900 GHG emissions determination for the proposed project.

**II. Executive Summary**

ARB staff reviewed the projected GHG emissions provided by the Applicant and confirmed the GHG emission factors used to estimate construction and operational emissions. Staff concurs with the GHG quantification in the Applicant's proposal (Attachment 2).

Based on an evaluation of the documentation provided by the Applicant, ARB staff concludes that, with commitments to purchase voluntary carbon credits documented in Attachments 2 and 3, the proposed project would not result in any net additional GHG emissions relative to the baseline as summarized in Tables 1 and 2 below. ARB staff confirms that the proposed project would meet the GHG emissions requirements of the

“Jobs and Economic Improvement through Environmental Leadership Act.” (Pub. Resources Code, §21178 et seq.) A detailed description of emissions by source is reviewed in subsequent sections.

Table 1 shows project construction-generated GHG emissions. Project construction is expected to be completed in approximately five years, with construction beginning as early as 2016. The Applicant, as the Lead Agency, has committed to offset the GHG emissions generated during project construction within six months of occupancy, and will purchase any necessary carbon credits from a qualified voluntary carbon credit generator.

**Table 1: Project Construction-Generated GHG Emissions<sup>1</sup>**

<b>Construction Year</b>	<b>GHG Emissions (MT CO<sub>2</sub>e/year)</b>
2016	822
2017	11,690
2018	11,717
2019	21,320
2020	2,723
<b>Total</b>	<b>48,270</b>
GHG Credits Required <sup>2</sup>	-48,270
Notes: GHG = greenhouse gas; MT CO <sub>2</sub> e = Metric tons carbon dioxide equivalent <sup>1</sup> Source: as documented in Attachment 2, and confirmed by ARB staff. <sup>2</sup> The Applicant has committed to purchase carbon credits in an amount sufficient to offset all net additional construction-related GHG emissions. No later than six months after the issuance of a Temporary Certificate of Occupancy for the project, the Applicant shall confirm the estimate of construction-generated GHG emissions according to the methodology followed in the AB 900 application (Attachment 2). The Applicant has also agreed to submit courtesy copies of executed contracts for purchased carbon credits to ARB. These commitments will be referenced as enforceable conditions of the Conditional Use Permit and the Site Development Permit. By approving and issuing these permits, the City will agree to comply with these conditions.	

Table 2 summarizes the net increase in project operation-related GHG emissions through the lifetime of the proposed project, which the Applicant has defined as 30 years. The continued operation of Qualcomm Stadium (i.e., the “No Project” scenario) in year 2019 serves as the reference point for the purpose of defining a baseline.

The Applicant, as the Lead Agency, has committed to execute one or more contracts to offset the net increase in GHG emissions generated during project operation no later than six months after project stabilization (the date following project completion when 90 percent of the available booking dates for the proposed stadium are secured). The Applicant will purchase voluntary carbon credits for the net increase in operational

emissions on a net-present value basis. The Applicant has agreed to submit courtesy copies of executed contracts for purchased carbon credits to ARB. Importantly, these commitments to offset all net increases in GHG emissions will be referenced as enforceable conditions of the Conditional Use Permit and the Site Development Permit issued by the City. By approving and issuing these permits, the City will agree to comply with these conditions.

**Table 2: Comparison of Baseline and Project Operation-Related GHG Emissions<sup>1</sup>**

Year <sup>2</sup>	GHG Emissions (MT CO <sub>2</sub> e/year)			
	Baseline (Qualcomm Stadium)	Proposed Project (Stadium Reconstruction) <sup>3</sup>	Difference <sup>3</sup>	GHG Credits Required <sup>4</sup>
2019	18,323	28,678	10,355	-10,355
2020	-	29,578	11,255	-11,255
2021	-	27,349	9,026	-9,026
2022	-	27,027	8,704	-8,704
2023	-	26,706	8,383	-8,383
2024	-	26,384	8,061	-8,061
2025	-	27,860	9,537	-9,537
2026	-	25,890	7,567	-7,567
2027	-	25,716	7,393	-7,393
2028	-	25,543	7,220	-7,220
2029	-	25,370	7,047	-7,047
2030	-	26,928	8,605	-8,605
2031	-	25,123	6,800	-6,800
2032	-	25,048	6,725	-6,725
2033	-	24,974	6,651	-6,651
2034	-	24,900	6,577	-6,577
2035 <sup>5</sup>	-	26,529	8,206	-8,206

**Notes:**

GHG = greenhouse gas; MT CO<sub>2</sub>e = Metric tons carbon dioxide equivalent.

<sup>1</sup> Source: as documented in Attachment 2, and confirmed by ARB staff.

<sup>2</sup> The Applicant estimates a useful life of the project of 30 years with first year of occupancy as early as 2019.

<sup>3</sup> The Applicant expects that the annual number of events hosted at the proposed stadium would fluctuate year-to-year. This analysis conservatively assumed that three NFL post-season events would occur at the proposed stadium approximately every five years. There were no NFL post-season events included in the baseline assumptions for the existing stadium.

<sup>4</sup> The Applicant has committed to purchase carbon credits in an amount sufficient to offset the net increase in operation-related GHG emissions. No later than six months after project stabilization (the date following project completion when 90 percent of the available booking dates for the proposed stadium are secured), the Applicant shall confirm the estimate of the net additional operation-related GHG emissions according to the methodology followed in the AB 900 application (Attachment 2) and information accumulated to date about the projected level of events. The Applicant has also agreed to submit courtesy copies of executed contracts for purchased carbon credits to ARB. These commitments will be referenced as enforceable conditions of the Conditional Use Permit and the Site Development Permit. By approving and issuing these permits, the City will agree to comply with these conditions.

<sup>5</sup> Emissions projections after year 2035 for the proposed project would be similar to, or less than the emissions estimated for 2035. The life of the project is estimated as 30 years, which would be approximately 2049, as defined by the Applicant.



### **III. Overview of AB 900**

AB 900 provides streamlined judicial review for development projects if, among other conditions, the “project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.” (Pub. Resources Code, §21183, subd. (c).)

The Governor’s Guidelines for AB 900 applications require applicants to submit a proposed methodology for quantifying the project’s GHG emissions and documentation that the project will not result in any net additional GHG emissions. The documentation must quantify direct and indirect GHG emissions associated with the project’s construction and operation, including GHG emissions from employee transportation, and the net emissions of the project after accounting for any mitigation measures. The project’s net emissions, after mitigation, must be monitored and enforced consistent with Public Resources Code section 21183, subdivision (d).

The role of ARB in reviewing AB 900 applications for purposes of the Governor’s certification is limited to an evaluation of the quantification methods and documentation submitted by the Applicant to determine whether the project would result in no net additional emissions of GHG emissions. ARB staff evaluated the technical elements of the project application, including existing emissions in the absence of the project (i.e., baseline), input data and assumptions used for emissions and mitigation calculations, quantification methods, and an estimate of the project’s net GHG emissions after any mitigation.

### **IV. Existing Conditions**

The San Diego Chargers NFL team currently hosts games at Qualcomm Stadium—a 70,560 seat arena—located on 15 acres within a 166-acre property. The property is located within the Mission Valley Community Plan area within the City of San Diego. Qualcomm Stadium also hosts other events such as professional and amateur sporting events, and other cultural and commercial events with lower attendance than NFL games.

### **V. Proposed Project Description**

The proposed project would be sited on a 17-acre footprint in the northeast corner of the existing 166-acre Qualcomm Stadium property, currently occupied by paved surface parking lots. Construction of the new stadium is proposed to begin in 2016 and conclude in 2019. The existing Qualcomm Stadium would be demolished once the new

stadium becomes operational in as early as 2019. All construction activities are expected to conclude in 2020. The Applicant anticipates leasing or subleasing the new stadium to end users such as the San Diego Chargers NFL team, and other professional, collegiate, and amateur sports teams.

This proposed stadium would include a permanent capacity of 68,000 seats, expanding to approximately 72,000 seats for special events, and capable of hosting NFL football games, other professional and amateur sporting events, entertainment, cultural, and commercial events.

The Applicant is seeking Leadership in Energy and Environmental Design (LEED) Gold certification for energy efficiency for the proposed project. In addition, the new stadium would supply 5,020 fewer on-site parking spaces compared to the existing stadium. The City is preparing a Transportation Demand Management (TDM) Plan for the new stadium to help address the planned shortage of on-site parking during the first few years of project operation. The Applicant anticipates meeting a greater amount of the project's travel demand through light rail transit compared to existing conditions.

## **VI. Technical Review and Assessment**

AECOM International Corporation (AECOM), on behalf of the Applicant, prepared a GHG emissions assessment for the proposed project to demonstrate that the requirements of AB 900 can be met. A full copy of this proposal can be found in Attachment 2, with additional supporting detail in Attachment 3.

The Applicant relied upon a variety of sources for activity data and emission factors to quantify GHG emissions. This ARB staff evaluation is focused on reviewing the data sources, emission factors, emission calculations, and assumptions used for the application, and determining whether these sources and assumptions are reasonable.

The Applicant relied upon the California Emissions Estimator Model (CalEEMod), a widely-used emissions quantification tool developed in coordination with local air districts to quantify criteria pollutant and GHG emissions from land use development projects in California. CalEEMod uses widely-accepted sources for emission estimates combined with appropriate default data that can be used if site-specific information is not available. CalEEMod is populated with data from the United States Environmental Protection Agency AP-42 emission factors, ARB's on-road and off-road equipment emission models such as the Emission Factor 2011 model (EMFAC2011), and the Off-road Emissions Inventory Program model (OFFROAD). The Applicant used CalEEMod, in combination with project-specific data, to calculate GHG emissions from construction and mobile-source (transportation) emissions.

Because of the unique nature of the stadium land use type, the Applicant relied on off-model estimation methods to calculate emissions from electricity, natural gas, area-source (e.g., landscaping and maintenance equipment), stationary-source (e.g. emergency back-up generators), solid waste, water, and wastewater that would more accurately reflect consumption rates and emissions-generating activities than CalEEMod defaults. ARB staff also verified the emission factors and data sources used for the off-model estimation methods, and determined that they are reasonable.

## **VII. Project Construction Emissions**

Construction-related GHG emissions are one-time, direct emissions and would occur over a five year construction period. The Applicant estimated GHG emissions associated with project construction by using the CalEEMod tool, which applies ARB-recommended off-road and on-road emissions factors from its OFFROAD2011 and EMFAC2011 emission factor models. With some exceptions, the Applicant used CalEEMod default settings to generate construction-related GHG emissions. The Applicant estimates a total of 48,270 metric tons carbon dioxide equivalent (MT CO<sub>2</sub>e) over the five-year project construction period, as shown in Table 1 above. Construction-related GHG emissions reflect the types of equipment expected and the number of hours of operation anticipated over the construction schedule. This includes heavy-duty equipment, such as refuse hauling trucks, excavators, cranes, and conventional work vehicles.

ARB staff concluded that the methodology and estimated GHG emissions provided by the Applicant for construction are appropriate.

## **VIII. Baseline Operational Emissions**

Operational emissions from activities at the existing Qualcomm stadium represent baseline conditions. The “no project scenario” in year 2019 serves as the baseline for purposes of this analysis. The baseline assumes Qualcomm stadium would continue in the future to operate and host similar events with similar attendance to current levels. GHG emissions were quantified for mobile, electricity, natural gas, area, stationary, solid waste, water, and wastewater-related sources. The application states that GHG emissions from Qualcomm Stadium within the base year (2019) are estimated as 18,323 MT CO<sub>2</sub>e.

ARB staff evaluated the Applicant’s GHG emission estimations, demand factors, and assumptions used in the Applicant’s baseline calculations, summarized in Table 2 above. ARB’s assessment agrees with the Applicant’s annual baseline GHG estimations summarized in Table 2.

## **IX. Proposed Project Operational Emissions**

Operational GHG emission sources from the proposed project include mobile, electricity, natural gas, area, solid waste, water, and wastewater sources. The proposed project does not propose any on-site stationary emissions sources (e.g., emergency back-up generators). Operational GHG emissions from the proposed project were assumed to begin in 2019.

ARB staff evaluated the proposed project's emission calculations, demand factors, and assumptions used to estimate operational GHG emissions and arrived at approximately the same GHG quantification as provided by the Applicant (within 0.1 percent).

There were several competing factors that affected the GHG emissions estimated for the proposed project, discussed below.

An increase in the number of events is anticipated at the new stadium, compared to the baseline at the existing stadium. Although the new stadium proposes fewer seats, less on-site parking, and a TDM Plan to increase travel to the stadium through alternative modes, the increase in the annual number of events results in greater mobile-source emissions compared to the baseline. Detailed assumptions about the increase in number of events and associated attendance are in Attachment 2.

The proposed project is seeking LEED Gold certification for energy efficiency and would include an on-site solar photovoltaic (PV) system installed over one acre of surface parking stalls with minimum 100 kilowatts of renewable electricity generation capacity. The solar PV system could be designed as large as five acres; however, biological resources and other site constraints would influence the final design of the solar PV system. Overall, the proposed project would consume less electricity and natural gas and would generate lower energy-related GHG emissions than the existing stadium.

The applicant used GHG emission factors for electricity from San Diego Gas and Electric that will change over time due to the California Renewable Portfolio Standard (RPS), a program designed to require 33 percent of grid electricity to come from renewable sources by 2020. Additionally, mobile-source emission factors used were based on a modified version of the ARB EMFAC2011 on-road inventory and include current emission reduction rules in place as of 2011. Additional vehicle regulations implemented since that time (e.g., ARB's Advanced Clean Cars regulations) are not included in the emission factors used for this project, and would further reduce the GHG emissions reported in Table 2.

The Applicant's assumptions and inputs are reasonably conservative, and represent an upper-bound for the net increase in GHG emissions that could occur. Based on the

Applicant's proposal, annual project operational emissions would exceed baseline throughout the lifetime of the project.

## **X. Method to Offset Emissions**

Under the GHG quantification methodology used by the Applicant, the proposed project would result in a one-time net GHG emissions increase of 48,270 MT CO<sub>2</sub>e during project construction, and an estimated net increase of 11,255 MT CO<sub>2</sub>e during the first year of full project operation (2020). Operational emissions will be on-going for the duration of the project life, and are expected to decline over the life of the project as emissions factors decline associated with adoption of lower-GHG-emitting vehicle technologies and renewable sources of electricity. The Applicant has agreed to meet the requirement set forth in California Public Resources Code section 21183, subdivision (c) to demonstrate that the proposed project would result in no net additional GHG emissions through the purchase of voluntary carbon credits sufficient to offset all projected additional GHG emissions, as detailed in Attachments 2 and 3.

Notably, the commitments to enter into contracts to offset net additional GHG emissions were incorporated as an improvement measure in the Draft Environmental Impact Report for the proposed project, and will be requirements incorporated into permit conditions. By approving the Conditional Use Permit and Site Development Permit, the City (as the Applicant) will agree to comply with these conditions.

## **XI. Conclusions and Recommendations**

Based on an evaluation of the documentation provided by the Applicant and its commitment to purchase voluntary carbon credits, ARB staff concludes that the project operational and construction emissions will not result in any net additional GHG emissions relative to the baseline.

## **ATTACHMENT 2**

**Application for Environmental Leadership Development Project**

**City of San Diego Stadium Reconstruction Project**

**(Submitted August 24, 2015)**

# **AB 900 Application**

**For the  
Qualcomm Stadium Reconstruction Project**

**Prepared for  
City of San Diego**

**August 2015**



401 West A Street, Suite 1200  
San Diego, California 92101





---

## TABLE OF CONTENTS

<b><u>Section</u></b>	<b><u>Page</u></b>
Project Description.....	1
Statutory Requirements for CEQA Streamlining.....	1
<b>ATTACHMENTS</b>	
Attachment A	Project Maps
Attachment B-1	Summary of Transportation Efficiency Calculations
Attachment B-2	Section 5 of the TIA
Attachment C	ARB Executive Order
Attachment D	Letter from City
Attachment E	Stadium Costs
Attachment F-1	Municipal Code
Attachment F-2	Labor Compliance Program
Attachment G	GHG Analysis

---

**LIST OF MAPS  
(In Attachment A)**

**Map**

Attachment A-1	Regional Map
Attachment A-2	Vicinity Map
Attachment A-3	Project Site and Location
Attachment A-4	New Stadium Site Plan

---

## PROJECT DESCRIPTION

The City of San Diego is proposing to replace the existing 48-year-old Qualcomm Stadium with a new multiuse sports, entertainment, and recreational stadium (Project). The Project is a Capital Improvement Program (CIP) project that would require a Conditional Use Permit (CUP) and a Site Development Permit (SDP) to construct a new multi-purpose sports stadium with a permanent seating capacity of up to 68,000 seats, expanding to approximately 72,000 seats for special events, and capable of hosting National Football League (NFL) football games, other professional and amateur sports, entertainment, cultural and commercial events. The Project also includes demolition of the existing Qualcomm Stadium after the new stadium is constructed. The existing 166-acre Qualcomm Stadium site, located at 9449 Friars Road, is bounded by Friars Road to the north, Interstate 15 (I-15) to the east, the San Diego River to the south, and by office and commercial buildings to the west (See Attachment A). The Project site is the entire 166-acre Qualcomm Stadium property with the construction of a new stadium on approximately 17 acres in the northern portion of the property (See Attachment A).

## STATUTORY REQUIREMENTS FOR CEQA STREAMLINING

The following information shows how the Project satisfies the statutory requirements for the California Environmental Quality Act (CEQA) streamlining as further informed by the criteria set forth in the Governor's Guidelines for Streamlining Judicial Review under CEQA (Public Resources Code Section 21178 et seq.). As defined in Public Resources Code section 21180(b)(1), the project application provides the following information sufficient to enable the Governor to determine that:

***(1) The project is residential, retail, commercial, sports, cultural, entertainment, or recreational in nature.***

The Project is commercial, sports, cultural, entertainment, and recreational in nature. It is anticipated that the new stadium would be leased or subleased through a stadium operating entity to one or several end-users such as an NFL team for playing home games during the NFL pre-season, regular season, and post-season, and other professional, collegiate, and amateur sports, entertainment, cultural, and commercial events, including soccer games, National Collegiate Athletic Association (NCAA) football games, and other major events. The new stadium and surrounding parking would also be used for events similar to the commercial, cultural, and entertainment events that currently occur at Qualcomm Stadium; however, with the new stadium overall on-site activity is anticipated to increase due to an improvement in facilities. Spectator facilities would be the largest overall stadium use and would include seating, suites, club areas, public restrooms, guest services, and a Hall of Fame Museum. Stadium operations would include employee areas; office/conference room; shops; engineering; janitorial; grounds keeping; security; event operations; dock and staging operations; storage; and mechanical,

---

electrical, and plumbing facilities. Food services and merchandise facilities would include concession offices, concession stands, concession commissary and storage, kitchens and pantries, restrooms, premium club, and other dining facilities. Team locker facilities would include locker facilities for the home team, visiting team, medical and training facilities, auxiliary locker rooms, officials and crew facilities, cheerleaders' locker rooms, and performer dressing accommodations. Media facilities would include press box, booths, writing areas, TV areas, interview rooms within the stadium, and TV truck crew staging areas outside the new stadium. Administrative facilities include NFL and stadium offices along with ticketing, security, and support services. There would be event center space of 206,000 gross square feet, which could host non-game day meetings. Proposed site plans for the Project are included in Attachment A.

***(2) The project, upon completion, will qualify for LEED silver certification. The application shall specify those design elements that make the project eligible for LEED silver certification, and the applicant shall submit a binding commitment to delay operating the project until it receives LEED silver certification. If, upon completion of construction, LEED silver certification is delayed as a result of the certification process rather than a project deficiency, the applicant may petition the Governor to approve project operation pending completion of the certification process.***

The overall design for the Project would meet or exceed current uniform codes designed to achieve a Leadership in Energy and Environmental Design (LEED) Gold rating, which meet and exceed those required for LEED Silver certification. The new stadium would include energy efficiency, water conservation, low-impact development, and other green-building practices, which would be incorporated into the final design to achieve a minimum LEED gold certification.

The LEED rating system offers four certification levels for new construction that correspond to the number of credits accrued in categories for location and transportation, sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, innovation, and regional priority (USGBC 2015). There are four levels of certification to acknowledge the degree of achievement. The number of points that the Project earns determines the level of LEED certification that the Project will receive:

- LEED Certified™: 40-49 points earned
- LEED Silver®: 50-59 points earned
- LEED Gold®: 60-79 points earned
- LEED Platinum®: 80+ points earned

LEED provides a level of flexibility for projects to choose the exact credits and project features. At the time of this application, the exact LEED credits and project features that would be selected to achieve LEED Gold Certification (i.e., 60-79 LEED points) have not yet been

---

determined. However, some of the design features that are anticipated for LEED certification include:

- *Materials and Resources.* Credits for Construction and Demolition Waste Management. According to the Waste Management Plan, the Project would recycle approximately 81 percent of construction waste materials and is in accordance with state diversion targets that target a minimum of 75 percent of construction materials to be diverted from disposal.
- *Location and Transportation.* Credits based on the Project being located at an infill site with surrounding density and diverse land uses to promote walkability and transportation efficiency.
- *Location and Transportation.* Credits for access to high quality transit. Local transit service to the Project area is provided by the San Diego Metropolitan Transit System (MTS) in the form of trolley (light rail) and fixed route bus services. The Project would locate the functional entry of the project within a ¼-mile (400-meter) walking distance of existing or planned bus, streetcar, or rideshare stops.
- *Water Efficiency.* Credits for the use of ultra-low flow fixtures in the restrooms such as low flow faucets with aerators, dual flush toilets, and waterless urinals.
- *Energy and Atmosphere.* Credits for optimized performance and renewable energy production. The Project would include analysis of efficiency measures, focusing on load reduction and HVAC-related strategies, during the design process and account for the results in decision-making for the stadium design. Solar photovoltaic (PV) panels that would provide a minimum of 100 kilowatts of renewable energy would be developed on-site. This could include solar panels on the new stadium or solar shade canopies in the parking lot.

Because final LEED certification is not granted until a project is completed and operational, the Project sponsor will petition the Governor to approve construction and project operation pending completion of the LEED certification process, as permitted under Public Resources Code Section 21178 et seq.

***(3) The project will achieve at least 10 percent greater transportation efficiency than comparable projects. The applicant shall provide information setting forth its basis for determining and evaluating comparable projects and their transportation efficiency, and how the project will achieve at least 10 percent greater transportation efficiency. For residential projects, the applicant shall also submit information demonstrating that the number of vehicle trips by residents divided by the number of residents is 10 percent more efficient than for comparable projects. For the purposes of this provision, comparable means a project of the same size, capacity and location type.***

---

The majority of stadium attendees currently travel to the Project site by automobile, followed by trolley, express shuttle service, and lastly by other modes of transportation including taxi, bus, bicycling, or walking. Projected attendance for the miscellaneous events is not anticipated to exceed the existing usage for similar event types at Qualcomm Stadium. Therefore, no additional vehicle trips over existing conditions on a daily basis are anticipated.

Attendees to events at the Project site would be encouraged to take the trolley to reduce parking demand. The existing trolley ridership is 22 to 28 percent for an event with 68,000 attendees. Currently, the parking lot has approximately 18,870 parking spaces. The Project design includes a maximum of 16,500 parking spaces, or a reduction of approximately 13 percent from existing conditions. Future game day vehicle trip generation to and from the site is anticipated to decrease from existing trip generation due to the proposed reduction in parking spaces and the implementation of the Transportation Demand Management (TDM) plan.

During the events in which the parking demands are to exceed capacity, a modal shift is anticipated since attendees are expected to seek alternative modes of transportation. In estimating mode split under Project conditions, the maximum trolley capacity was used as a constraint in limiting the number of attendees that can shift from driving and parking on-site to riding the Trolley. The percent of public transit use (i.e., modal split) is anticipated to increase from the current range of 22 to 28 percent for the existing Qualcomm stadium to a range of 29 to 34 percent for the Project, which equates to a mode shift of 21 to 32 percent. In other words, the percentage of transit use will increase by 21 to 32 percent from the existing Qualcomm Stadium.

As a result of the mode shift and TDM plan, the total number of weekday vehicle trips is anticipated to reduce from 35,700 to 31,200 for NFL events. And, the total number of weekend vehicles trips is anticipated to reduce from 29,600 to 26,200. These are estimated reductions of approximately 11 and 13 percent for weekday and weekend trips, respectively.

Section 4.10, Mobility, of the Draft Environmental Impact Report includes Mitigation Measure MOB-2, which requires that a Transportation Demand Management Plan be prepared by the City of San Diego. The goals in the TDM plan have been developed to create a synergetic approach across applicable modes of transportation and parking to address both near-term (construction/demolition phases) and long-term operational needs of the Project:

- Goal 1 – Trip Reduction
- Goal 2 – Reduce Onsite Parking Demand
- Goal 3 – Increase Transit Ridership
- Goal 4 – Increase Walking and Bicycle Use

---

Each goal includes objectives and performance metrics to determine if the goals are being met by the strategies in the TDM plan, which is an enforceable but flexible approach to increasing transportation efficiency. The strategies are meant to be mixed and matched depending on the available resources, needed effectiveness, and results. The strategies selected should consider the estimated cost, influence, and overall rating. Choosing the implementation strategies shall vary from year to year and can be mixed and matched in order to achieve the results needed to be a flexible, living document that is adaptable over time and responsive to available resources and budget. The Draft TDM plan includes but is not limited to the following objectives and strategies:

- **Objective 1A:** Encourage carpooling
  - **Example Strategy:** Pricing Analysis of Carpool Incentive Pricing. A full analysis of pricing incentives related to carpooling to assess effectiveness and attendee satisfaction.
  - **Example Strategy:** Increased parking price based on car occupancy. Cars with 2 or less people will pay more for parking. Vehicles with 6 or more people will pay less.
  - **Example Strategy:** Significantly increase parking price for Single Occupancy Vehicles. Charge an additional amount for an attendee parking onsite without any passengers
- **Objective 2A:** Reduce parking demand
  - **Example Strategy:** Provide an Offsite Parking Shuttle Service. Establish a shuttle route to service key offsite parking locations to reduce the number of attendee trips seeking offsite parking locations and more efficiently transport attendees to the stadium.
  - **Example Strategy:** Provide Sponsorship Opportunities on Offsite Parking Locations. Identify key offsite parking lots that will provide opportunities for sponsor activities, tents, food and beverage and entertainment in order to create a pre-game tailgate experience that will be serviced by an offsite parking shuttle to avoid attendees circling the neighborhood for offsite parking locations.
- **Objective 3A:** Maximize high trolley ridership during weekday game days
  - **Example Strategy:** Marketing and Outreach Campaign. In coordination with the City, NFL, MTS, and San Diego Association of Governments (SANDAG) to create a marketing campaign to encourage attendees to take the trolley. Utilize the same efforts as the 2003 Super Bowl at Qualcomm Stadium. Free transit passes during stadium events as giveaways or raffle winnings could be included.

---

Other elements could also include free promotions and giveaways exclusively for attendees who used MTS passes.

- **Example Strategy:** Provide Transportation Information Kiosks. Provide permanent transportation information kiosks near the stadium entrances with all transportation information including local transit, regional connections, and alternative modes of transportation. Transportation guides will be available at these kiosks to provide information on the best time to arrive to the stadium during large events and other relevant information.
- **Objective 4A:** Encourage walking and bicycle mode
  - **Example Strategy:** Host a Bike Valet. Host a bike valet onsite during large stadium events (Approximately 300 spaces).
  - **Example Strategy:** Coordinate Bike Pools and Walk Pools. Coordinate and promote City led bicycle pools and walk pools where attendees can meet up at a set location and bike or walk to the stadium together.

The TDM Plan will be prepared before the Final Environmental Impact Report is published, would take effect prior to the start of the new stadium construction phase and would be implemented throughout the life of the Project and long-term operation. The TDM Plan will be implemented in tandem with the Project construction schedule to anticipate the greatest impacts and mitigate all impacts before they occur. With the construction mobilization schedule occurring towards the end of the NFL 2016 Season, the TDM Plan will begin implementation in August 2016. Working group meetings should begin in January 2016 in order to communicate clear implementation strategies before the beginning of the NFL 2016 season.

The TDM Plan includes an ongoing annual assessment as a part of its implementation. In this assessment, performance metrics must be collected once a year in order to assess the success or failure of the implementation strategies. If one of the metrics does not meet the threshold, the TDM Working Group will reassess the chosen implementation strategies. Should additional best practices and implementation strategies arise to address the goals, the TDM shall be assessed annually to accommodate changes to the plan. A new role of Stadium TDM Coordinator will be created by the City. This TDM Coordinator will be responsible for the assessment cycle of this plan, scheduling regular meetings with the TDM Working Group and updating the TDM plan.

Based on the projected changes in parking, transit use and vehicle trips, as well as the implementation of the TDM plan, the Project will achieve at least 10 percent greater transportation efficiency than the existing Qualcomm Stadium. Additional information on transportation efficiency is included in Attachment B.



---

***(4) The project is located on an infill site, as defined at Public Resources Code section 21061.3, and in an urbanized area, as defined at Public Resources Code section 21071.***

According to Public Resource Code 21061.3, an “infill site” is defined as a site in an urbanized area that meets either of the following criteria:

- (a) The site has not been previously developed for urban uses and both of the following apply:
  - (1) the site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses; and
  - (2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.
- (b) The site has been previously developed for qualified urban uses.

The Project meets the requirements of 21061.3(b), since the Project site was previously developed for a qualified urban use. Existing land uses within the Project site include the existing Qualcomm Stadium with associated parking lot, a soccer field and recycling center in the southwest corner of the site, and the MTS Trolley Green Line station and trolley line that traverses the southern portion of the site.

An urbanized area, according to Public Resources Code 21071, can be defined as an incorporated city that has a population of at least 100,000 persons. The project site is located in the City of San Diego, which is an incorporated City with a population of approximately 1.4 million people.

***(5) The information required by Public Resources Code section 21180(b)(1) is available for projects within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect. For the purposes of this provision, “in effect” means that the sustainable communities strategy or the alternative planning strategy has been adopted by the metropolitan planning organization, and that the Air Resources Board has accepted the metropolitan planning organization’s determination that the sustainable communities strategy or alternative planning strategy meets the adopted greenhouse gas reduction targets and is not the subject of judicial challenge.***

---

Senate Bill (SB) 375, signed in September 2008, aligns regional transportation planning efforts, regional greenhouse gas (GHG) reduction targets, and land use and housing allocation. SB 375 requires Metropolitan Planning Organizations (MPOs) to adopt a Sustainable Communities Strategy (SCS) or an Alternative Planning Strategy (APS), which will prescribe land use allocation in that MPO's Regional Transportation Plan (RTP). On September 23, 2010, ARB adopted regional GHG targets for passenger vehicles and light trucks for 2020 and 2035 for the 18 MPOs in California, including SANDAG.

SANDAG's current GHG targets are per capita carbon dioxide (CO<sub>2</sub>) emission reductions from passenger vehicles of 7 percent by 2020 and 13 percent by 2035 relative to 2005 levels. ARB is required to update the SB 375 GHG emissions reduction targets at least every 8 years and may revise them every four years. ARB is currently working on updates to the targets.

SANDAG adopted the RTP/SCS in 2011. In November 2011, ARB reviewed the adopted RTP/SCS and approved Executive Order G-11-114, which indicated that ARB accepted SANDAG's quantification of GHG emissions from the SCS. ARB determined that, if implemented, the SCS would achieve the reduction targets for the San Diego region in compliance with SB 375 (see Attachment C).

***(6) Information establishing that the requirements of Public Resources Code section 21181 have been met. Written acknowledgment from the lead agency of the applicant's intent to apply for certification may be used to satisfy this requirement.***

Written acknowledgement from the City of San Diego regarding the intent to apply for certification is attached as Attachment D.

***(7) Information establishing that the project entails a minimum investment of \$100 million in California through the time of completion of construction.***

In determining the probable cost of a new stadium, the architecture firm advising the City of San Diego on conceptual design work has estimated that the total project costs would be \$1.1 billion. This includes an estimate of approximately \$65 million for work on the site, demolition, plaza, and utilities, \$700 million for stadium hard costs, \$111 million for indirect costs and construction contingencies, \$93 million for soft costs such as design and administration, and \$131 million for project contingencies (see Attachment E). Based on anticipated project costs, the Project will exceed the minimum investment requirement of \$100 million in Public Resources Code section 21183(a).

---

***(8) Information establishing that the prevailing and living wage requirements of Public Resources Code Section 21183(b) will be satisfied.***

As required by Public Resources Code section 21183(b), all construction workers employed in the execution of the Project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code.

Compliance with the City of San Diego Living Wage Ordinance is required by San Diego Municipal Code sections 22.4201 through 22.4245. The City of San Diego also institutes a Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally funded public works contracts. The State of California's Department of Industrial Relations approved the City's application for interim certification as a Labor Compliance Program, effective August 11, 2003. As a certified LCP, the City is obligated to enforce applicable Labor Code provisions and operates as a representative of the DIR in conducting investigations. This program is applicable to all public works projects which are designated as requiring prevailing wages and would be required for the Project. The Project sponsor will include this requirement in all contracts for work performed. A copy of the current Municipal Code and Labor Compliance Program is included in Attachment F.

***(9) Information establishing that the project will not result in any net additional greenhouse gas emissions. This information is subject to a determination signed by the Executive Officer of the Air Resources Board that the project does not result in any net additional greenhouse gas emissions, following the procedures set forth in section 6 of these Guidelines.***

ARB recommends that documentation for the AB 900 application include baseline annual GHG emissions (baseline is considered to be the existing Qualcomm Stadium in 2015), and the project's operational annual GHG emissions, including both direct and indirect GHG emissions. In addition, ARB requests quantification of GHG emissions for multiple years to determine when the proposed project would become GHG-neutral. As provided in more detail in Attachment G, the analysis includes GHG emissions for construction, electricity, natural gas, mobile, solid waste, water and wastewater, and area and stationary sources. Construction-related and operational emissions associated with typical construction activities, such as site grading, construction and demolition, were modeled using the California Emissions Estimator Model (CalEEMod), Version 2013.2.2.

The new stadium would include energy efficiency, water conservation, low-impact development, and other green-building practices, which would be incorporated into the final design to achieve a minimum LEED Gold rating. Energy conservation measures would also include the use of

---

solar photovoltaic energy. When coupled with a parking shade canopy, the photovoltaic system provides shade while generating electricity.

The Project would also be developed to be Net Zero total energy increase as compared to Qualcomm Stadium. To help achieve this, solar energy generation would provide a minimum of 100 kilowatts. This could include solar panels on the new stadium or solar shade canopies in the parking lot. The solar shade canopies would cover, at a minimum, 220 parking spaces on an acre or cover as much as 5 acres depending on final design. Other energy-saving measures include the use of LED lighting inside and outside the stadium and for the scoreboard and field signs. A comprehensive energy control system would be included utilizing motion sensors and photocells to avoid over lighting. Other anticipated energy-saving features would likely include the building orientation, use of low-flow plumbing fixtures, use of high-efficiency electrical fixtures, an integrated recycling program, the recycling of materials from the demolition of the existing site, and other features. There would also be reclaimed water infrastructure installed in the Project design to support future service should it become available.

Construction-related GHG emissions were estimated at an annual maximum of 21,320 MT CO<sub>2</sub>e per year during 2019, and 48,270 MT CO<sub>2</sub>e over the entire 5-year construction period. Operation of the Project in 2019 and 2020 would result in a net annual increase of 10,355 and 11,255 MT CO<sub>2</sub>e from baseline conditions. As shown in Attachment C, the Project would result in a net increase of 186,394 MT CO<sub>2</sub>e through the year 2035. Since qualifying projects cannot result in a net increase of GHG emissions, the Project would be required to purchase voluntary carbon credits and this would be a condition of the Project's development permits to ensure enforceability. One or more contracts shall be executed to purchase voluntary carbon credits from a verified GHG emissions credit broker in an amount sufficient to offset construction and operational GHG emissions over the lifetime of the project. This measure will become effective after final approval and certification of the AB 900 application by the Governor's office.

***(10) Information documenting a binding agreement between the project proponent and the lead agency establishing the requirements set forth in Public Resources Code sections 21183(d), (e), and (f).***

Written acknowledgement from the City of San Diego regarding Public Resources Code section 21183(d), (e), and (f) is attached as Attachment D.

***(11) Any other information requested by the Governor.***

No additional information has been requested at this time.

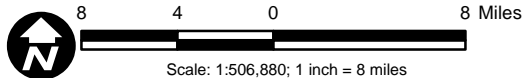
# **Attachment A**

## **Project Maps**





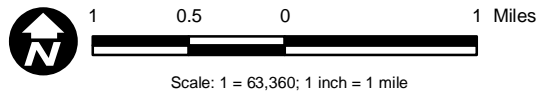
Source: Esri; SanGIS; SANDAG.



## Attachment A-1 Regional Map



Source: Esri 2010; AECOM 2015.

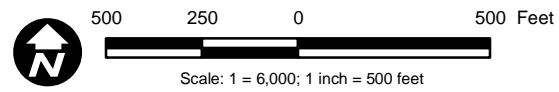


**Attachment A-2  
Vicinity Map**

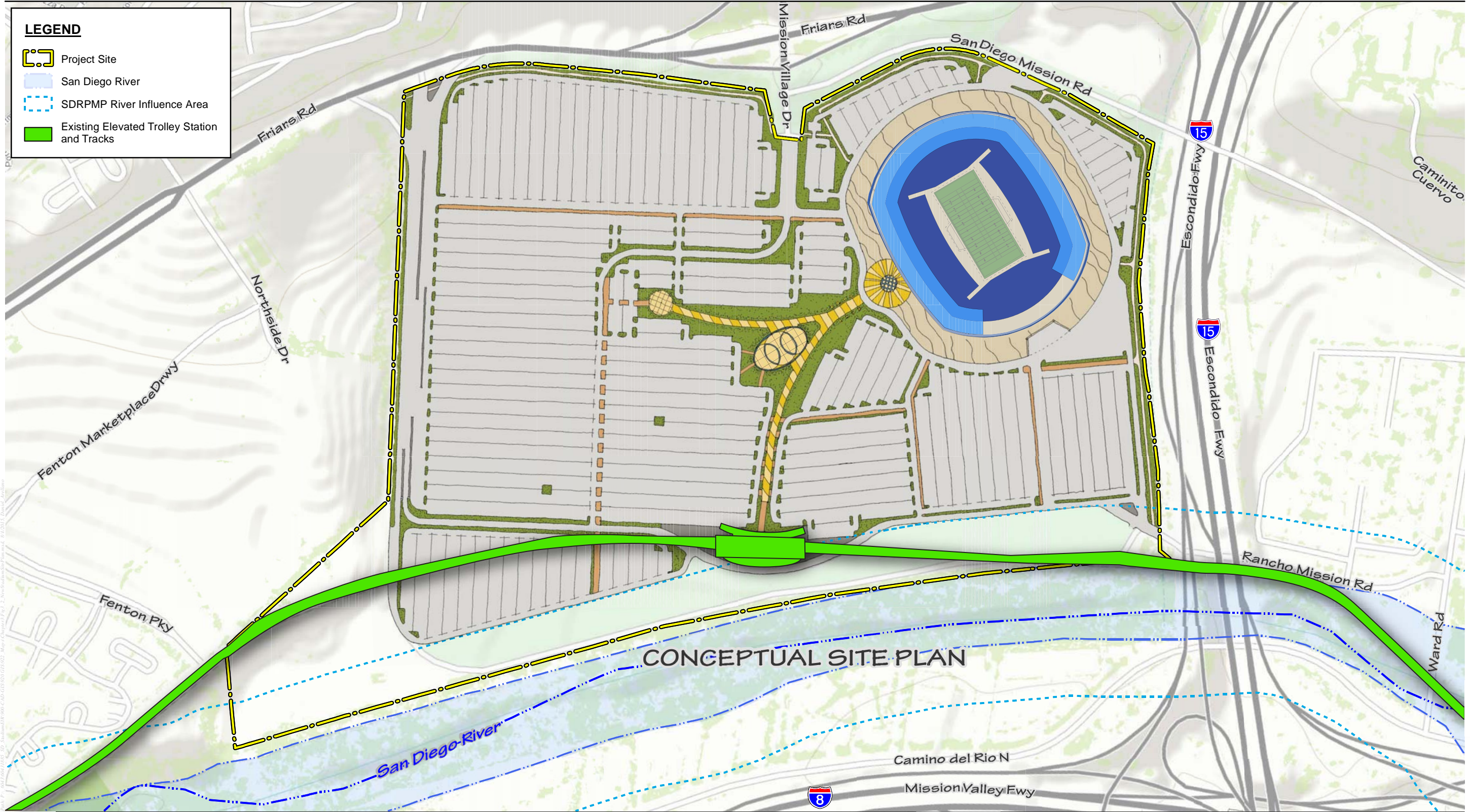




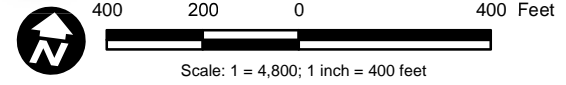
Source: NAIP 2014.



**Attachment A-3**  
**Project Site and Location**



Source: Esri World Topographic Map; FEMA; National Hydrography Dataset (NHD).



**CONCEPTUAL SITE PLAN**

## **Attachment B-1**

### **Summary of Transportation Efficiency Calculations**



Transportation Efficiency

Existing Stadium Modal Splits

Day of Week	Event Attendee					
	Auto	Shuttle/ Charter Bus	Taxi/ Drop Off	Walk/Bike	Trolley	Total
<b>Transportation Modal Split (Person Trips)</b>						
Weekday	63%	13%	1%	1%	22%	100%
Weekend	56%	14%	1%	1%	28%	100%
<b>Trip Generation (Person Trips)</b>						
Weekday	42,600	9,000	700	700	15,000	68,000
Weekend	38,100	9,500	700	700	19,000	68,000

New Stadium Modal Splits

Day of Week	Event Attendee						Percent Change from Existing				
	Car	Shuttle/ Charter Bus	Taxi/ Drop Off	Walk/ Bike	Trolley	Total	Car	Shuttle/ Charter Bus	Taxi/ Drop Off	Walk/ Bike	Trolley
<b>Transportation Modal Split (Person Trips)</b>											
Weekday	54%	15%	1%	1%	29%	100%	-14%	15%	0%	0%	32%
Weekend	49%	15%	1%	1%	34%	100%	-13%	7%	0%	0%	21%
<b>Trip Generation (Person Trips)</b>											
Weekday	36,600	10,000	700	700	20,000	68,000	-14%	11%	0%	0%	33%
Weekend	33,100	10,500	700	700	23,000	68,000	-13%	11%	0%	0%	21%

Trip Generation

Day of Week	Auto (veh)	Shuttle / Charter Bus (veh)	Total Trips (PCE)	Percent Change from Existing
<b>Existing</b>				
Weekday	34,700	500	35,700	N/A
Weekend	28,600	500	29,600	N/A
<b>Construction Phase</b>				
Weekday	30,000	700	31,400	-12%
Weekend	25,000	600	26,200	-11%
<b>Demolition Phase</b>				
Weekday	30,000	800	31,600	-11%
Weekend	25,000	600	26,200	-11%
<b>Project Build Out</b>				
Weekday	30,000	600	31,200	-13%
Weekend	25,000	600	26,200	-11%



## **Attachment B-2**

### **Section 5 of the TIA**





# Traffic Impact Analysis Report Excerpts from Section 5.0

## Stadium Reconstruction EIR

Prepared for  
City of San Diego

AECOM Project No. 60431885  
**August 2015**



999 Town and County Road, Suite 300  
Orange, CA 92868

This page intentionally left blank.

---

## 5.0 TRAFFIC FORECASTING AND TRIP GENERATION

This section describes the traffic forecasting and trip generation procedures under the Existing Year (2015), Construction and Demolition Year (2019), and Project Build Out Year (2035) conditions.

### 5.1 TRAVEL DEMAND MODEL

The SANDAG Series 12 Traffic Volume Forecast was developed based on the population and employment information from the 2050 Regional Transportation Plan (RTP) completed in 2011. Models for forecast years 2015 and 2035 were adopted for the purpose of this traffic study to establish the traffic demand used for these analyses. The adjusted AM peak hour, PM peak hour and ADT volumes from the SANDAG model were used to forecast traffic volumes for the future scenarios.

#### *Model Post-Processing*

To ensure the accuracy of regional model results at the project level (i.e. at specific arterial intersections or roadway segments), it was necessary to make further adjustments based on existing data to the model results to more closely replicate travel conditions.

Future traffic volume post-processing relied on existing counts and model growths at each corresponding link extracted from the aforementioned model for forecast year 2015 and 2035. The model growths at the link level are applied to existing volumes for roadway and freeway segments, as well as for intersection approach and departure legs. All post-processed volumes are reviewed and appropriate adjustments are made to reflect local area land uses and known travel patterns.

For traffic projections in analysis year 2019 under Project Construction and Demolition conditions, annual growth rates were calculated assuming a linear traffic growth between years 2015 and 2035. For weekend traffic volume forecasting, model growths are adjusted to match existing relationships between weekday and weekend traffic volumes at the study locations.

### 5.2 TRIP GENERATION

The trip generation analysis used the City of San Diego Trip Generation Manual as guidance for this discussion and used existing as well as forecast data to develop trip generation figures.

In order to assess the level of service and significant impact analysis, trip generation for weekday game days were assessed to capture the most severe traffic impacts. Existing game day trip generation was calculated using parking gate counts, trolley ridership, and recent attendance data from past games. Future trip generation was estimated based on projected event frequency and attendance, the reduction of on-site parking spaces, and the implementation of the Transportation Demand Management (TDM) plan.

Average attendance to major NFL games at Qualcomm Stadium is approximately 65,000 and the most recent NFL games have been approximately 68,000. The majority of stadium attendees travel to the Project site by automobile, followed by trolley, express shuttle service, and lastly by other modes of transportation including taxi, bus, bicycling or walking.

There are currently 18,870 parking spaces available on-site. It should be noted that around 1,000 to 3,000 spaces are rendered unusable during major stadium events with the existing parking lot and site plan configuration due to event tents, tailgating activities, media zones, and increased bus/shuttle parking.

NFL games, especially weekday night games, are the worst-case scenario for traffic impacts. Therefore, the discussion will focus on NFL games as all other stadium events would not be as impacting.

#### *Mode Split*

**Table 5-1** summarizes existing transportation mode split which was derived using the following assumptions:

- Transportation modal splits were derived based on historic game day parking gate counts from ACE Parking and trolley ridership from MTS.
- The vehicle occupancy rate was estimated based on existing parking data and occupancy rates used for similar stadiums and venues in California. Vehicle occupancy rate for weekday game days is assumed to be 2.7 persons per vehicle and 3.0 persons per vehicle for weekend game days. Data suggests that attendees are more likely to carpool on weekends than on weekdays. This assumption is consistent with the vehicle occupancy rates observed at similar venues in other parts of California.
- Attendees are more likely to ride the Trolley to weekend games than to weeknight games. On typical weeknights, there is a significant commuter ridership base leaving less space available for event goers.

**Table 5-1  
Modal Splits for Existing Conditions**

Day of Week	Event Attendee						Stadium Personnel			
	Auto	Shuttle/ Charter Bus	Taxi/ Drop Off	Walk/Bike	Trolley	Total	Car	Offsite Shuttle	Transit	Total
<b>Transportation Modal Split (Person Trips)</b>										
Weekday	63%	13%	1%	1%	22%	100%	57%	29%	14%	100%
Weekend	56%	14%	1%	1%	28%	100%	60%	29%	11%	100%
<b>Trip Generation (Person Trips)</b>										
Weekday	42,600	9,000	700	700	15,000	68,000	2,000	1,000	500	3,500
Weekend	38,100	9,500	700	700	19,000	68,000	2,100	1,000	400	3,500
<b>Trip Generation (Vehicle Trips)</b>										
Weekday	15,800	200	300	0	0	16,300	1,300	100	0	1,400
Weekend	12,700	200	200	0	0	13,100	1,400	100	0	1,500
<b>Vehicle Occupancy Rate</b>										
Weekday	2.7	45	2.7	--	--	--	1.5	20	--	--
Weekend	3.0	45	3.0	--	--	--	1.5	20	--	--

#### Automobile Trips

Automobile trips refer to passenger cars parking on-site. Attendees could either drive alone (single occupancy) or with other family or friends in a carpool (multiple occupancy). The occupancy rate of each passenger car parking onsite determines the number of attendees that travel to the games by automobile. Weekday vehicle occupancy is expected to be lower as attendees would be less likely to carpool than on weekends. A major event with an attendance of 68,000 attendees is anticipated to generate approximately of 15,800 automobile trips on weekdays and a total of 12,700 automobile trips on weekends, prior to implementation of the Transportation Demand Management (TDM) Plan. See **Section 8.0** for detailed discussion of the TDM.

Game day personnel are also anticipated to arrive to the project site via automobile trips. Approximately 1,000 spaces for employee parking are provided off-site, however there are a number of employees who would park onsite. These game day personnel are less likely to carpool as they would arrive several hours before kickoff. The average vehicle occupancy rate for game day personnel automobile vehicles is assumed to be 1.5 persons per car for both weekday and weekend game days. These personnel auto trips total approximately 1,300 auto trips on weekday games and 1,400 auto trips on weekend games.

#### Transit Trips

Transit trips include trolley trips and other transit connections made to the trolley. The MTS Trolley Green Line services the project site in the southern portion of the parking lot and provides the most direct transit access. Bus Route 14 services the project area, but attendees who ride the bus to the Project site must walk an additional ½ mile to the Project site and are considered as pedestrians arriving to the project site. Assuming a typical game day attendance of 68,000 people, approximately 15,000 transit trips are generated on weekday games and approximately 19,000 transit trips on weekend game days.

---

Game day personnel also take the trolley to work from throughout the city and region. The number of game day personnel transit trips was calculated based on the onsite parking data provided by ACE parking and the limited number of employee parking spaces located offsite. It was calculated that the remainder of the game day personnel would travel to the project site using transit.

#### Bike and Walk Trips

Some attendees from the surrounding neighborhoods could reasonably bike or walk to the Project site, although considered to be a minimal number. Approximately 1% of the event attendee trips or 700 people are estimated to bike or walk to the project site on both weekday and weekend game days.

A very small number of employees bike or walk to the Project site on weekday and weekend game days, so much so that when rounding those figures it amounts to zero person trips. Therefore, these person trips were not represented in Table 5-1.

#### Taxi/Drop Off

Taxi and drop off trips refer to attendees who travel to the Project site by taxi or other ride-sharing services or by passenger cars that do not park on-site. A taxi/drop off area is located off-site along San Diego Mission Road and Mission Village Drive. The number of taxi or drop off trips to this area is expected to be minimal as this intersection is very congested before events with automobiles queuing to enter the Main Gate. Approximately 1% of the attendees are anticipated to travel to the Project site by taxi or at the drop-off area. A major event with an attendance of 68,000 attendees is anticipated to generate approximately 200-300 vehicle trips on weekdays and weekends.

#### Shuttle/Charter Bus trips

Shuttle and charter bus trips include private charter buses or shuttles that pick up attendees from specific locations throughout the region before the game day event, park on-site for the duration of the event and depart after the event. Approximately 100 parking spaces for these vehicles are available onsite. The number of trips currently generated by shuttle and charter bus is approximately 9,000 person trips on weekday games and 9,500 person trips on weekends.

#### Offsite Shuttle

Game day personnel also use an offsite shuttle to travel to and from the employee parking lot located offsite. This shuttle drops off employees onsite and does not park onsite before, during or after the game. Many of these trips occur several hours before the peak period and before the game event ends. Approximately 1,000 parking spaces are provided on the offsite employee parking lot.

#### ***Future Trip Generation***

Future game day vehicle trip generation to and from the site is anticipated to decrease from existing trip generation due to reduced on-site parking and the implementation of the TDM. During the events in which the parking demands are to exceed capacity, a modal shift is anticipated since attendees are expected to seek alternative modes of transportation.

In estimating mode split under Project conditions, the maximum trolley capacity was used as a constraint in limiting the number of attendees that can shift from driving and parking on-site to riding the Trolley. The modal split and trips generated for all future scenarios assume trolley ridership would reach a conservative capacity rate of 20,000 riders on weekday game days and 23,000 riders on weekend game days.

**Table 5-2** represents the modal splits for all future conditions including new stadium construction, Qualcomm Stadium demolition and future horizon year.

Approximately 36,600 auto trips are expected on weekday game days and 33,100 auto trips are expected on weekend game days under future Project scenarios. Overflow vehicles would be directed to off-site parking sites and shuttles would be provided between the off-site parking sites and the Project site. These shuttles would be circulating between the parking sites and the Project site and would not be parking on-site.

**Table 5-2  
Modal Splits for All Future Conditions**

Day of Week	Event Attendee						Stadium Personnel			
	Car	Shuttle/ Charter Bus	Taxi/ Drop Off	Walk/ Bike	Trolley	Total	Car	Shuttle	Trolley	Total
<b>Transportation Modal Split (Person Trips)</b>										
Weekday	54%	15%	1%	1%	29%	100%	50%	36%	15%	100%
Weekend	49%	15%	1%	1%	34%	100%	53%	36%	12%	100%
<b>Trip Generation (Person Trips)</b>										
Weekday	36,600	10,000	700	700	20,000	68,000	1,800	1,300	400	3,500
Weekend	33,100	10,500	700	700	23,000	68,000	1,800	1,300	400	3,500
<b>Trip Generation (Vehicle Trips)</b>										
Weekday	13,600	200	300	0	0	14,100	1,200	100	0	1,300
Weekend	11,000	200	200	0	0	11,400	1,200	100	0	1,300
<b>Vehicle Occupancy Rate</b>										
Weekday	2.7	45	2.7	--	--	--	1.5	20	--	--
Weekend	3.0	45	3.0	--	--	--	1.5	20	--	--

**Table 5-3** summarizes the daily vehicle trip generation under existing and Project conditions on both weekday and weekend game days.

**Table 5-3  
Daily Vehicle Trip Generation on Game Days (Inbound and Outbound)**

Day of Week	Auto (veh)	Shuttle / Charter Bus (veh)	Total Trips (PCE)
<b>Existing</b>			
Weekday	34,700	500	35,700
Weekend	28,600	500	29,600
<b>Construction Phase</b>			
Weekday	30,000	700	31,400
Weekend	25,000	600	26,200
<b>Demolition Phase</b>			
Weekday	30,000	800	31,600
Weekend	25,000	600	26,200
<b>Project Build Out</b>			
Weekday	30,000	600	31,200
Weekend	25,000	600	26,200

Note: Total daily trips were calculated using an assumed Passenger Car Equivalent (PCE) of 2 and rounded to the nearest 100 trips.

**Attachment C**

**ARB Executive Order**





State of California  
AIR RESOURCES BOARD

EXECUTIVE ORDER G-11-114

San Diego Association of Governments  
Sustainable Communities Strategy (SCS)  
ARB Acceptance of GHG Quantification Determination

WHEREAS, the Sustainable Communities and Climate Protection Act of 2008 ((Chap. 728, Stats. 2008) Senate Bill 375, or SB 375, as amended) requires each of California's 18 Metropolitan Transportation Organizations (MPOs), as part of its Regional Transportation Plan (RTP) planning process, to develop a Sustainable Communities Strategy (SCS) or an Alternative Planning Strategy (APS) that meets regional greenhouse gas (GHG) emission reduction targets (targets) set by the Air Resources Board (ARB, or Board);

WHEREAS, SB 375 also recognizes ARB's target-setting responsibility as a recurring process, requiring ARB to update the targets every eight years and permitting target-setting every four years;

WHEREAS, on September 23, 2010 the Board set 2020 and 2035 targets for the San Diego Association of Governments (SANDAG) MPO region;

WHEREAS, in April 2011, SANDAG published a draft RTP containing a draft SCS that states that it meets or exceeds the region's targets for 2020 and 2035;

WHEREAS, ARB staff performed a review and technical evaluation of the draft SCS based on the ARB's technical methodology for evaluating an SCS (published in July 2011);

WHEREAS, ARB staff's technical review of SANDAG's draft SCS's GHG reduction quantification are documented in a staff report (published on September 13, 2011);

WHEREAS, ARB staff's report concluded that SANDAG's draft SCS used technical methodologies that would accurately quantify greenhouse gas reductions;

WHEREAS, ARB staff's analysis showed that SANDAG's draft SCS, if implemented, would meet the targets that the Board established for the region for 2020 and 2035;

WHEREAS, SANDAG made modifications to the draft SCS including minor transportation infrastructure changes to both transit and roadways, and minor network changes such as route alignments and stop locations;

WHEREAS, ARB staff reviewed the modifications to the draft SCS made by the SANDAG Board of Directors when it adopted the final RTP and SCS on October 28, 2011;

WHEREAS, the modifications adopted by SANDAG as part of the final SCS support the ability of the SCS to meet the regional targets established for the region for 2020 and 2035 because the reductions in per capita GHG emissions in both 2020 and 2035 would be slightly greater than demonstrated by the draft SCS;

WHEREAS, the modifications included in SANDAG's final SCS resulted in slightly greater reductions in per capita VMT when compared to the draft SCS;

WHEREAS, ARB staff reviewed key performance indicators (housing and employment near transit stations, bike and walk trips, and commute mode share), and determined that they collectively support SANDAG's determination;

WHEREAS, as provided in its SCS transmittal letter (dated October 28, 2011), the SANDAG Board of Directors strengthened its 2050 RTP to include the following:

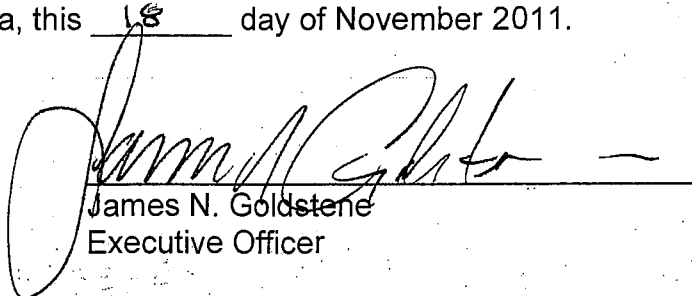
- Make improvements to its travel modeling system to better reflect GHG reductions from the SCS;
- Make future travel modeling systems available to the public; and,
- Use the upcoming Regional Comprehensive Plan update process to develop alternative land use planning scenarios.

WHEREAS, Health and Safety Code sections 39515 and 39516 delegate to the Board's Executive Officer the authority to act on behalf of the Board in this matter;

NOW, THEREFORE, BE IT RESOLVED that pursuant to section 65080(b)(2)(l)(ii) of the California Government Code, the Executive Officer hereby accepts the MPO's quantification of greenhouse gas emissions from the final SCS adopted by the SANDAG Board of Directors on October 28, 2011 and their determination that the SCS will, if implemented, achieve the 2020 and 2035 greenhouse gas emission reduction targets established by the ARB.

NOW, THEREFORE, IT IS ORDERED that ARB staff is directed to forward this executive order to the SANDAG Board of Directors.

Executed at Sacramento, California, this 18 day of November 2011.



James N. Goldstene  
Executive Officer

Attachment: ARB staff report, published September 13, 2011

## **Attachment D**

### **Letter from City**





THE CITY OF SAN DIEGO

August 24, 2015

Submitted via email Scott. Morgan@opr.ca.gov

Mr. Scott Morgan  
Deputy Director of Administration and State Clearing House Director  
Governor's Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

**Subject: Qualcomm Stadium Reconstruction Project-Acknowledgement of Obligations under Public Resources Code Sections 21183(d), (e) and (f)**

Dear Mr. Morgan,

The City of San Diego is submitting an application to request certification of the Qualcomm Stadium Reconstruction Project (Project) as a Leadership Project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (Act), commonly referred to as an AB 900 application. The intent of this letter is to acknowledge the obligations under the Act as set forth in California Public Resources Code sections 21183(d), (e) and (f), and provide the process for the City's agreement to undertake those obligations.

The Final Environmental Impact Report (FEIR) for the Project will be presented to the City Council for its review and certification, including consideration of mitigation measures and approval of the Mitigation Monitoring and Reporting Program (MMRP). As required by Public Resources Code section 21183(d), all mitigation measures required pursuant to California Environmental Quality Act (CEQA) to certify the Project under the Act shall be included as conditions in the Site Development Permit (SDP) and Conditional Use Permit (CUP) for the Project. The SDP and CUP will be presented to the City Council for its consideration and approval subsequent to its consideration of the FEIR. The permit conditions will be fully monitored and enforced for the life of the obligation.

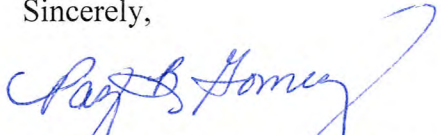
In addition to the FEIR, MMRP, and permits, the City Council, as part of its approval of the project and for the purpose of complying with the requirements of the Act, will be presented a resolution authorizing the City to pay Court of Appeal costs for hearing and deciding any case, including payment of costs for the appointment of a special master if deemed appropriate by the court, all as required by Public Resources Code section 21183(e) and pursuant to the Judicial Council's Rules of Court.

Likewise, the City Council will be presented a resolution authorizing the City to pay the costs of preparing an administrative record for the Project (which preparation is currently underway), concurrent with review and consideration of the Project pursuant to CEQA and the Act, all as required by Public Resources Code section 21183(f).

Mr. Scott Morgan  
August 24, 2015  
Page 2

The City will fully meet the requirements of the Act in order to take advantage of its benefits. The Project will be presented to the City Council with requests for the authorizations needed to fulfill these requirements.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paz B. Gomez", with a large, sweeping flourish extending to the right.

Paz B. Gomez, PE, CEM, GBE  
Deputy Chief Operating Officer  
Infrastructure/Public Works

Electronic cc: Mike Hansen, Director of Land Use and Environmental Policy, Mayor's Office  
James Nagelvoort, Director, Public Works Department  
Tom Tomlinson, Acting Director, Planning Department  
Kerry Santoro, Deputy Director, Development Services Department  
Kris Shackelford, Senior Civil Engineer, Public Works Department  
Carrie Gleeson, Deputy City Attorney, City Attorney's Office

## **Attachment E**

### **Stadium Costs**





# SAN DIEGO CHARGERS

## STADIUM DESIGN CONCEPT

NFL Relocation Committee – August 10, 2015

POPULOUS®

# **Project Costs Timeline & Disbursement Schedule**

---

# Project Cost Summary

Site / Demo / Plaza / Utilities	\$	65,272,572
Stadium Hard Costs	\$	699,168,428
General Requirements / Indirect Costs	\$	111,015,000
Construction Subtotal	\$	875,456,000
Project Soft Costs	\$	93,225,600
Project Contingency	\$	131,318,400
Total Project Costs	\$	1,100,000,000

# Construction Cost Estimate

	Quantity	Unit	Price	Cost
Site Clearing	6,850,000	sf	\$0.25	1,713,000
Demolish Existing Stadium	1	ls	\$15,000,000	15,000,000
Utility Relocation and New Services	1	allow	\$5,000,000	5,000,000
Excavation and Foundation	1,750,000	sf	\$27	47,622,000
Structural Frame	1,750,000	sf	\$95	166,221,000
Roofing and Waterproofing	1,750,000	sf	\$5	9,199,000
Exterior Wall & Misc Metal	628,650	sfca	\$80	50,292,000
Interior Finishes	1,750,000	sf	\$80	140,186,000
FF&E	1,750,000	sf	\$7	12,250,000
Scoreboard	1,750,000	sf	\$12	20,963,000
Playing Field	1,750,000	sf	\$2	3,299,000
Equipment	1,750,000	sf	\$4	6,941,000
Food Service Equipment	1,750,000	sf	\$12	21,601,000
Seating	65,000	sf	\$130	8,450,000
Vertical Transportation	1,750,000	sf	\$7	11,665,000
Plumbing	1,750,000	sf	\$16	27,645,000
Fire Protection	1,750,000	sf	\$3	5,975,000
HVAC	1,750,000	sf	\$19	32,628,000
Electrical	1,750,000	sf	\$41	71,288,000
Audio Visual	1,750,000	sf	\$14	24,815,000
Plaza and Site	1	ls	\$40,000,000	40,000,000
General Requirements	\$722,753,000	\$\$	3%	<u>21,683,000</u>
	Direct Work			744,436,000
Indirect Costs	\$744,436,000	\$\$	12%	89,332,000
Contingency	\$833,768,000	\$\$	5%	<u>41,688,000</u>
Construction Hard Costs			\$500	<u>875,456,000</u>

# Project Timeline & Disbursement Schedule

	MONTHLY	CUMULATIVE
Mar-16	\$5,613,600	\$ 5,613,600
Apr-16	\$5,613,600	\$ 11,227,200
May-16	\$5,613,600	\$ 16,840,800
Jun-16	\$5,613,600	\$ 22,454,400
Jul-16	\$5,613,600	\$ 28,068,000
Aug-16	\$5,613,600	\$ 33,681,600
Sep-16	\$5,613,600	\$ 39,295,200
Oct-16	\$5,613,600	\$ 44,908,800
Nov-16	\$7,095,100	\$ 52,003,900
Dec-16	\$7,095,100	\$ 59,099,000

	MONTHLY	CUMULATIVE
Mar-16	\$5,613,600	\$ 5,613,600
Apr-16	\$5,613,600	\$ 11,227,200
May-16	\$5,613,600	\$ 16,840,800
Jun-16	\$5,613,600	\$ 22,454,400
Jul-16	\$5,613,600	\$ 28,068,000
Aug-16	\$5,613,600	\$ 33,681,600
Sep-16	\$5,613,600	\$ 39,295,200
Oct-16	\$5,613,600	\$ 44,908,800
Nov-16	\$7,095,100	\$ 52,003,900
Dec-16	\$7,095,100	\$ 59,099,000
Jan-17	\$16,090,900	\$ 75,189,900
Feb-17	\$16,090,900	\$ 91,280,800
Mar-17	\$20,338,530	\$ 111,619,330
Apr-17	\$20,338,530	\$ 131,957,859
May-17	\$32,211,458	\$ 164,169,317
Jun-17	\$32,211,458	\$ 196,380,776
Jul-17	\$32,211,458	\$ 228,592,234
Aug-17	\$32,211,458	\$ 260,803,692
Sep-17	\$32,211,458	\$ 293,015,150
Oct-17	\$32,211,458	\$ 325,226,608
Nov-17	\$27,781,203	\$ 353,007,811
Dec-17	\$40,188,613	\$ 393,196,424
Jan-18	\$41,721,780	\$ 434,918,204
Feb-18	\$41,721,780	\$ 476,639,984
Mar-18	\$41,721,780	\$ 518,361,764
Apr-18	\$42,566,780	\$ 560,928,544
May-18	\$45,606,780	\$ 606,535,323
Jun-18	\$45,606,780	\$ 652,142,103
Jul-18	\$32,200,685	\$ 684,342,788
Aug-18	\$32,200,685	\$ 716,543,473
Sep-18	\$36,200,685	\$ 752,744,157
Oct-18	\$32,039,110	\$ 784,783,267
Nov-18	\$32,039,110	\$ 816,822,376
Dec-18	\$36,984,310	\$ 853,806,686
Jan-19	\$41,176,910	\$ 894,983,596
Feb-19	\$41,156,660	\$ 936,140,255
Mar-19	\$41,156,660	\$ 977,296,915
Apr-19	\$44,614,993	\$ 1,021,911,908
May-19	\$36,922,848	\$ 1,058,834,756
Jun-19	\$41,165,244	\$ 1,100,000,000

Total Project Cost \$1,100,000,000

# Project Timeline & Disbursement Schedule

	Quantity	Unit	Price	Cost	Months	2016										2017							
						1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6		
						M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J		
Site Clearing	6,850,000	sf	\$0.25	1,713,000	2									857	857								
Demolish Existing Stadium	1	ls	\$15,000,000	15,000,000	4																		
Utility Relocation and New Services	1	allow	\$5,000,000	5,000,000	8									625	625	625	625						
Excavation and Foundation	1,750,000	sf	\$27	47,522,000	10											4,762	4,762	4,762	4,762	4,762	4,762		
Structural Frame	1,750,000	sf	\$95	166,221,000	14																	11,873	11,873
Roofing and Waterproofing	1,750,000	sf	\$5	9,199,000	6																		
Exterior Wall & Misc Metal	628,850	sfca	\$80	50,292,000	10																		
Interior Finishes	1,750,000	sf	\$80	140,185,000	19																		
FF&E	1,750,000	sf	\$7	12,250,000	3																		
Scoreboard	1,750,000	sf	\$12	20,963,000	5																		
Playing Field	1,750,000	sf	\$2	3,299,000	4																		
Equipment	1,750,000	sf	\$4	6,941,000	8																		
Food Service Equipment	1,750,000	sf	\$12	21,601,000	5																		
Seating	85,000	sf	\$130	8,450,000	10																		
Vertical Transportation	1,750,000	sf	\$7	11,665,000	12																		
Plumbing	1,750,000	sf	\$16	27,645,000	27															1,024	1,024	1,024	1,024
Fire Protection	1,750,000	sf	\$3	5,975,000	18																		
HVAC	1,750,000	sf	\$19	32,628,000	27															1,208	1,208	1,208	1,208
Electrical	1,750,000	sf	\$41	71,288,000	27															2,640	2,640	2,640	2,640
Audio Visual	1,750,000	sf	\$14	24,815,000	12																		
Plaza and Site	1	ls	\$40,000,000	40,000,000	10																		
General Requirements	\$722,753,000	\$\$	3%	21,683,000	30											723	723	723	723	723	723		
Indirect Costs	\$744,436,000	\$\$	12%	89,332,000	30											2,978	2,978	2,978	2,978	2,978	2,978		
Contingency	\$833,768,000	\$\$	5%	41,588,000	30											1,390	1,390	1,390	1,390	1,390	1,390		
<b>Construction Subtotal</b>			\$500	<b>875,455,000</b>																			
<b>Soft Costs</b>	<b>224,544,000</b>	<b>25.85%</b>																					
Design and Consultants		4.50%	18%	39,395,520	40																		
Administration/PR/Legal/Marketing		2.50%		21,885,400	40																		
Testing, Inspections, Permitting, Fees		2.50%		21,885,400	40																		
Miscellaneous/Add Services		1.15%		10,057,280	40																		
Contingency		15.00%		131,318,400	40																		
<b>Total Soft Costs</b>				<b>224,544,000</b>		5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614
<b>Total Project Cost</b>				<b>1,100,000,000</b>		5,614	5,614	5,614	5,614	5,614	5,614	5,614	5,614	7,095	7,095	16,091	16,091	20,339	20,339	32,211	32,211		







## **Attachment F-1**

### **Municipal Code**



**Article 2: Administrative Code**

**Division 42: City of San Diego Living Wage Ordinance**  
(Added 6/6/2005 by O-19386 N.S.)

**§ 22.4201 Purpose and Intent**

The *City* awards many taxpayer-funded agreements to *businesses* that provide *services* to the public and to the *City* or that are intended to promote economic development, job creation, and retention. The *City* also owns, operates, manages, or leases sports, entertainment, or convention facilities and contracts with *businesses* to use these facilities or provide *services* at these locations to the public. It is the experience of the *City* that many of these *services* to the public and to the *City* are provided by workers who live at or below the poverty line. This Division provides that when agreements, including *service contracts*, *financial assistance agreements*, and *City facilities agreements* are extended by the *City* to *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty. This Division therefore requires *covered employers* and their subcontractors to pay their employees a wage that will enable a full-time worker to meet basic needs and avoid economic hardship. Paying *services* employees a living wage is intended to improve the quality of *services* provided to the *City* and to the public by reducing high turnover, absenteeism, and instability in the workplace. This Division also promotes the *City's* policies and programs that seek to meet the employment and economic development needs of the *City* and its workforce. *Businesses* that do not fall into any of the above described categories are not required to comply with this Division.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4202 Citation**

This Division shall be cited as the City of San Diego Living Wage Ordinance.  
(Added 6-6-2005 by O-19386 N.S.)

**§22.4205 Definitions**

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

*Affordable Care Act* means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and any subsequent federal legislation and applicable federal regulations.

*Business* means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

*City* means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority, and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

*City facility* means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center;
- (e) San Diego City Concourse; or
- (f) Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there. This subsection is not intended to extend to the Living Wage Ordinance to other structures located in the Civic Center Plaza.

*City facility agreement* means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for thirty days or more in any calendar year; and (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than ninety days.

*City facility employer* means any *business* that has entered into a *City facility agreement*. For the purposes of this Division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

*City Manager* means the City Manager and his/her delegates and representatives.

*Compensated leave* means any paid sick leave, vacation leave, or personal leave provided by a *covered employer* to a *covered employee*. *Compensated leave* does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

*Covered employee* means any individual employed on a full-time, part-time, temporary, or seasonal basis by (a) a *service contractor* with regard to any hours worked in performance of a *service contract*; (b) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or (c) a *City facility employer* with regard to any hours worked at a *City facility*. *Covered employee* does not include: (a) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution; or (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

*Covered employer* means any *service contractor*, *financial assistance recipient*, *City facility employer*, or any authorized agent thereof.

*Financial assistance agreement* means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. As to economic development, job creation, or job retention, this Division applies to *financial assistance agreements* with a combined value over a period of five years of \$500,000 or more. As to tourism, arts, and cultural programs, this Division applies to *financial assistance agreements* with a combined annual value of \$750,000 or more. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

*Financial assistance recipient* means any *business* that has entered into a *financial assistance agreement*. For purposes of this Division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement*, or for the program that is the subject of the *financial assistance agreement*.

*Health benefits* means benefits related to medical, dental, vision, and other health services, and excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

*Health benefits rate* means a minimum dollar amount per hour toward the cost of *health benefits* for *covered employees* and their dependents.

*Prime service contractor* means any *business* that enters into a contract for *services* directly with the *City*.

*Service contract* means a contract between the *City* and a *business*, and any applicable subcontracts or franchises, to furnish *services*. For purposes of this Division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

*Service contractor* means any *business* that has been awarded a *service contract* subject to this Division. For purposes of this Division, *service contractor* includes all subcontractors or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

*Services* means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this Division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) Automotive repair and maintenance;
- (b) Cashiers;
- (c) Child care;
- (d) Concessions/retail sales;
- (e) Facility and building maintenance;
- (f) On-site food service/preparation;
- (g) Janitorial, custodial, street cleaning and housekeeping;
- (h) Landscaping;

- (i) Laundry services;
- (j) Office/clerical;
- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers;
- (p) Warehouse workers.
- (q) Waste collection and waste disposal, including recycling;
- (r) Right-of-way maintenance; and
- (s) Water and wastewater maintenance

*Unfair immigration-related practice* has the same meaning as in California Labor Code section 1019(b)(1).

*Willful violation* means a *covered employer's* intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud. A *covered employer's* failure or refusal to comply with this Division is prima facie evidence of a *willful violation* if the contract for *services* states that this Division applies.

(Added 6-6-2005 by O-19386 N.S.)  
(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)  
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4210 Applicability of Living Wage Ordinance**

- (a) This division shall apply to:
  - (1) any *service contract*, including any applicable subcontract, except for *service contracts* with a combined value of payments of \$25,000 or less that are entered into, awarded, amended, renewed, or extended before April 1, 2014. Compliance with this Division is required during the term of the *service contract*.
  - (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract. Compliance with this Division is required for a period of five years after the threshold amount has been received by the *business*.
  - (3) any *financial assistance agreement* subject to the \$750,000 threshold, including any applicable subcontract. Compliance is required for one year after the threshold amount has been received by the *business*.
  - (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement. Compliance with this Division is required during the term of the *City facility agreement*.
- (b) *Service contracts, financial assistance agreements, and City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this Division.
- (c) For any contract subject to this Division, the *prime service contractor* must use its own employees to perform at least fifty percent of the work described in the contract.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4215 Exemptions.**

- (a) The following contracts are exempt from the requirements of this Division:
  - (1) contracts subject to federal or state law or regulations that preclude the applicability of this Division's requirements;
  - (2) contracts that involve programs where the *City* shares management authority with other jurisdictions, unless all the signatory jurisdictions agree to the applicability of this Division's requirements to the contract;



- (3) contracts for *services* by any other governmental agency;
  - (4) contracts for public works construction;
  - (5) cooperative procurement contracts, including contracts that use a bidding process that substantially complies with *City* requirements;
  - (6) contracts for the purchase of goods, property, or the leasing of property;
  - (7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services.
  - (8) contracts where compliance with this division is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.
- (b) Notwithstanding section 22.4215(a)(1)-(8), *City facility agreements* are not exempt from the requirements of this Division.
- (c) The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this Division:
- (1) *Businesses*, including their parent and subsidiary entities, employing twelve or fewer employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, so long as the *City* determines that the *business*, including any of its subcontractors, will not need to retain more than twelve employees to perform work related to a *service contract*, *financial assistance agreement*, or *City facility agreement*.
  - (2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.
- (d) The definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of this Division.

(Added 6-6-2005 by O-19386 N.S.)  
(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)  
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4220 Payment of Living Wage and Provision of Benefits**

- (a) *Covered employers* subject to this Division must pay *covered employees* the hourly wage rate and *health benefits rate* posted on the *City's* web site for that fiscal year.
- (b) The hourly wage rates will be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31. The *health benefits rate* will be consistent with the *Affordable Care Act* and any other applicable federal and state law provisions. Prior to April 1 of each year, the *City* will calculate the new rates and provide notice to all *covered employers* by posting on the *City's* web site the rates in effect for the next fiscal year.
- (c) *Covered employers* must provide to each *covered employee* a minimum of ten days per year of *compensated leave*. *Compensated leave* must vest as accrued, in accordance with applicable state law. Part-time employees must accrue *compensated leave* at a rate proportional to full-time employees. *Covered employees* must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.
- (d) *Covered employers* must also permit *covered employees* to take a minimum of ten additional days of uncompensated leave per year to be used for sick leave for the illness of the *covered employee* or a member of his or her immediate family, where the *covered employee* has exhausted all accrued *compensated leave*. This section does not mandate the accrual from year to year of uncompensated days off.
- (e) *Covered employers* must pay *covered employees* the state prevailing wage rate as specified in section 22.3019 if the prevailing wage rate is higher than the wage rate specified in this Division. For purposes of this section, “wage rate” means the sum of required hourly wages, *health benefits*, and *compensated leave*.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4225 Reporting and Notification Requirements**

- (a) Every *service contract, financial assistance agreement, and City facility agreement* must require that the party contracting with the *City* be subject to the terms of this Division and all regulations and rules promulgated under this Division and that all applicable subcontractors, sublessees, and concessionaires comply with the terms of this Division and all regulations and rules promulgated under this Division.
- (b) Each *covered employer* must annually distribute a notice with the first paycheck to occur after July 1 to its *covered employees* of the requirements of this Division, the possible availability of health insurance coverage under the *Affordable Care Act*, and the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* must file a living wage certification with the *City Manager* within thirty days of becoming a *covered employer*. *Covered employers* must ensure that all applicable subcontractors, sublessees, and concessionaires file a living wage certification within thirty days of becoming covered by the requirements of this Division. The living wage certification must be completed on a form provided by the *City Manager*.
- (d) Each *covered employer* must file with the *City Manager* an annual report documenting compliance with this Division. The *covered employer* must maintain records documenting compliance for at least three years, but is not required to maintain records for more than seven years, after the *City's* final payment on the *service contract, financial assistance agreement, or City facility agreement*. Such records must be made available to the *City* upon request. The records to be maintained must include all wage records, proof of payment for *health benefits*, *covered employee* name, address, date of hire, job classification, rate of pay, cost and amount paid for *health benefits*, hours worked in each pay period, and paid and unpaid time off (accrued and used).
- (e) Each *covered employer* must post a notice informing *covered employees* of their rights under this Division, and any applicable exemptions from the hourly wage rate requirements of this Division. The poster must be at the site of work, or a site frequently accessed by *covered employees*, in a prominent and accessible place where it can easily be seen by *covered employees*. Each *covered employer* must update this notice annually and within thirty days of receiving notice from the *City* of the amended hourly wage rates under this Division.

(Added 6-6-2005 by O-19386 N.S.)  
(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)  
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4230 Enforcement and Remedies**

- (a) A *covered employee* claiming a violation of this Division may file an action against a *covered employer* in a court of competent jurisdiction within three years after discovery of the alleged violation.
- (b) The court may award the following monetary damages to a *covered employee* who proves a violation of this Division:
  - (1) For failure to pay the required hourly wage on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the hourly wage required by this Division and the amount actually paid to the *covered employee*, plus interest, and penalties for *willful violations*.
  - (2) For failure to pay the *health benefits rate* on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the *health benefits rate* required by this Division and the amount actually paid towards the *health benefits rate* for the *covered employee*, plus interest, and penalties for *willful violations*.
  - (3) For retaliation for exercise of any rights provided for under this Division, reinstatement, back pay, or any other relief that a court may deem appropriate.
  - (4) For a *willful violation* of this Division, a penalty of up to three times the amount of damages awarded pursuant to section 22.4230(b)(1) and/or (b)(2).
  - (5) Reasonable attorneys' fees and costs to a *covered employee* who prevails in any such private action.
- (c) The court may award reasonable attorneys' fees to a *covered employer* who prevails if the *covered employee's* suit is found to be frivolous.
- (d) A *covered employer* shall not:
  - (1) Retaliate against a *covered employee* who alleges non-compliance with this Division or cooperates with an investigation regarding compliance with this Division. Retaliation includes but is not limited to *unfair immigration-related practices*, or any other discriminatory practice that violates federal or state law; or

- (2) Discharge, reduce in compensation, or otherwise discriminate against any *covered employee* for complaining with regard to the *covered employer's* practices with respect to this Division, for opposing any practice proscribed by this Division, for participating in proceedings related to this Division, for seeking to enforce his or her rights under this Division by any lawful means, or for otherwise asserting rights under this Division.
- (e) A *covered employee* claiming a violation of the Division may file a complaint with the *City*. The *City* shall investigate and address any alleged violation of this Division's requirements, and shall convey the results of the investigation to the complainant within sixty days, with reasonable thirty-day extensions. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this Division does not create any right of action to recover damages from the *City* by any person, including but not limited to an aggrieved *covered employee*.
- (f) Whether based upon a complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this Division, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within thirty days. If the *covered employer* does not demonstrate to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall take one or more of the following enforcement actions:
  - (1) Declare a material breach of the *service contract*, *financial assistance agreement*, or *City facility agreement* and exercise the *City's* contractual remedies, which are to include, but not be limited to, suspension or termination of the *service contract*, *financial assistance agreement*, or *City facility agreement* and the return of monies paid by the *City* for services not yet rendered.
  - (2) Institute proceedings under Chapter 2, Article 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties or restitution have been fully paid, whichever occurs last.
  - (3) Request a determination of non-responsibility under Chapter 2, Article 2, Division 30.
  - (4) Request that the City Attorney bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:

- (A) Where applicable, payment to the *covered employee* of all unpaid wages or *health benefits* prescribed by this Division, plus interest;
  - (B) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) per *covered employee* for each violation for each day the violation remains uncured; and
  - (C) The *City's* administrative costs.
- (5) Refer violations of this Division to appropriate local, state, and/or federal agencies and authorities.
- (g) If a *covered employer* is determined by the *City Manager* to have violated this Division two or more times in a two-year period, the *City Manager* shall take enforcement action pursuant to section 22.4230(f), even if the *covered employer* has substantially cured any material violations.
- (h) A violation of this Division is not subject to prosecution as a misdemeanor or infraction, notwithstanding any other provision of this Code.
- (i) This Division is not to be construed to limit a *covered employee's* right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights, nor is exhaustion of remedies under this Division a prerequisite to the assertion of any other such right.

(“Enforcement” added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-08 by O-19809 N.S; effective 12-24-2008.)

(Retitled to “Enforcement and Remedies” and amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

**§22.4235 Administration**

- (a) The *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division, including procedures for handling complaints by *covered employees*. The *City Manager* shall monitor compliance, including conducting periodic reviews of appropriate records maintained by *covered employers* to verify compliance and to investigate claimed violations. To secure compliance with this Division, the *City Manager* is authorized to take any appropriate enforcement action pursuant to Chapter 1, Article 2, Division 1 of this Code.

- (b) The *City Manager* is authorized to create a citizens advisory committee for the purpose of making recommendations regarding how the policies and purposes of this Division may be advanced.
- (c) On July 1 of each year, or as soon thereafter as is practicable, the *City Manager* shall submit an annual report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

*(Added 6-6-2005 by O-19386 N.S.)*

*(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)*

*(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)*

#### **§22.4240 Collective Bargaining Agreements**

The provisions of this Division shall not be superseded by any collective bargaining agreement unless the supersession is specifically agreed to in writing by the parties to the collective bargaining agreement.

*(Added 6-6-2005 by O-19386 N.S.)*

*(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)*

#### **§22.4245 Severability**

All provisions in this Division are intended to be consistent with all applicable federal and state laws. If any provision of this Division is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this Division can be enforced in a manner that substantially carries out the objectives of this Division.

*(Added 6-6-2005 by O-19386 N.S.)*

*(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)*





## **Attachment F-2**

### **Labor Compliance Program**





THE CITY OF SAN DIEGO

# LABOR COMPLIANCE PROGRAM

November 2009

1200 Third Avenue, Suite 200  
Mail Station 56P  
San Diego, CA 92101  
Phone 619/235-5785  
Fax 619/235-5209

**Jerry Sanders**  
Mayor

**Jay M. Goldstone**  
Chief Operating Officer

**Wally Hill**  
Assistant Chief Operating Officer

**Debra Fischle-Faulk**  
Director of Administration

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM  
IMPLEMENTATION, OPERATION, PROCEDURES**

**Contents**

- I. City of San Diego Labor Compliance Program**
- II. Implementation Plan**
- III. Operational Manual**
- IV. Procedures**
- V. Forms**

# CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM

## PREFACE

The City of San Diego institutes this Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally funded public works contracts. This program is applicable to all public works projects which are designated as requiring prevailing wages.

California Labor Code Section 1770, *et seq.* requires that contractors on public works projects pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code 1771.5 requires an awarding body to identify prevailing wage requirements in bid invitations, contract language and at pre-construction conferences, to review payroll records to verify compliance with the Labor Code, and to withhold contract payments when payroll records are delinquent or inadequate or when underpayments have occurred.

California Labor Code Section 1776 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.

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

This Labor Compliance Program (“LCP”) contains labor compliance standards required by State and Federal laws, regulations, and directives, as well as policies and contract provisions, which include, but are not limited to, the following:

- Contractors’ payment of applicable general prevailing wage rates.
- Contractors’ employment of properly registered apprentices.
- Contractors’ provision of certified payroll records upon request, but not less than weekly.
- Program’s monitoring of City construction sites for verification of proper payments of prevailing wage rates and work classification.
- Program’s presentation at pre-construction conferences with contractors/subcontractors.
- Program’s withholding of contract payments and imposing penalties for noncompliance.
- Program’s preparation and submittal of annual reports.

Labor Compliance Officers (“LCOs”) will represent the City of San Diego in enforcement of this LCP.

**SECTION I**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**General Labor Compliance Program**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**TABLE OF CONTENTS**

	<b>Page</b>
<b>Introduction</b>	
<b>I. Public Works Subject to Prevailing Wage Laws</b> .....	<b>1</b>
A. Types of Contracts to Which Prevailing Wage Requirements Apply.....	<b>1</b>
B. Limited Exemption.....	<b>1</b>
C. Applicable Dates for Enforcement of the LCP.....	<b>1</b>
<b>II. Competitive Bidding on City Public Works Contracts</b> .....	<b>2</b>
<b>III. Pre-Construction Conference</b> .....	<b>2</b>
<b>IV. Review of Certified Payroll Records</b> .....	<b>4</b>
A. Certified Payroll Records Required.....	<b>4</b>
B. Apprentices.....	<b>6</b>
C. Audit of Certified Payroll Records.....	<b>7</b>
<b>V. Reporting of Willful Violations to the Labor Commissioner</b> .....	<b>7</b>
A. Failure to Comply with Prevailing Wage Requirements.....	<b>7</b>
B. Falsification of Payroll Records, Misclassification of Work, Failure to Accurately Report Hours of Work.....	<b>7</b>
C. Failure to Submit Certified Payroll Records.....	<b>7</b>
D. Failure to Pay Fringe Benefits.....	<b>7</b>
E. Failure to Pay Correct Apprentice Rates and/or Misclassification of Apprentices .....	<b>8</b>
F. Taking of Kickbacks.....	<b>8</b>
<b>VI. Enforcement Action</b> .....	<b>8</b>
A. Duty of the Awarding Body.....	<b>8</b>
B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate....	<b>14</b>
C. Withholding for Violation for Not Paying the Per Diem Prevailing Wages.....	<b>15</b>
D. Forfeitures Requiring Approval by the Labor Commissioner.....	<b>16</b>
E. Determination of Amount of Forfeiture by the Labor Commissioner.....	<b>17</b>
F. Liquidated Damages.....	<b>19</b>
G. Request for Review.....	<b>19</b>
H. Deposits of Penalties and Forfeitures Withheld.....	<b>20</b>
I. Debarment Policy.....	<b>20</b>
<b>VII. Notice of Withholding and Review Thereof</b> .....	<b>21</b>
A. Notice of Withholding of Contract Payments (NWCP).....	<b>21</b>
B. Review of NWCP.....	<b>21</b>
<b>VIII. Distribution of Forfeited Sums</b> .....	<b>22</b>
<b>IX. Outreach Activities</b> .....	<b>23</b>
A. Providing Information to the Public.....	<b>23</b>
B. In-service Management Training on the Labor Compliance Program.....	<b>23</b>

**Table of Contents**  
(Continued)

<b>X.</b>	<b>Annual Reports</b> .....	<b>24</b>
	A. Prevailing Wage Annual Report .....	<b>24</b>
	B. Annual Report on the LCP to the Director of the Department of Industrial Relations.....	<b>24</b>

**ATTACHMENTS**

- A. Checklist of Labor Law Requirements for Review at Pre-Construction Conference
- B. Audit Record Form
- C. Single Project Labor Compliance Review and Enforcement Report Form
- D. Notice of Deadlines for Forfeitures
- E. Notice of Withholding of Contract Payments
- F. Notice of Transmittal
- G. Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)
- H. Prevailing Wage Hearing Regulations, 8 *CCR Sections 17201-17270*



## INTRODUCTION

The City of San Diego institutes this general Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to labor compliance provisions of State and Federally-funded public works contracts and additionally to comply with the provisions of Labor Code section 1771.8 pertaining to the use of funds derived from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This LCP contains labor compliance standards required by State and Federal laws, regulations and directives, as well as policies and contract provisions.

The California Labor Code Section 1770, *et seq.*, requires contractors on public works projects to pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this LCP, the City adheres to statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, on applicable projects, the City intends to actively enforce this LCP by monitoring City construction sites for payment of prevailing wage rates and to require contractors and subcontractors with workers on applicable City projects to submit copies of certified payroll records demonstrating their compliance with payment of prevailing wage rates.

The City’s LCP includes January 21, 2009, revisions to Title 8 of the California Code of Regulations Sections 16000 – 16404 and 16421 – 16802. Should applicable sections of the Labor Code or undergo alteration, amendment or deletion, the City of San Diego will modify the affected portions of this program accordingly.



**SECTION I  
PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS**

State prevailing wage rates apply to public works contracts as set forth in Labor Code Sections 1720 *et seq.*, and include, but are not limited to, such types of work as construction, alteration, demolition, repair or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines appropriate prevailing wage rates for particular construction trades and crafts by county.

**A. Types of Contracts to Which Prevailing Wage Requirements Apply**

The City of San Diego institutes this general Labor Compliance Program [LCP] as provided in Section 1771.5(b) of the Labor Code. When the City determines a project to require prevailing wages, these sections of the Labor Code will be enforced on such projects.

As provided in Labor Code section 1771.8(a), an awarding body that chooses to use funds derived from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 shall initiate and enforce a Labor Compliance Program as described in subdivision (b) of section 1771.5 of the Labor Code with respect to that public works project. Accordingly, upon approval by the Director of the Department of Industrial Relations, the City of San Diego's LCP shall apply to public works using funds derived from this Bond Act.

**B. Limited Exemption**

As provided in Labor Code Section 1771.5(a), if a City of San Diego public works project would be otherwise subject to prevailing wage requirements except that the value is \$25,000 or less when the project is for construction or installation work or of \$15,000 or less when the project is for alteration, demolition, repair, or maintenance work, then the City shall not require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for such projects. A project for construction, installation, alteration, demolition, repair, or maintenance work shall be identified as such in the call for bids, and in the contract or purchase order.

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

**C. Applicable Dates for Enforcement of the LCP**

The applicable dates for enforcement of awarding body Labor Compliance Programs are established by Section 16425 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the City's LCP until after the program has received initial or final approval.

**SECTION II**  
**COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS**

The City publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. All City bid advertisements or bid invitations and public works contracts contain appropriate language concerning requirements of the Labor Code.

**SECTION III**  
**PRE-CONSTRUCTION CONFERENCE**

After the City awards a public works contract and prior to commencement of the work, a mandatory Pre-Construction Conference shall be conducted with the contractor and those subcontractors listed in its bid documents. A Labor Compliance Officer shall present information at this conference.

At that meeting, the Labor Compliance Officer will discuss Federal and State labor law requirements applicable to the contract, including prevailing wage requirements, respective record-keeping responsibilities, the requirement for submittal of certified payroll records to the City and the prohibition against discrimination in employment.

The Labor Compliance Officer will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (Attachment A to this document) and will discuss in detail the following checklist items:

1. Contractor's duty to pay prevailing wages [Labor Code Section 1770 *et seq.*].
2. Contractor's duty to employ registered apprentices on public works projects [Labor Code Section 1777.5].
3. Penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment [Labor Code Sections 1775, 1777.7, and 1813].
4. Requirement to maintain and submit copies of certified payroll records to the City, on a weekly basis, as required [Labor Code Section 1776] and penalties for failure to do so [Labor Code Section 1776(g)]. The requirement includes and applies to all subcontractors performing work on this project 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. Prohibition against employment discrimination [Labor Code Sections 1735 and 1777.6; the Government Code and Title VII of the Civil Rights Act of 1964, as amended].
6. Prohibition against taking or receiving a portion of an employee's wages [Labor Code Section 1778] (kickback).

7. 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. Requirement to list all subcontractors that are performing one-half of one percent (0.5%) of the total amount of the contract [Public Contract Code Section 4100 *et seq.*].
9. Requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed [Labor Code Section 1021] and under California Contractors License Law. Also, see Business and Professions Code Section 7000, *et seq.*
10. Prohibition against unfair competition [Business and Professions Code Sections 17200-17208].
11. Requirement that contractor and subcontractor be properly insured for Workers' Compensation [Labor Code Section 1861].
12. Requirement that the contractor abide by Occupational Safety and Health laws and regulations that apply to this particular public works project.
13. Prohibition against hiring undocumented workers and requirement to secure proof of eligibility/citizenship from all workers.
14. Requirement to provide itemized wage statements to employees under Labor Code Section 226.

Contractors and subcontractors present at the Pre-Construction Conference will be given the opportunity to ask questions of the Labor Compliance Officer relative to items contained in the Checklist of Labor Law Requirements. The checklist will then be signed by the contractor's representative and a representative of each subcontractor and the City's Labor Compliance Officer.

At the Pre-Construction Conference, the Labor Compliance Officer will provide the contractor with a copy of the City's LCP packet which includes: a copy of the approved LCP, the Checklist of Labor Law Requirements, applicable Prevailing Wage Rate Determinations, blank certified payroll record forms, fringe benefit statements, State apprenticeship requirements, and a copy of the Labor Code relating to Public Works and Public Agencies [Part 7, Chapter 1, Sections 1720-1861].

It will be the contractor's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors.

**SECTION IV  
REVIEW OF CERTIFIED PAYROLL RECORDS**

**A. Certified Payroll Records Required**

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on City projects subject to the LCP. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, rate of pay (including rates of contributions for or costs assumed to provide fringe benefits), daily and weekly number of hours worked, actual wages paid and the payroll check numbers.

**1. Submittal of Certified Payroll Records**

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the City of San Diego Labor Compliance Officer as required. 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 signed by the contractor or each subcontractor indicating payroll records are correct and complete, wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations and classifications set forth for each employee conform with work performed.

Time cards, front and back copies of canceled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within ten (10) days following receipt of request.

**2. Use of Electronic Reporting Forms**

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

- a. The reports must contain all information required by Labor Code Section 1776, organized in a manner that is similar to how the information is reported on the Department of Industrial Relation's "Public Works Payroll Reporting Form" (Form A-1-131).
- b. The reports shall 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.
- c. Reports submitted to this Labor Compliance Program must be either (1) in the form of non-modifiable image or record that bears an electronic signature or includes a copy of an 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.
- 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.

### **3. Full Accountability**

Each individual, laborer or craftsperson working on this public works contract must appear on the payroll. 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 this contract must also submit a certified payroll record listing days and hours worked and the trade classification descriptive of work actually done.

The contractor shall provide records required under this section to the City of San Diego within five (5) days of each payday, and shall make these records available for inspection by the Department of Industrial Relations, and shall permit representatives of each to interview tradesworkers 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. Moreover, the prime contractor is responsible for Labor Code violations of its subcontractors in accordance with Labor Code Section 1775.

### **4. Payment to Employees**

Employees must be paid unconditionally, and not less often than once each week, the full amounts due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, 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 as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

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

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

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

1. Submit contract award information to the apprenticeship committee for each apprenticeable craft or trade in the area of the project;
2. Request dispatch of apprentices from the applicable apprenticeship program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyman work; and
3. Contribute to the applicable apprenticeship program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an apprenticeship program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the contractor is registered to train apprentices, 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. 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.



**C. Audit of Certified Payroll Records**

Audits shall be conducted by the Labor Compliance Officer and shall also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

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

**SECTION V  
REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER**

If an investigation reveals that a willful violation of the Labor Code has occurred, the Labor Compliance Officer 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 (6) types of willful violations are reported:

**A. Failure to Comply with Prevailing Wage Rate Requirements**

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

**B. 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 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.

**C. Failure to Submit Certified Payroll Records**

The contractors and subcontractors shall have ten (10) days upon notification by the Program Manager in which to comply with the requirement of submittal of weekly records and/or to correct inaccuracies or omissions that have been detected.

**D. Failure to Pay Fringe Benefits**

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

**E. Failure to Pay 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 Labor Commissioner as a willful violation upon completion of an investigation and audit.

**F. 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.

**SECTION VI  
ENFORCEMENT ACTION**

**A. Duty of the Awarding Body**

The City of San Diego as the awarding body having an approved LCP has a duty to the Director of the Department of Industrial Relations to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code in a manner consistent with the practice of the Labor Commissioner. The City's LCP shall refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making decisions. The primary function of this LCP is to ensure public works contractors comply with prevailing wage requirements found in the Public Works Chapter of the Labor Code. The procedures specified herein, including proactive investigation methods, comprise the minimum obligations required of this LCP to operate as specified in sections 16248 and 16434. The City of San Diego Labor Compliance Program will:

**1. Review payroll records** furnished by contractors and subcontractors in accordance with Section 16421(a)(3), and in a format prescribed at Section 16401 of Title 8 of the California Code of Regulations, as promptly as practicable after receipt, 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:

- a. all appropriate data elements identified in Labor Code Section 1776(a) have been reported;
  - b. certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and
  - c. correct prevailing wage rates have been reported as paid for each classification of labor listed, with confirmation of payment 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.
- 1) For each month a contractor or subcontractor reports 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.

- 2) Confirmation shall be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest payroll records furnished by a contractor or subcontractor are inaccurate.
- 2. Conduct in-person inspections at sites where public work is being performed.** Such On-Site Visits may be undertaken randomly or as deemed necessary, but shall be undertaken during each week that workers are present. On-Site Visits may include any activities deemed necessary to corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors. All On-Site Visits shall include visual inspection of:
    - a. the copy of the DIR wage determination(s) required to be posted at each job site in compliance with Labor Code Section 1773.2, and
    - b. Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with Section 16429, including a phone number for inquiries, questions, or assistance with regard to the LCP.
  - 3. Respond to receipt of a written complaint** alleging failure of a contractor or subcontractor to pay prevailing wages by performing all of the following actions:
    - a. Within 15 days after receipt of the complaint, send a written acknowledgement to the complainant acknowledging receipt of the complaint and identifying the name, address, and phone number of the Labor Compliance Officer 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. Notify the complainant in writing of the resolution of the complaint within ten days after the complaint has been resolved;
    - d. Notify the complainant in writing at least once every 30 days of the status of a complaint that has not yet been resolved; and
    - e. Notify the complainant in writing at least once every 90 days of the status of a complaint that has been resolved by the City's LCP but remains under review or in litigation before another entity.
  - 4. With respect to apprenticeship standards,** perform the following:
    - 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 Labor Code Section 1773.3;
- c. refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards;
- d. enforce prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner to ensure that:
  - 1) any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity;
  - 2) apprentices are paid no less than the prevailing apprentice rate;
  - 3) workers listed and paid as apprentices on certified payroll records are, in fact, duly registered as apprentices with the Division of Apprenticeship Standards; and
  - 4) the regular prevailing wage rate is paid to any worker who is not a duly registered apprentice and for all hours worked in excess of the maximum ratio permitted under Labor Code Section 1777.5(g).

**5. Maintain records for each public work project** subject to prevailing wage requirements which include a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project.

- a. The summary shall be maintained using the form, Single Project Labor Compliance Review and Enforcement Report Form (in Appendix C) following 8 CCR §16434.
- b. The summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner.
- c. Records for a prevailing wage project shall be retained for the later of:
  - 1) at least one year after the acceptance of the public work or 5 years after 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.
- d. A written summary or report includes information maintained electronically, provided the summary or report can be printed 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 in California.

- 6. Prepare an Audit as a written summary when there has been a violation** of the Public Works Chapter of the Labor Code resulting in the underpayment of wages.
- a. An Audit will include prevailing wage deficiencies for each underpaid worker with any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined 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. An Audit may include, but is not limited to:
    - 1) worker interviews;
    - 2) complaints from workers or other interested persons;
    - 3) all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments;
    - 4) work schedules by days and hours; and
    - 5) disbursement by way of cash, check, or any other method, of funds to a person(s) by job classification and/or skill pursuant to a public works project.
  - b. An Audit will contain details sufficient to enable 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. To meet such standards, the Audit Reporting Forms (included in the Forms section as Appendix B in this document) will be utilized:
    - 1) Public Works Investigation Worksheet
    - 2) Public Works Audit Worksheet
    - 3) Prevailing Wage Determination Summary
  - c. An Audit report will also include 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.
  - d. Records supporting an Audit shall be maintained by the City 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.

7. **Provide notification of an opportunity to resolve a wage deficiency** to the contractor and affected subcontractor prior to a determination of the amount of forfeiture by the Labor Commissioner after a determination that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared.
  - a. 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).
  - b. Based upon the contractor's submission, the City's LCP may reasonably conclude the failure to pay correct wages was a good faith mistake and the City 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 following terms are met:
    - 1) the contractor and/or affected subcontractor have no known prior record of failure to meet their prevailing wage obligations;
    - 2) underpayment of wages to workers is promptly corrected; and
    - 3) proof of such payment is received by the City's LCP.
  - c. For each instance in which a wage deficiency is resolved in accordance with this regulation, the City's LCP shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall include:
    - 1) name and description of the public works project;
    - 2) contractor or affected subcontractor involved;
    - 3) gross amount of wages paid to workers to resolve the prevailing wage deficiency; and
    - 4) a copy of the Audit prepared for this incident including any exculpatory information submitted by the affected contractor or subcontractor.
8. **Recommend a withhold** of penalties, forfeitures, and underpayment of wages for violations of the requirements of this program.
9. **Ensure accord with Labor Code** Section 1771.5(b) that this LCP requires at a minimum the inclusion of appropriate language in bid requests, design-build requests, the contract, and purchase orders concerning California Labor Code Chapter 1 of Part 7 of Division 2:
  - a. A provision that contract payments are not made when payroll records are delinquent or inadequate; and
  - b. A pre-construction conference with listed contractors and subcontractors to discuss applicable federal and state labor law requirements as outlined in the Checklist of Labor Law Requirements (see Attachment A) with copies of forms furnished and discussed.

**10. Take cognizance of prevailing wage violations** under California Labor Code Section 1726 and take any appropriate action pursuant to and in accordance with that responsibility and authority.

**11. Enforce prevailing wage requirements**, consistent with the policy of the state by taking reasonable, vigorous and prompt action to determine whether violations exist and enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. This LCP shall neither avoid use of its enforcement authority based on cost considerations nor use its authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not limited to, prolonged or excessive withholdings of contract payments without making a determination a violation has occurred.

To the extent authorized by law, the City or a Joint Powers Authority to which the City is a party, may contract with a third party to initiate and enforce all or part of its LCP provided the third party is approved by the Director to operate an LCP. This shall not limit the City's authority to contract for services for the operation of its own approved LCP, including services by persons licensed or certified by the State of CA to practice law, architecture, engineering or accounting.

A private entity approved by the Director to operate an LCP and that operates an LCP pursuant to a contract with the City or a Joint Powers Authority with the City as a party shall have the same rights and responsibilities as the City in administering the LCP, including but not limited to complying with the conflict of interest provisions of the Political Reform Act including disclosure requirements for LCP employees and consultants who participate in making governmental decisions as defined under Title 2 CA Code of Regulations Section 18701 and maintaining, disclosing, or keeping confidential personnel information, payroll records, and other information and records in accordance with the Labor Code Section 1776, the CA Public Records Act and the Information Practices Act of 1977.

**12. Pursue continual development of abilities** to perform labor compliance oversight including securing training on enforcement of prevailing wage requirements, monitoring and investigation, and procedural requirements and responsibilities.

**13. Designate employees for this program** who participate in making decisions for this Labor Compliance Program and require those employees to file Statements of Economic Interest (FPPC Form 700) through the filing officer for the City of San Diego and to comply with other applicable requirements of the Political Reform Act (commencing with Section 87100 of the Government Code) in connection with this work.

**14. Any failure** of this Labor Compliance Program to comply with an requirement shall not of itself constitute a defense to the failure to pay prevailing wages or meet other obligations imposed by California Labor Code Chapter 1, Part 7, Division 2.

**B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate**

1. “Withhold” means to cease payments by the awarding body, its agents or others who pay on its behalf 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 release of 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 City Contract and the LCP.
4. “Inadequate payroll records” are any one of the following:
  - a. A record lacking the information required by Labor Code Section 1776.
  - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor.
  - c. A record remaining uncorrected for one payroll period after the awarding body has given the contractor notice of inaccuracies detected by audit or record review, provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one-percent (1%) of the entire certified weekly payroll in dollar value and does 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*.
5. When payroll records are delinquent or inadequate, the withholding of contract payments is required by Labor Code Section 1771.5 (b)(5) and 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 City’s LCP has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate. A contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the City’s LCP provides notice that the subcontractor has cured the delinquency or deficiency.
  - a. When contract payments are withheld under this section, the City’s LCP shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:



- 1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate;
  - 2) the specific amount being withheld; and
  - 3) notification of the contractor's or subcontractor's 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 City's LCP has exceeded its authority under this section.
- b. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
  - c. 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. Pursuant to Labor Code Section 1776, the contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

**C. Withholding for Violation for Not Paying the Per Diem Prevailing Wages**

1. 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.
2. "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of the contractor or subcontractor.
  - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*
  - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8 CCR Section 16000 *et seq.* and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid.
  - c. Estimated amounts of "illegal taking of wages."
  - d. Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council.
  - e. The withholding of contract payments when, after investigation, it is established that underpayment or violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

3. Provisions relating to the penalties under Labor Code Sections 1775 and 1813:
  - a. Pursuant to Labor Code Section 1775, the contractor shall, as a penalty to the City, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages.
  - b. Pursuant to Labor Code Section 1813, the contractor shall, as a penalty to the City on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week.

**D. Forfeitures Requiring Approval by the Labor Commissioner**

1. “Forfeitures” are the amounts of unpaid penalties and wages assessed by the City’s LCP and proposed to be withheld pursuant to Labor Code Section 1771.6(a) and includes:
  - a. the difference between 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
  - b. penalties assessed under Labor Code Sections 1775, 1776 and 1813.
2. “Failing to pay the correct rate of prevailing wages” means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (§§ 17201 through 17270).

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

- a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in Title 8 CCR Section 16000 and Labor Code Section 1771.
- b. Failure to provide complete and accurate payroll records, as required by Labor Code Section 1776.
- c. Paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program.
- d. Accepting or extracting kickbacks, in violation of Labor Code Section 1778.

- e. Engaging in prohibited actions related to fees for registration as a public works employee, in violation of Labor Code Section 1779.
  - f. Failure to pay overtime for work over eight (8) hours in any one day or forty (40) hours in any one week, in violation of Labor Code Sections 1813, 1815, or Title 8 CCR Section 16200(a)(3)(F).
- 3. 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 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 in 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.
  - 4. For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437.

**E. Determination of Amount of Forfeiture by the Labor Commissioner**

- 1. Where the City's LCP requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:
  - a. The date that the public work was accepted and the date that a notice of completion was filed.
  - b. Any other deadline which, if missed, would impede collection.
  - c. Evidence of violation in narrative form.
  - d. Evidence that an "audit" or "investigation" occurred in compliance with Title 8 CCR Section 16432.
  - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation, or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position.
  - f. Where the City seeks not only amounts of wages but also a penalty as part of the forfeiture and the contractor has unsuccessfully contended that the cause of violation was a mistake, inadvertence or neglect, a statement should accompany the proposal for a forfeiture with a recommended penalty amount, pursuant to Labor Code Section 1775.
  - g. Where the City seeks only wages or a penalty less than fifty dollars (\$50) per day as part of the forfeiture and the contractor has successfully contended that the cause of

violation was a mistake, inadvertence or neglect, then the file should include the evidence as to the contractor's knowledge of its obligation, including the LCP's communication to the contractor of the obligation in the bid invitations, in the pre-construction conference agenda and records, and any other notice given as part of the contracting process. Included with the file should be a statement similar to that described in subsection (f) above and recommended penalty amounts, pursuant to Labor Code Section 1775.

- h. The previous record of the contractor in meeting prevailing wage obligations.
  - i. Whether the City's LCP is approved on an interim or temporary basis under sections 16425 or 16426 above or extended approval under section 16427.
2. 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 less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.
  3. A copy of the file or report shall be served on the contractor at the same time it is sent to the Labor Commissioner.

The City may exclude from the documents served on the contractor/subcontractor or surety copies of documents secured from these parties during an audit, investigation or meeting if those documents are clearly referenced in the file or report.

4. The Labor Commissioner shall affirm, reject or modify the forfeiture in whole or in part as to penalty and/or wages due.
5. The determination of the forfeiture by the Labor Commissioner is effective on the following date for Labor Compliance Programs having initial approval pursuant to Section 16426 of the California Code of Regulations:
  - a. On the date the Labor Commissioner serves by first class mail on the City and on the contractor, an endorsed copy of the proposed forfeiture, or a 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 thirty (30) days of receipt of the proposed forfeiture.
  - b. If the City's LCP is operating with extended authority under Section 16427, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. In such cases, 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.

#### **F. Liquidated Damages**

1. In accordance with Labor Code Section 1742.1 (a) after 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issues to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid.
  - a. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.
  - b. If the contractor or subcontractor demonstrates to the satisfaction of the Director substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the Director may exercise discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages.
2. Any liquidated damages shall be distributed to the employee along with the unpaid wages.
3. Section 203.5 shall not apply to claims for prevailing wages under this chapter.
4. If within 60 days following service of the assessment or notice, the full amount including penalties has been deposited with the DIR to hold in escrow pending administrative and judicial review, there shall be no liability for liquidated damages, under Section 1742.1 (b) notwithstanding subdivision (a). The DIR will release such funds, plus any earned interest, at the conclusion of all administrative and judicial review to the persons or entities found to be entitled to such funds.

#### **G. Request for Review**

1. A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of a City of San Diego LCP enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and regulations found in sections 17201-17270 of Title 8 of the California Code of Regulations.
2. The City's LCP shall have the rights and responsibilities of the Enforcing Agency (as defined in section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to:
  - a. serve notices;
  - b. transmit the Request for Review to the hearing office;

- c. provide an opportunity to review evidence in a timely manner;
  - d. participate through counsel in all hearing proceedings; and
  - e. meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.
3. If a contractor or subcontractor seeks review of a City 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.
  4. Except in cases where the Labor Commissioner has intervened, the City's LCP has 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.
  5. The City's LCP shall document the reasons for any settlement or request for dismissal and make that documentation available to the Labor Commissioner upon request whenever the City 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.

#### **H. 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 its General Fund.
2. Where collection of fines, penalties or forfeitures results from court action to which the Labor Commissioner and the City are both parties, the fines, penalties or forfeitures shall be divided between the General Funds of the State and City, 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 subcontractor, either by withholding or as a result of court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code Section 96.7.

#### **I. Debarment Policy**

It is the policy of the City that the public works prevailing wage requirements set forth in the California Labor Code, Section 1720-1861, be strictly enforced. In furtherance thereof,

construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the State of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the labor code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

## **SECTION VII 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 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. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body. A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the City is found as Attachment D 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 to the office of the LCP that appears on the NCWP within sixty (60) days after service of the NWCP. If no hearing is requested within sixty (60) days after service of the NWCP, the NWCP shall become final.
2. Within ten (10) days following the receipt of the request for review, 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 or surety that secures 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 Attachment E to this document.
3. Upon receipt of a timely request, a hearing shall be commenced within ninety (90) days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an Administrative Law judge pursuant to 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 the hearing within twenty (20) days of the receipt 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 a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Attachment F 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 forty-five (45) days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying or dismissing the assessment. The decision of the director shall consist of a notice of findings 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 LCP. Within fifteen (15) days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The Director has adopted regulations setting forth procedures for hearings under this subdivision. The regulations are found as Attachment G 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 forty-five (45) days after service of the decision. If no petition for writ of mandate is filed within forty-five (45) days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
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 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 NWCP by the City to withhold contract payments pursuant to Section 1771.7.



## **SECTION VIII DISTRIBUTION OF FORFEITED SUMS**

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

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

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 shall have priority over all Stop Notices filed against the prime contractor.

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 City that has enforced this chapter pursuant to Section 1771.7.

## **SECTION IX OUTREACH ACTIVITIES**

To ensure the successful implementation of the City's Labor Compliance Program, there shall be several outreach activities initiated and maintained.

### **A. Providing Information to the Public**

Labor Compliance Officers shall be responsible for communication and outreach activities relative to public information on the City's LCP:

1. Regular presentations to contractors at all City Pre-Bid Conferences and Pre-Construction Conferences.
2. Ongoing communication via correspondence and with workers at City job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.
3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the City.

### **B. In-service Management Training on the Labor Compliance Program**

The Labor Compliance Program shall provide ongoing management in-service training and workshops for City staff relative to the terms, requirements and administration of this Labor Compliance Program.

## **SECTION X ANNUAL REPORTS**

### **A. Annual Report on Prevailing Wage Monitoring**

The City's LCP will submit to the Mayor with copies to City Council members an annual report on prevailing wage monitoring in the format required by the DIR (LCP AR1) which will include the following information:

1. Progress report on the LCP in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the LCP.
2. Annual reporting period (based on DIR designation) summary of:
  - a. Monitoring activities;
  - b. Record keeping activities;
  - c. Labor Code violations identified and reported to DLSE;
  - d. Statistical analysis of the prevailing wage violations on City public works projects;
  - e. Summary of outreach activities;
  - f. Certification of compliance with conflict of interest disclosure requirements as defined by Title 2, CA Code of Regulations section 18701; and
  - g. Current statement disclosing information required under section 16426 (a)2), (3) and (5).

### **B. Annual Report on the LCP to the Director of the Department of Industrial Relations**

The City's LCP will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within sixty (60) days after the end of its annual reporting period as designated by the DIR's approval of the LCP. The annual report shall be made on the appropriate form LCP-AR1 and will contain, as a minimum, the following information:

1. Number of public works contracts awarded which are subject to prevailing wages and their total value.
2. 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.
3. A summary of penalties and forfeitures imposed and withheld or recovered in a court of competent jurisdiction.

4. A special summary of all audits that were conducted upon request of Labor Commissioner.
5. A certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under Title 2, California Code of Regulations, section 18701 and a current statement disclosing the information required under section 16426(a)(2), (3) and (5).
6. Information in the Annual Report shall be reported in sufficient detail to afford a basis to evaluate the scope and level of enforcement activity of the LCP.

Copies of this report will be distributed to the Director of the Department of Industrial Relations and the Chief Operating Officer.

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**CHECKLIST OF LABOR LAW REQUIREMENTS  
FOR REVIEW AT PRE-CONSTRUCTION CONFERENCE**

(In accordance with CCR Section 16421 and 16430)

Federal and State labor law requirements applicable to the contract are composed of, but not limited to, the following:

- 1. Payment of Prevailing Wage Rates** The award of this public works contract requires that all workers employed on this project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

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

- 2. Apprentices** It is the duty of the contractor and subcontractors to employ registered apprentices on this public works project per Labor Code Section 1777.5.
- 3. Penalties** Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit upon request accurate certified payroll records, failure to employ apprentices and failure to pay employees for all hours worked at the correct prevailing wage rate in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813.
- 4. Certified Payroll Records** Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker or other employee hired in connection with this public works project.

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

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly. If there has been no work performed during a given week, the Certified Payroll Record for that week shall be annotated, "No Work."

- 5. Nondiscrimination in Employment** Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public

Contract Code; and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

*Equal Employment Poster* The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project.

*Records* The contractor and each subcontractor shall maintain accurate records of employment information as required by the *Monthly Employment Report*. This report shall specify ethnicity and gender for each employee in a craft, trade or classification.

*Reports* A *Monthly Employment Report* for the contractor and for each of its subcontractors is required to be completed and submitted each month by no later than the fifth day of that month. Reports are to be for the previous month's work and are to be project specific. If no work was performed during that month, the form shall clearly state "No Work."

6. **Kickback Prohibited** Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages.
7. **Acceptance of Fees Prohibited** Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work [Labor Code Section 1779] or for filling work orders on public works contracts [Labor Code Section 1780].
8. **Listing of Subcontractors** Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent (0.5%) of the total effort [Government Code Section 4100, *et seq.*].
9. **Proper Licensing** Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed [Labor Code Section 1021 and Business and Professions Code Section 7000, *et seq.* under California Contractors License Law].
10. **Unfair Competition Prohibited** Contractors and subcontractors are prohibited from engaging in unfair competition [Business and Professions Code Sections 17200-17208].
11. **Workers' Compensation Insurance** All contractors and subcontractors are required to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 [Labor Code Section 1861].
12. **OSHA** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

**13. Undocumented Workers** Contractors and subcontractors are required to follow federal regulations prohibiting the hiring of undocumented workers and requiring proof of eligibility/citizenship from all workers.

**14. Itemized Wage Statements** Contractors and subcontractors are required to observe Labor Code section 226 and provide itemized wage statements to employees.

In accordance with Federal and State laws, and with City policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

**For the Contractor:**

**For the City of San Diego**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

## ATTACHMENT B

### CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM

#### AUDIT RECORD FORM (For Use with CCR Section 16432 Audits)

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

1. Audit of the obligation to carry workers’ compensation insurance means producing written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers’ Compensation Insurance Rating Bureau.
2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: Whether contract award information was received, including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards.
3. Audit of the obligation to pass through amounts, made part of the bid, for apprenticeship training contributions to either the training trust or the California Apprenticeship Council, means asking for copies of checks remitted, or when the audit occurs more than thirty (30) days after the month in which payroll has been paid, copies of canceled checks remitted.
4. Audit of “illegal taking of wages” means inspection of written authorizations for deductions (as listed in Labor Code Section 224) in the contractor’s files and comparison to wage deduction statements furnished to employees [Labor Code Section 226] together with an interview of several employees as to any payments made which are not reflected on the wage deduction statements.
5. Audit of the obligation to keep records of working hours [Title 8 CCR Section 16432] and pay not less than required for hours worked in excess of eight (8) hours/day and forty (40) hours/week [Title 8 CCR Section 16200(a)(3)(F)] means review and audit of weekly certified payroll records.
6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly certified payroll records for compliance with:

- a. All elements defined as the General Prevailing Rate of Per Diem Wages in 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 Program Manager's office and posted at the public works job site.
- b. 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 Labor Compliance Officer's office and posted at the public works job site.

NOTE: Audit Record Worksheet forms are included in the "Forms" section of this handbook:

- Public Works Investigation Worksheet
- Public Works Audit Worksheet
- Prevailing Wage Determination Summary



**Single Project Labor Compliance Review and Enforcement Report Form**

[Appendix C following 8 CCR §16434]

Awarding Body: \_\_\_\_\_

Project Name: \_\_\_\_\_

Name of Approved Labor Compliance Program: \_\_\_\_\_

Bid Advertisement Date: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Notice of Completion Recordation Date: \_\_\_\_\_

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

3. Notification to Project Workers of Labor Compliance Program's Contact Person. (Explain Manner of Notification for each project work site.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Certified Payroll Record Review

- a. CPRs Received From:

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

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

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

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

a. Independent Confirmation of CPR Data

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

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

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

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

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

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

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

\* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

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

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

7. Requests for Approval of Forfeiture to Labor Commissioner

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

8. Litigation Pending Under Labor Code Section 1742

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

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

\_\_\_\_\_  
Authorized Representative for Labor Compliance Program

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**NOTICE OF DEADLINES FOR FORFEITURES**  
(Under CCR Section 16437)

**TO:**           (NAME OF CONTRACTOR)          

This document requests the Labor Commissioner of California to approve a forfeiture of money you would otherwise be paid. The City Labor Compliance Officer is asking the Labor Commissioner of California to agree, in twenty (20) days, that the enclosed Evidence Report and package of materials indicates that you have violated the law.

Your failure to respond to City's request that the Labor Commissioner approve a forfeiture, by writing to the Labor Commissioner within twenty (20) days of the date of service (the date of postmark) of this document on you, may lead the Labor Commissioner to affirm the proposed forfeiture and may also end your right to contest those amounts further.

You must serve any written response on the Labor Commissioner and the City's Labor Compliance Officer by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur or why the penalties should not be assessed, within the twenty (20)-day period, it will be considered.

If you change your address, or decide to hire an attorney, it is your responsibility to advise the City Labor Compliance Officer by certified mail. Otherwise, notices will be served at your last address on file, and deadlines may pass before you receive such notice.

**ATTACHMENT E**

<b>LABOR COMPLIANCE PROGRAM</b> City of San Diego 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209	(SEAL )
Date:	In Reply Refer to Case No.:

**NOTICE OF WITHHOLDING OF CONTRACT PAYMENTS**

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

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for the City of San Diego ("LCP") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code Sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Labor Compliance Program has determined the total amount of wages due is: \$\_\_\_\_\_

The Labor Compliance Program has determined the total amount of penalties assessed under Labor Code Sections 1775 and 1813 is: \$\_\_\_\_\_

The Labor Compliance Program has determined the amount of penalties assessed under Labor Code Section 1776 is: \$\_\_\_\_\_

**LABOR COMPLIANCE PROGRAM**  
**City of San Diego**

By:\_\_\_\_\_

## NOTICE OF RIGHT TO OBTAIN REVIEW - FORMAL HEARING

In accordance with Labor Code Sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within sixty (60) days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

City of San Diego Labor Compliance Program  
Review Office-Notice of Withholding of Contract Payments  
202 "C" Street, Mail Station 56P  
San Diego, CA 92101

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code Section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within twenty (20) days of the Labor Compliance Program's receipt of the written **Request for Review**.

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

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

## OPPORTUNITY FOR SETTLEMENT MEETING

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

final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to \_\_\_\_\_ at the following address:

City of San Diego Labor Compliance Program  
Review Office-Notice of Withholding of Contract Payments  
202 "C" Street, Mail Station 56P  
San Diego, CA 92101

### **LIQUIDATED DAMAGES**

In accordance with Labor Code Section 1742.1 (a) after 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issues to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter. Under Section 1742.1 (b) notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any earned interest, at the conclusion of all administrative and judicial review to the persons or entities who are found to be entitled to such funds.

**The Amount of Liquidated Damages Available Under this Notice is \$\_\_\_\_\_.**

#### Distribution:

Prime Contractor  
Subcontractor  
Surety(s) on Bond

**ATTACHMENT F**

<p>LABOR COMPLIANCE PROGRAM City of San Diego Review Office - Notice of Withholding of Contract Payments 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209</p>	<p>(SEAL )</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

**NOTICE OF TRANSMITTAL**

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

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

Also enclosed please find the following:

- \_\_\_\_\_ Copy of Notice of Withholding of Contract Payments
- \_\_\_\_\_ Copy of Audit Summary

**LABOR COMPLIANCE PROGRAM**  
**City of San Diego**

By: \_\_\_\_\_

cc: Prime Contractor  
Subcontractor  
Bonding Company

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



**ATTACHMENT G**

<p>LABOR COMPLIANCE PROGRAM City of San Diego Review Office - Notice of Withholding of Contract Payments 202 "C" Street, Mail Station 56P San Diego, CA 92101 Phone: 619 235-5785 Fax: 619 235-5209</p>	<p>(SEAL )</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

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

To: Prime Contractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency, at its own expense, forwards copies of all such evidence to the affected contractor or subcontractor.

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

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

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

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

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

**LABOR COMPLIANCE PROGRAM  
City of San Diego  
202 "C" Street, Mail Station 56P  
San Diego, CA 92101  
Phone: 619 235-5785  
Fax: 619 235-5209  
Attention: Labor Compliance Program Manager**

**REQUEST TO REVIEW EVIDENCE**

To: LABOR COMPLIANCE PROGRAM  
City of San Diego  
202 "C" Street, Mail Station 56P  
San Diego, CA 92101  
Phone: 619 235-5785  
Fax: 619 235-5209

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Regarding Notice of Withholding of Contract Payments Dated \_\_\_\_\_

Our Case No.: \_\_\_\_\_

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

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

**PREVAILING WAGE HEARING REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 8, CHAPTER 8, SUBCHAPTER 6**  
**(SECTIONS 17201 through 17270)**

**C O N T E N T S**

**ARTICLE 1. GENERAL**

- 17201. Scope and Application of Rules.
- 17202. Definitions.
- 17203. Computation of Time and Extensions of Time to Respond or Act.
- 17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.
- 17205. Authority of Hearing Officers.
- 17206. Access to Hearing Records.
- 17207. Ex Parte Communications.
- 17208. Intervention and Participation by Other Interested Persons.
- 17209. Representation at Hearing.
- 17210. Proper Method of Service.
- 17211. Filing and Service of Documents by Facsimile or Other Electronic Means.
- 17212. Administrative Adjudication Bill of Rights.

**ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW**

- 17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.
- 17221. Opportunity for Early Settlement.
- 17222. Filing of Request for Review.
- 17223. Transmittal of Request for Review to Department.
- 17224. Disclosure of Evidence.
- 17225. Withdrawal of Request for Review; Reinstatement.
- 17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.
- 17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.
- 17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.
- 17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

**ARTICLE 3. PREHEARING PROCEDURES**

- 17230. Scheduling of Hearing; Continuances and Tolling.
- 17231. Prehearing Conference.
- 17232. Consolidation and Severance.
- 17233. Prehearing Motions; Cut-Off Date.
- 17234. Evidence by Affidavit or Declaration.
- 17235. Subpoena and Subpoena Duces Tecum.
- 17236. Written Notice to Party in Lieu of Subpoena.
- 17237. Depositions and Other Discovery.

**ARTICLE 4. HEARINGS**

- 17240. Notice of Appointment of Hearing Officer; Objections.

- 17241. Time and Place of Hearing.
- 17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.
- 17243. Conduct of Hearing.
- 17244. Evidence Rules; Hearsay.
- 17245. Official Notice.
- 17246. Failure to Appear; Relief from Default.
- 17247. Contempt and Monetary Sanctions.
- 17248. Interpreters.
- 17249. Hearing Record; Recording of Testimony and other Proceedings.
- 17250. Burdens of Proof on Wages and Penalties.
- 17251. Liquidated Damages.
- 17252. Oral Argument and Briefs.
- 17253. Conclusion of Hearing; Time for Decision.

**[THERE IS NO ARTICLE 5]**

**ARTICLE 6. DECISION OF THE DIRECTOR**

- 17260. Decision.
- 17261. Reconsideration.
- 17262. Final Decision; Time for Seeking Review.
- 17263. Preparation of Record for Review.
- 17264. Request for Participation by Director in Judicial Review Proceeding.

**ARTICLE 7. TRANSITIONAL RULE**

- 17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

**ARTICLE 1. GENERAL**

**17201. Scope and Application of Rules.**

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.

(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect

to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.

(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as "Rules" using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.5, 1771.6(b), 1773.5, 1776, and 1777.1 – 1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

**17202. Definitions.**

For the purpose of these Rules:

(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741,

or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprenticeship Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;

(b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;

(c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;

(d) "Department" means the Department of Industrial Relations;

(e) "Director" means the Director of the Department of Industrial Relations;

(f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; *i.e.*, it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;

(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;

(h) "Joint Labor-Management Committee" means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner's functions under Chapter 1, Part 7 of Division 2

(commencing with section 1720) of the Labor Code;

(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];

(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;

(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).

**(m) "Rule" refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)**

(n) "Surety" has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

(o) "Working Day" means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 2787, 3247, and 3248, Civil Code; sections 12a and 12b, Code of Civil Procedure; sections 6700, 6701, 11405.60 and 11405.70, Government Code; sections 1720 *et seq.*, 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b), and 1776, Labor Code; and 29 U.S.C. §175a.

**17203. Computation of Time and Extensions of Time to Respond or Act.**

(a) In computing the time within which a right may be exercised or an act is to be performed, the

first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(c) Where service of any notice, decision, pleading or other document is by first class mail, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the *Director* may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1010 through 1013, Code of Civil Procedure; and section 1742(b), Labor Code.

**17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.**

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (*see* subpart (d) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.

(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director – Legal Unit. However, if no attorney employed by

the Office of the Director – Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.

(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.

(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.

NOTE: Authority cited: sections 7, 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11425.30 and 11502(b), Government Code; and sections 7, 55, 59, and 1742(b), Labor Code.

**17205. Authority of Hearing Officers.**

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material

evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.

(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11512, Government Code and section 1742(b), Labor Code.

#### **17206. Access to Hearing Records.**

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; *provided however*, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.

(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 6250 *et seq.* Government Code and section 1742(b), Labor Code.

#### **17207. Ex Parte Communications.**

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any

other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matters of procedure or practice" shall be liberally construed.

(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.

(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.

(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the



Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; *provided that* (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11430.10 through 11430.80, Government Code, and section 1742(b), Labor Code.

#### **17208. Intervention and Participation by other Interested Persons.**

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.

(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (e) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.

(c) The employee(s), labor union, or Joint Labor-Management Committee who filed the formal complaint which led the Enforcing Agency to

issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor-Management Committee shall be treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.

(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall *not* be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests which have been forfeited as a result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code §11440.50(c).

(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11440.50(c), Government Code; and sections 1720 *et seq.*, 1741, 1742, and 1771.6, Labor Code.

#### **17209. Representation at Hearing.**

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; *however*, a Party shall use the form Authorization for Representation by Non-Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non-attorney who is not an owner, officer, or managing agent of that Party.

(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.

(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.

(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17210. Proper Method of Service.**

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.

(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.

(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by

the party making the statement; or (3) copy of letter of transmittal.

(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.

(e) In each proceeding, the Hearing Officer shall maintain an official address record which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure and section 1742(b), Labor Code.

**17211. Filing and Service of Documents by Facsimile or Other Electronic Means.**

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.

(b) Filings and service by facsimile or other electronic means shall not be authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17212. Administrative Adjudication Bill of Rights.**

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.

(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).

(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code §11440.60 (b) and (c).

(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall *not* apply to these review proceedings.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11415.20, 11425.10 *et seq.*, and 11430.80(b), Government Code; and section 1742(b), Labor Code.

**ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW**

**17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.**

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by

certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed “known or reasonably ascertainable,” and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.

(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

(1) a description of the nature of the violation and basis for the Assessment or Notice; and

(2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.

(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:

(1) the name and address of the office to whom a Request for Review may be sent;

(2) information on the procedures for obtaining review of the Assessment or Withholding of Contract Payments;

(3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and

(4) the following statement which shall appear in bold or another type face that makes it stand out from the other text:

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

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure, and sections 1741, 1742, 1743, 1771.6, and 1776, Labor Code.

**17221. Opportunity for Early Settlement.**

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.

(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].

(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.

(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.

NOTE: Authority cited: sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: sections 1742, 1742.1, and 1771.6, Labor Code.

**17222. Filing of Request for Review.**

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.

(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on

the Assessment or Notice of Withholding of Contract Payments from which review is sought.

(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall *not* be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.

(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, and 1771.6(a), Labor Code.

**17223. Transmittal of Request for Review to Department.**

Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The

Enforcing Agency shall transmit these items to the following address.

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

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(a) and 1771.6(a), Labor Code.

**17224. Disclosure of Evidence.**

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

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

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

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

evidence in proceedings before the Hearing Officer or the Director.

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

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b) and 1771.6, Labor Code.

**17225. Withdrawal of Request for Review; Reinstatement.**

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.

(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742 and 1771.6, Labor Code.

**17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.**

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:

(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.

(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].

(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.

(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21[Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.6, 1775(b), and 1776(g), Labor Code.

**17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer

may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.

(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.

(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract Payments or dismissing the Request for Review as untimely under the statute; (2) find the Assessment, Withholding, or Request for Review timely and direct that the matter proceed to hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.

(d) A decision by the Director which sets aside an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall *not* be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1741, 1742, 1771.5, and 1771.6, Labor Code.

**17228. Finality of Assessment or of Withholding of Contract Payments When No**

**Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.**

(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a “final order” as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).

(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1727, 1742, and 1771.6, Labor Code.

**17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.**

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (*see* Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(d), and 1771.6, Labor Code.

**ARTICLE 3. PREHEARING PROCEDURES**

**17230. Scheduling of Hearing; Continuances and Tolling.**

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07 [Section 17207]’s prohibition on *ex parte* communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.

(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (*see* subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.

(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.

(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.

(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to compel the attendance, testimony, or production

of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17231. Prehearing Conference.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.

(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.

(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11511.5, Government Code, and section 1742(b), Labor Code.

**17232. Consolidation and Severance.**

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own

motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.

(b) The Hearing Officer may sever consolidated proceedings for good cause.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11507.3, Government Code, and section 1742(b), Labor Code.

**17233. Prehearing Motions; Cut Off Date.**

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (*i.e.*, names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.

(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.

(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer *and* in which the enforcement or forfeiture of a fundamental right is at stake. When the Hearing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.

(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for



Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17234. Evidence by Affidavit or Declaration.**

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant or declarant, the right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified in person. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefore is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:

"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross-examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date *at least* 10 days after anticipated date of service of this notice on the other Parties]."

(c) If a timely request is made to cross-examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in

evidence, but shall be given only the same effect as other hearsay evidence under Rule 44\_[Section 17244].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; section 11514, Government Code; and section 1742(b), Labor Code.

**17235. Subpoena and Subpoena Duces Tecum.**

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.

(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.

(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1985 through 1988, Code of Civil Procedure; section 1563, Evidence Code; sections 11450.20 through 11455.30, Government Code; and section 1742(b), Labor Code.

**17236. Written Notice to Party in Lieu of Subpoena.**

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such witness is not required if written notice requesting the

witness to attend, with the time and place of the hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non-compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

**17237. Depositions and Other Discovery.**

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.

(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.

(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in

separate proceedings, if such evidence is otherwise relevant and admissible.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

**ARTICLE 4. HEARINGS**

**17240. Notice of Appointment of Hearing Officer; Objections.**

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practicable and no later than when the matter is noticed for a prehearing conference or hearing.

(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.

(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, *whichever is earlier*, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits, if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another

Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code . Reference: sections 170.3(c)(1), Code of Civil Procedure; sections 11425.30 and 11425.40, Government Code; and section 1742(b), Labor Code.

**17241. Time and Place of Hearing.**

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.

(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.

(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11425.20, Government Code; and section 1742(b), Labor Code.

**17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.**

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing

Officer shall conduct the hearing from a location where members of the public may be physically present, and members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.

(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.

(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.

(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 777, Evidence Code, section 11425.20, Government Code, and section 1742(b), Labor Code.

**17243. Conduct of Hearing.**

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.

(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.

(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.

(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and explain

the order in which evidence will be presented; *provided that*, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

**17244. Evidence Rules; Hearsay.**

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.

(c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

**17245. Official Notice.**

(a) A Hearing Officer may take official notice of (1) the Director's General Prevailing Wage Determinations, the Director's Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.

(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 451, 452 and 455, Evidence Code; section 11515, Government Code; and section 1742(b), Labor Code.

**17246. Failure to Appear; Relief from Default.**

(a) Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party's absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party.

(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non-appearance shall file a written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non-appearance.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 473, Code of Civil Procedure; and section 1742(b), Labor Code.

**17247. Contempt and Monetary Sanctions.**

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.

(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial review in the same manner as a decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 128.5, Code of Civil Procedure; sections 11455.10 through 11455.30, Government Code; and section 1742(b), Labor Code.

**17248. Interpreters.**

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or

who is deaf or hearing impaired as defined under Evidence Code section 754.

(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.

(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.

(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.

(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.

(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict

of interest. A conflict may exist if an interpreter is an employee of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.

(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confidential communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.

(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 754, Evidence Code; sections 11435.05 through 11435.65, and 68560 through 68566, Government Code; and section 1742(b), Labor Code.

#### **17249. Hearing Record; Recording of Testimony and other Proceedings.**

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.

(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The

failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).

(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, *provided that* it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and *further provided that*, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

#### **17250. Burdens of Proof on Wages and Penalties.**

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.

(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.

(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.

(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance

of the evidence, unless a higher standard is prescribed by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 500, 502, and 550, Evidence Code; and sections 1742(b) and 1775, Labor Code.

**17251. Liquidated Damages.**

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.

(b) To demonstrate “substantial grounds for believing the Assessment or Notice to be in error,” the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b), 1742.1, and 1773.5, Labor Code.

**17252. Oral Argument and Briefs.**

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post-hearing brief. However, the Hearing Officer may permit the Parties to submit written post-hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.

(c) In addition to or as an alternative to post-hearing briefs, the Hearing Officer may also

prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17253. Conclusion of Hearing; Time for Decision.**

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post-hearing arguments or upon the expiration of the last day for filing any post-hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.

(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**ARTICLE 6. DECISION OF THE DIRECTOR**

**17260. Decision.**

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director’s review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.

(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.

(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made

on that Party at the last known address on file with the Enforcing Agency in addition to service on the authorized Representative.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure; section 11425.50, Government Code; and section 1742(b), Labor Code.

**17261. Reconsideration.**

(a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.

(b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.

(c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].

(d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall *not* extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15-day time limit prescribed in subpart (b) of this section.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742, Labor Code.

**17262. Final Decision; Time for Seeking Review.**

(a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; *provided however*, that if the Director has issued a modified decision pursuant to and within the 15-day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review shall extend from the date of service of the modified decision rather than from the original decision.

(b) The modification of a decision to correct a clerical error after expiration of the 15-day time limit on the Director's reconsideration authority shall *not* extend the time for seeking judicial review.

(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director – Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5. Reference: sections 1013 and 1094.5, Code of Civil Procedure; and section 1742, Labor Code.

**17263. Preparation of Record for Review.**

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.

(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to



prepare the record. However, upon notice that a Party seeking judicial review has been granted *in forma pauperis* status under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.

(c) The pendency of any request for the Department to prepare a hearing record shall *not* extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure; California Rule of Court 985; section 68511.3, Government Code; and section 1742(c), Labor Code.

#### **17264. Request for Participation by Director in Judicial Review Proceeding.**

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure and section 1742(c), Labor Code.

#### **ARTICLE 7. TRANSITIONAL RULE.**

##### **17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.**

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body

with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; *provided that*, the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731-1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall *not* extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**SECTION II**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**Implementation Plan**

## SECTION II

### IMPLEMENTATION PLAN

- Labor Compliance Officers receive construction contract awards/work schedules from various City Departments including the Public Utilities Department and Engineering & Capital Projects.
- Labor Compliance Officers participate in Pre-Construction Conference.
- Labor Compliance Officers conduct on-site interviews with contractors' employees and include interview sheets in Project Wage Files.
- Labor Compliance Officers verify information from certified payroll records.
- Labor Compliance Officers notify contractor in writing of any discrepancies with certified payroll records.
- If clarification/correction is not received from the contractor within two (2) weeks, Labor Compliance Officers will commence an investigation.
- Upon completion of the investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
- Labor Compliance Officers prepare and submit public works violation reports to Labor Commissioner as required.
- Labor Compliance Officers receive *Monthly Employment Report* from the contractor and its subcontractors; Program Manager maintains database of this information for year-end report.
- Labor Compliance Officers communicate on a regular basis with contractors, workers, building and trade organizations and other community entities and in-service management to City personnel.
- Labor Compliance Officers prepare and submit annual program reports to the Mayor with a copy provided to City Council members and the Director of the Department of Industrial Relations.
- Labor Compliance Program Administrator manages all facets and is the primary contact for the City's Labor Compliance Program.

**SECTION III**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**Operational Manual**

## **SECTION III**

### **OPERATION MANUAL**

#### **Site Visitations**

1. Safety is the paramount factor for any site visit to any City construction projects. Labor Compliance Officers shall not enter any area that appears unsafe. Labor Compliance Officers are expected to exercise reasonable caution at all times.
2. All authorized personnel visiting any City construction site are required to be properly identified as a City representative by wearing visible picture ID's (badge) or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats, safety shoes and safety vests.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
4. Upon arrival at a site, the Labor Compliance Officer will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, Labor Compliance Officers will check in at the site's administrative office. Labor Compliance Officer will identify self and state the purpose of the visit. Labor Compliance Officer will sign in if required to do so. If the site superintendent cites some reason that denies access to the site, Labor Compliance Officer will promptly and politely remove self and make a note of this occurrence and include it in a report for the Project Wage File.
5. Labor Compliance Officer will check to see the following are displayed in the contractor's trailer:
  - EOE Posters
  - Posted prevailing wage sheets
  - Sign-in Log
  - Listing of subcontractors on site

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

6. There will be times when the site superintendent is somewhere on the site and/or there is no contractor present in the trailer. Labor Compliance Officers should check in at the City's Resident Engineer's trailer. The RE will also know which contractors are on site at that time. If all trailers are empty or locked, Labor Compliance Officers should locate the site superintendent or RE on the site prior to commencing interviews.

#### **Interviewing**

1. Once the Labor Compliance Officer has checked in with the site superintendent and obtained access to the site, the Labor Compliance Officer should try to locate tradespersons working

in clusters; for instance, several painters, electricians, roofers, etc. working in one area. The workers should be approached individually in a non-threatening, professional manner. The Labor Compliance Officer should identify self, indicating they are a City representative needing only a few seconds of time to ask some very generic questions to ensure receipt of the proper rate of pay for the type of work performed. Again, no person's safety should be endangered in conducting these interviews. For instance, the Labor Compliance Officer should not insist that someone on a scaffold 40 feet in the air come down for an interview. Employees should not be asked to form a line but should be allowed to continue working until interviewed individually.

These interviews are random; two or three tradespersons for each subcontractor are more than sufficient for one visit. Any persons missed are usually picked up on the next visit. If only one tradesperson is at the site, then that person should be interviewed if possible. If the Labor Compliance Officer is told the rest of a crew will be there in an hour, the Labor Compliance Officer should not wait unless total site interviewing will take that length of time. Thirty minutes of interviewing per site is typically sufficient, depending upon site size and/or number of subcontractors present. A contractor tradesperson should also be interviewed.

2. Using the Labor Compliance Site Visitation Interview form, each interviewee should be asked the following: name, social security number, employer, title (trade), rate of pay and task being performed at the time of interview.
3. If someone declines to speak with a Labor Compliance Officer, those wishes should be respected. If someone asks if the interview is union-related, they should be told no. The City works with both open and closed shop trades.
4. If a Labor Compliance Officer tries to interview someone who does not speak English and communication in the appropriate language cannot occur, the Labor Compliance Officer should try to locate a coworker who can interpret. If an entire crew is unable to speak English and no interpreter is available this should be included in your report to the Program Manager.
5. If an interviewee refuses to disclose a social security number, those wishes should be respected. However, interviewees should be assured that all information given is kept strictly confidential.
6. If an interviewee does not know their rate of pay (most tradespersons don't know), the Labor Compliance Officer should ask for a guesstimate. If the response is, "whatever prevailing wage is," that response should be indicated on the form.
7. If an interviewee indicates that he/she is an apprentice, the Labor Compliance Officer should make sure to ask "What period?" These can be anywhere from 1<sup>st</sup> to 10<sup>th</sup>. If the interviewee is not sure, ask how many years have been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.
8. Labor Compliance Officer's should ALWAYS thank each interviewee for their time.

9. Labor Compliance Officer's are there to collect information only, not to dictate how to perform jobs. Should a Labor Compliance Officer witness a potentially unsafe or unwarranted condition, the Labor Compliance Officer should contact the site inspector or job superintendent immediately and make a note on the site visitation log of what was observed. Upon return to the office, Labor Compliance Officers should report findings to the Program Manager.

**Reporting**

1. All original interview forms conducted by Labor Compliance Officers shall be included in Project Wage Files no later than the end of each workweek.

**SECTION IV**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**Procedures**



## **SECTION IV**

### **PROCEDURES**

#### **Certified Payroll Verification Procedures**

1. Various City departments including the Public Utilities Department and Engineering & Capital Projects will provide the Labor Compliance Officers with construction work schedules.
2. Upon receipt of certified payroll reports from prime and subcontractors once a week, Labor Compliance Officers will compare information from employee interviews, Daily Diaries and *Monthly Employee Reports* to the contractors certified payroll reports and the prevailing wage schedule.
3. Labor Compliance Officers will compare name and social security number with trade classification listed.
4. Labor Compliance Officers will ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule and job descriptions.
5. Labor Compliance Officers will check for employment of apprentices, correct rate of pay for period of apprenticeship and proper hourly ratio to journey workers.
6. Labor Compliance Officers will contact the contractor in writing and send by certified mail any inaccuracies in the verification of its certified payroll.
7. If clarification/correction is not received within two weeks from the contractor, the Labor Compliance Officer will commence an investigation.
8. Upon completion of an investigation, a report will be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
9. Labor Compliance Officers will retain all original interview forms and annotate databases as applicable.

#### **Site Monitor Procedures**

1. Labor Compliance Officers will receive construction site work schedules from project managers or resident engineers.
2. Labor Compliance Officers will check in with site administrative office/site superintendent.

3. Labor Compliance Officers will conduct interviews with workers utilizing the Labor Compliance Site Visitation Interview form.
4. Labor Compliance Officers will note on the form any infractions observed while conducting an interview.
5. Interview forms will be included in Project Wage Files.
6. Any infractions observed by the Labor Compliance Officer will be reported to the Labor Compliance Program Administrator.

**SECTION V**

**CITY OF SAN DIEGO  
LABOR COMPLIANCE PROGRAM**

**Forms**

## FORMS

- Labor Compliance Prevailing Wage Handout
- California Code of Regulations Checklist [8 CCR §16421] – Appendix A
- Apprentices on Public Works
- Excerpts from California Labor Code Relating to Apprentices on Public Works (DAS 10)
- Summary of Apprentice Requirements
- Public Works Contract Award Information (DAS 140)
- Training Funds Contributions (CAC 2)
- Contractor Fringe Benefit Statement
- Monthly Employment Report (sample)
- Certified Payroll Reporting (sample)
- DIR Public Works Payroll Reporting Form A-1-131 [8 CCR §16401]
- Prevailing Wage Determination (sample)
- Labor Compliance Site Visitation Interview Form
- Site Visitation Log
- Pre-Award Letter (sample)
- Post-Award Letter (sample)
- First Request for Certified Payrolls Letter (sample)
- Missing Documents List
- Certified Payroll Worksheet
- Certified Payroll Correction Letter (sample)
- Request for Approval of Forfeiture Amount
- Audit Record Worksheets [8 CA Code of Regulations §16432] – Appendix B
  - Public Works Investigation Worksheet
  - Public Works Audit Worksheet
  - Prevailing Wage Determination Summary
- Single Project Labor Compliance Review and Enforcement Report Form [8 CCR §16434] – Appendix C

## PREVAILING WAGE CONTRACTOR HANDOUT



THE CITY OF SAN DIEGO  
202 C Street, MS 56P  
San Diego, CA 92101

### THE PUBLIC WORKS REQUIREMENTS ARE:

- (A) the appropriate number of apprentices is on the job site, as set forth in Labor Code Section 1777.5.
- (B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.
- (C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.
- (D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in 8 CCR Section 16400(e).
- (E) other requirements imposed by law.
- (5) Withhold monies. See Labor Code Section 1727.
- (6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.
- (7) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7.
- (8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.  
Exception: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid [as specified in 16200(a)(3)(F)].
- (9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.
- (10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

### THE CONTRACTOR AND SUBCONTRACTOR SHALL:

- (1) Pay not less than the prevailing wage to all workers, as defined in CCR's section 16000(a), and as set forth in Labor Code Sections 1771 and 1774;
- (2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites;

- (3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;
- (4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;
- (5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;
- (6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in 8 CCR Section 16200(a)(3); and
- (7) Comply with Section 16101 of these regulations regarding discrimination.
- (8) Be subject to provisions of Labor Code Section 1777.7, which specifies the penalties, imposed on a contractor who willfully fails to comply with provisions of Section 1777.5.
- (9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813.
- (10) Comply with other requirements imposed by law.

### APPRENTICE TRAINING

SEE LABOR CODE SECTION 1777.5 (e)

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

### APPRENTICE TRAINING CONTRIBUTION REQUIREMENTS

SEE CALIFORNIA CODE OF REGULATIONS:  
TITLE 8, ARTICLE 4,

**16200(G) Wage rates, training contributions and apprenticeship contributions.**

Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California

Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

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

3. If neither of the above will accept the funds, cash pay shall be as provided for in ccr's section 16200(a)(3)(I).  
SEE CALIFORNIA CODE OF REGULATIONS:  
TITLE 8, ARTICLE 10, SECTION 230.2

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

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

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

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

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

**CERTIFYING PERSON**

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

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

**CHANGES TO PREVAILING RATE AFTER AWARD**

SEE LABOR CODE SECTION: 1773.6

**No effect once the contract notice to bidders is published.**

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

**CREDITS, FOR FRINGE BENEFIT PAYMENTS**

SEE CALIFORNIA CODE OF REGULATIONS:  
TITLE 8, GROUP 3, ARTICLE 4,

16200(i) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts, which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

**And memo from the division of industrial relations dated 11-15-90.**

**THE RULE:**

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

**EMPLOYEES SUBJECT TO PREVAILING WAGES**

SEE LABOR CODE SECTION 1771, 1772 & 1776  
*City of San Diego General Conditions require all workers on the project shall be paid the wage of the trade they are most closely related to. This includes:*

*anyone on site and off site even at remote manufacturing facilities.*

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

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

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

#### **EMPLOYER PAYMENTS**

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

(1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;

(2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and

(3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

#### **FRINGE BENEFIT PAYMENT REQUIREMENTS**

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

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

#### **FRINGE BENEFITS INCLUDE**

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

3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;

(B) retirement plan benefits;

(C) vacations and holidays with pay, or cash payments in lieu thereof;

(D) compensation for injuries or illnesses resulting from occupational activity;

(E) life, accidental death and dismemberment, and disability or sickness and accident insurance;

(F) supplemental unemployment benefits;

(G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;

(H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;

(I) See definition of "Employer Payments," (3).

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

(4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

#### **FRINGE BENEFITS DO NOT INCLUDE**

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

(b) The term "general prevailing rate of per diem wages"

does not include any employer payments for:

(1) Job related expenses other than travel time and subsistence pay;

(2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;

(3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;

(4) Industry or trade promotion;

(5) Political contributions or activities;

(6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or

(7) Such other payments as the Director may determine to exclude. Interested Party. When used

with reference to a particular prevailing wage determination made by the Director, includes:

**PAYROLL RECORDS INCLUDE**

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

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

**PERSONS REQUIRED TO RECEIVE PREVAILING WAGES**

SEE LABOR CODE SECTIONS:

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

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

City of San Diego General Conditions require all workers not in a prevailing wage classification to be paid the wage most closely related to the craft or trade they are involved with.

**WITHHOLDING PAYMENTS, JUSTIFICATION**

SEE LABOR CODE SECTION: 1727 & 1771.5(b),(5)  
SEE CALIFORNIA CODE OF REGULATIONS: TITLE 8, ARTICLE 5, SECTION

16435(a) "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

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

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

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

- (1) A record lacking the information required by Labor Code Section 1776;
- (2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor;
- (3) A record remaining uncorrected for one payroll period, after the awarding body has given the contractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will

stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401.

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

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:

- (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate;
  - (2) specifies the amount being withheld; and
  - (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.
- (g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
- (h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.



DIRECTOR OF INDUSTRIAL RELATIONS  
PRECEDENTIAL DECISIONS WHICH REQUIRE  
PREVAILING WAGES:

Decision 92-036: stands for the payment of out of state workers if they are working on California "Public Works"

Decision 93-019: stands for the payment of truck drivers removing, delivering or relocating material on a "Public Works"

Decision 94-017: stands for the payment of waste processors off site if the waste is exclusively from a "Public Works"

COURT DECISIONS:

Standard Traffic Services v. Department of Transportation (case 132667) Shasta: partners are due prevailing wages if working on a "Public Works"

## CALIFORNIA CODE OF REGULATIONS

APPENDIX A: Checklist of Labor Law Requirements to review at pre-job conference, Section 16421, with suggested Certification by subcontractor.

The Federal and State Labor law requirements applicable to the contract are composed of but not limited to the following items:

**Project** \_\_\_\_\_

**Contractor's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

	Initials of City's Labor Compliance Representative	Initials of awarded Contractor's Representative
(1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 <i>et seq.</i> , should the project exceed the exemption amounts;		
(2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;		
(3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;		
(4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776.; and penalties for failure to do so under Labor Code Section 1776(g);		
(5) The prohibition against employment discrimination under Labor Code Section 1777.6, the Government Code, and Title VII of the Civil Rights Act of 1964;		
(6) The prohibition against accepting or extracting kickbacks from employee wages under Labor Code Section 1778;		
(7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filing work orders on public works under Labor Code Section 1780;		
(8) The requirement to list all subcontractors under Public Contract Code Section 4100 <i>et seq.</i> ;		
(9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 <i>et seq.</i> ;		
(10) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;		
(11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;		
(12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;		
(13) The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers;		
(14) The requirement to provide itemized wage statements to employees under Labor Code section 226.		

## **CITY OF SAN DIEGO LABOR COMPLIANCE PROGRAM CALIFORNIA CODE OF REGULATIONS CHECKLIST**

After the City awards a public works contract and prior to commencement of work on that contract a mandatory Pre-Construction Conference shall be conducted by the Labor Compliance Officer with the contractor and those subcontractors listed in its bid documents. The following is a listing of labor law requirements applicable to a public works contract:

### **1. Payment of Prevailing Wage Rates**

- a. All workers on the project are to be paid not less than the specified general prevailing wage rate by the contractor and its subcontractors unless subject to exemption.
- b. The contractor is responsible for complying with all applicable general prevailing wage rates for tradesworkers and any rate changes which occur during term of the contract.
- c. Prevailing wage rates and rate changes must be posted at the job site for workers to view.
- d. The Labor Compliance Officer will provide contractors with copies of prevailing wage rates upon request as well as copies of any revisions to prevailing rate wages received from the Department of Labor.

### **2. Apprentices** It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects.

### **3. Penalties**

- a. Penalties including forfeitures and debarment shall be imposed for contractor/subcontractor failure to pay prevailing wages for nonexempt projects and for failure to employ apprentices.
- b. Penalties shall also be imposed for failure to provide certified payroll records and to provide them by the date requested, failure to provide *Monthly Employment Reports* by the date requested, failure to pay workers for work in excess of eight (8) hrs/day for forty (40) hrs/week and for failure to be a properly licensed contractor or subcontractor.

### **4. Certified Payroll Records**

- a. Contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number and work classification of each employee, the straight time and overtime hours worked each day and each week, the fringe benefits and the actual per diem wages paid to each journeyman, apprentice, worker or other employee hired in connection with a public works project.
- b. Employee payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor/subcontractor or shall be furnished to any employee or to his or her authorized representative on request.
- c. Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls to the Labor Compliance Officer when requested to do so but no less often than once a month. Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. In the event that no work has been performed during a given week the Certified Payroll Record shall be annotated with the words "No Work" for that week.

### **5. Nondiscrimination in Employment--Equal Opportunity** All contractors and subcontractors are required to avoid discrimination in employment and shall make good faith efforts to comply with the City's goal in hiring Disabled Veteran Business Enterprises.

6. **Kickback Prohibited** Contractors and subcontractors are prohibited from accepting or extracting “kickbacks” from employee wages.
7. **Acceptance of Fees Prohibited** Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work or for filling work orders on public works contracts.
8. **Listing of Subcontractors** Contractors are required to list all subcontractors hired to perform work on public works project when that work is equivalent to more than one-half of one percent (.5%) of the total effort.
9. **Proper Licensing** All contractors and subcontractors are required to be properly licensed.
10. **Unfair Competition** Contractors and subcontractors are prohibited from engaging in unfair competition.
11. **Workers’ Compensation Insurance** All contractors and subcontractors are required to be insured against liability for workers compensation or to undertake self-insurance.
12. **OSHA** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.
13. **Undocumented Workers** Contractors and subcontractors are required to follow federal regulations prohibiting the hiring of undocumented workers and requiring proof of eligibility/citizenship from all workers.
14. **Itemized Wage Statements** Contractors and subcontractors are required to observe Labor Code section 226 and provide itemized wage statements to employees.

In accordance with Federal and State laws and with City policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements and fully understands that failure to comply with these requirements will subject it to the penalties cited herein. The contractor also herein certifies that it has been provided with a copy of the City Labor Compliance Program Package which includes:

1. Labor Law Requirements Checklist (included herein)
2. Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record forms
4. Fringe Benefit Statements
5. Blank Monthly Employment Report forms
6. State Apprenticeship Requirements (DAS-140)
7. Copy of Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861)

**It is the contractor’s responsibility to provide copies of the City’s Labor Compliance Program Package to all listed subcontractors and to any substitutes subcontractors.**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title of Contractor Authorized Representative

\_\_\_\_\_  
Name/Title of City of San Diego Labor Compliance Representative

STATE OF CALIFORNIA

---

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

TO ALL PUBLIC WORKS CONTRACTORS

Congratulations on having been awarded a public works project.

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

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

- Submit contract award information within ten (10) days of contract award, to the applicable Joint Apprenticeship Committee, which shall include an estimate of Journeymen hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. This information may be submitted on the attached form. DAS 140.
- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentices work for every five hours of labor performed by a journeyman.
- Pay the apprentice rate on public works projects only to those apprentices who are registered as defined in Labor Code Section 3077.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contribution to the California Apprenticeship Council (CAC) at P.O. Box 420603, San Francisco, CA 94142.
- Training fund contributions to the CAC are due and payable on the 15<sup>th</sup> day of each month for work performed during the preceding month.
- Training fund contributions to the CAC shall be paid by check and shall be accompanied by a completed form CAC-2 (attached).

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

If the Division of Apprenticeship Standards can be of assistance to you, please contact our office at (714) 558-4126.

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

Chapter 1 of Division 2  
APPRENTICES ON PUBLIC WORKS

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

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

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

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

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

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

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

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

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

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

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or

subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

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

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

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

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

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

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

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

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

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

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

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

the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

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

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

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

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

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

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

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

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any

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

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

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

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

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

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



Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

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

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

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

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

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within

45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business.

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

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

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

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

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

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

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

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

## **Division of Apprenticeship Standards**

### **APPRENTICES ON PUBLIC WORKS**

#### **SUMMARY OF REQUIREMENTS**

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

- Submit contract award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed.
- The contract award information shall be in writing, and shall be provided to the applicable apprenticeship committee within 10 days of the date of the agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. [California Code of Regulations, Title 8, Section 230.]
- Employ apprentices on the public work in a ratio to journeymen of no less than one hour of apprentice work for every five hours of labor performed by a journeyman.
- Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA 94142. Training contributions to the Council are due and payable on the 15<sup>th</sup> of the month for work performed during the preceding month.
- Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC2 form, Training Fund Contributions, or the following information [California Code of Regulations, Title 8, Section 230.2 c]:
  1. The name, address and phone number of the contractor making the contribution.
  2. The contractor's license number.
  3. The name and address of the public agency that awarded the contract.
  4. The jobsite location, including the county where the work was performed.
  5. The contract or project number.
  6. The time period covered by the enclosed contributions.
  7. The contribution rate and total hours worked by the apprenticeable occupation(s).
- Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077:

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

## PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the Public Work. Go to <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

**Do not send this information to the Division of Apprenticeship Standards.**

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENCE NO
MAILING ADDRESS, NUMBER & STREET	AREA CODE & TELEPHONE NO
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMAN HOURS
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	OCCUPATION OF APPRENTICE
	APPROXIMATE DATES TO BE EMPLOYED

### This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One of the Boxes Below

1.  We are already approved to train apprentices by the \_\_\_\_\_ Apprenticeship Committee. We will employ and train under their standards (Enter name of Committee)
2.  We will comply with the standards of \_\_\_\_\_ Apprenticeship Committee for the duration of this job only. (Enter name of Committee)
3.  We will employ and train apprentices in accordance with the California Apprenticeship Council Regulations, including s/s 230.1(c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

**State of California – Department of Industrial Relations  
DIVISION OF APPRENTICESHIP STANDARDS**



**CITY OF SAN DIEGO**  
**CONTRACTOR FRINGE BENEFIT STATEMENT**

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

Contractor / Subcontractor Name:	Business Address:
----------------------------------	-------------------

In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

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

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

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

<b>FRINGE BENEFITS</b>	Health & Welfare	\$ _____	PAID TO:	Name: _____ Address: _____
	Pension	\$ _____	PAID TO:	Name: _____ Address: _____
	Vacation/ Holiday	\$ _____	PAID TO:	Name: _____ Address: _____
	Training And/or Other	\$ _____	PAID TO:	Name: _____ Address: _____

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

<b>FRINGE BENEFITS</b>	Health & Welfare	\$ _____	PAID TO:	Name: _____ Address: _____
	Pension	\$ _____	PAID TO:	Name: _____ Address: _____
	Vacation/ Holiday	\$ _____	PAID TO:	Name: _____ Address: _____
	Training And/or Other	\$ _____	PAID TO:	Name: _____ Address: _____

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

Submitted: Contractor / Subcontractor	By: Name / Title
---------------------------------------	------------------

# MONTHLY EMPLOYMENT REPORT

Contractor: \_\_\_\_\_ Employer I.D Number: \_\_\_\_\_

Project Title: \_\_\_\_\_ Work Order Number: \_\_\_\_\_

Reporting Period: From: \_\_\_\_\_ To: \_\_\_\_\_ Bid Number: \_\_\_\_\_

<b>Employee List</b>		Male or Female	1 Ethnic Symbol	Craft	2 Employee Source	Number of Hours Worked
Last Name, First Name, Middle Initial	Social Security #					
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						

SAMPLE

1 Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic, Latino, Puerto Rican	MA
Native American, American Indian, Eskimo	NA
Asian, Pacific Islander	AP
Filipino	FI
Caucasian	CA
Other Ethnicity (not defined above)	OTH

2 Employee Source	
Apprenticeship Program	A
Employment Agency	E
Training Program	T
Union Hiring Hall	U
Other	O

I certify under penalty of perjury that the foregoing information is true and correct:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

**Authorized Signature**
**Printed Name / Title**
**Date Prepared**





PUBLIC WORKS PAYROLL REPORTING FORM

NAME OF CONTRACTOR OR SUB CONTRACTOR CONTRACTORS LICENSE # ADDRESS SPECIALTY LICENSE #

PAYROLL NO. FOR WEEK ENDING SELF-INSURED CERTIFICATE # PROJECT OR CONTRACT NO. WORKERS' COMPENSATION POLICY # PROJECT AND LOCATION

Main payroll reporting table with columns for employee info, work classification, hours, gross amount earned, deductions, and payments.

Form A 1-131 (New 2-80) (form has been reduced to fit page)

S = Straight Time O = Overtime SDI = State Disability Insurance

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

CERTIFICATION must be completed

I, \_\_\_\_\_, the undersigned, am \_\_\_\_\_ with the authority to act for and on behalf of \_\_\_\_\_, certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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



**NOTICE TO PUBLIC ENTITY**

**For Privacy Considerations**

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

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

-----

I, \_\_\_\_\_, the undersigned, am the  
(Name – print)

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

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

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

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)  
of the actual disbursements by way of cash, check, or whatever form to the individual or  
individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**DETERMINATION:** SD-23-31-4-2000-1

**ISSUE DATE:** February 22, 2000

**EXPIRATION DATE OF DETERMINATION:** June 30, 2000\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Contra Costa County

CLASSIFICATION (JOURNEYPELSON) and	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily	Saturday <sup>a</sup>	Sunday
<b>ENGINEERING CONSTRUCTION</b>								1 1/2X	1 1/2X	Holiday
Carpenter (Heavy and Highway work)	\$25.25	2.30	1.01	2.72 b	.30	8	31.58	44.205	44.205	56.83
Light Commercial Bridge Carpenter (Highway work)	20.40	2.30	1.01	2.72 b	.30	8	26.73	36.93	36.93	47.13
Millwright	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Pile Driver	25.75	2.30	1.01	2.72 b	.30	8	32.08	44.955	44.955	57.83
Diver, Wet (up to 50 ft. depth)cd	25.38	2.30	1.01	2.72 b	.30	8	31.71	44.40	44.40	57.09
Diver, Standby	55.76	2.30	1.01	2.72 b	.30	8	62.09	89.97	89.97	117.85
Diver's Tender	28.38	2.30	1.01	2.72 b	.30	8	34.71	48.90	48.90	63.09
	27.38	2.30	1.01	2.72 b	.30	8	33.71	47.40	47.40	61.09

**DETERMINATION:** SD-23-31-4-2000-1A

**ISSUE DATE:** February 22, 2000

**EXPIRATION DATE OF DETERMINATION:** July 1, 2000\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates at (415) 703-4774.

**LOCALITY:** All localities within San Diego County

**BUILDING CONSTRUCTION**

Carpenter	\$23.40	2.30	1.01	2.17 b	.30	8	29.18	40.88	40.88	52.58
Light Commercial	18.72	2.30	1.01	2.17 b	.30	8	24.50	33.86	33.86	43.22

**DETERMINATION:** SD-31-741-1-2000-1

**ISSUE DATE:** FEBRUARY 22, 2000

**EXPIRATION DATE OF DETERMINATION:** May 31, 2000\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within San Diego County.

Classification (Journey person) and	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Hours	Total Hourly Rate	Daily	Saturday <sup>a</sup>	Sunday
Terrazzo Installer	\$29.55	2.30	1.01	1.72 b	-	8	34.58	49.355	49.355	64.13
Terrazzo Finisher	23.05	2.30	1.01	1.72 b	-	8	28.08	39.605	39.605	51.13

# Indicates an apprenticeable craft. Rates for apprentices are available in the General Prevailing Wage Apprentice Schedules. <sup>a</sup> Saturday in the same workweek may be worked at straight-time rate for the first 8 hours if the employee was unable to complete the 40 hours during the normal workweek. <sup>b</sup> Includes supplemental dues. <sup>c</sup> Shall receive a minimum of 8 hours pay for any day or part thereof. <sup>d</sup> For specific rates over 50 ft. depth, contact the Division of Labor Statistics and Research.

**DESCRIPTION:**

**Engineering Construction**

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

**Building Construction**

Requires a Class B license and includes non-residential buildings (such as hospitals, government buildings, public schools) and commercial buildings (with the exception of industrial buildings).

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

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. Travel and/or subsistence requirements for each craft, classification or type of worker may be obtained from the Prevailing Wage Unit at (415) 703-4774.



CITY OF SAN DIEGO  
Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego CA 92101

CONSTRUCTION INTERVIEWS  
**Employee Statement**

Side 1 of 2

**CONFIDENTIAL**

*This document contains personal information and it shall be kept confidential in order to protect against unauthorized disclosure.*

Company Employee:

CCO:

Project Name:

Job Site/Location:

Company:

Contract/K#:

DOH:

Date:

Race:

Sex:

**QUESTIONS**

1. What is your current position and salary?

2. How long have you worked for this company?

3. How did you hear about this job or company?

4. Do you believe you are earning a fair wage compared to others within your trade?

5. Are you receiving a fair share of overtime?

6. Have you ever been asked to work outside your trade? For more or less wages?

7. Do you belong to a Union? Did you belong to a Union before this job?

8. Has this company provided you with any type of formal or informal training (OJT)?

9. Have you received any formal or informal training or discussion regarding the company's Equal Employment Opportunity Policy?

**CONSTRUCTION INTERVIEWS**  
**Employee Statement**  
**Side 2 of 2**

**10. Have you observed the posting of the company's EEO Policy letter and EEO posters at project construction sites and/or in the company office?**

**11. Have you ever been encouraged by your employer to refer your friends (especially minorities and women) with construction trade experience to apply for employment at this company?**

**12. What do you believe the company's attitude is regarding the hiring of minorities and women?**

**13. Have you been aware of working with minorities, women, veterans or disabled individuals at this job site or others?**

**14. Do you believe the company has treated you fairly?**

**15. Does the company ensure and maintain a working environment free from harassment, intimidation and coercion at its job sites?**

**Additional Comments**

\_\_\_\_\_  
**Employee Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Labor Compliance Officer**

\_\_\_\_\_  
**Date**



CITY OF SAN DIEGO  
Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego CA 92101

**SUPERINTENDENT OR  
FOREMAN  
STATEMENT FORM**  
  
Side 1 of 2

**CONFIDENTIAL**

*This document contains personal information and it shall be kept confidential in order to protect against unauthorized disclosure.*

**Superintendent/Foreman:**

**CCO:**

**Project Name:**

**Contract/K#:**

**Company:**

**Date:**

**Race:**

**Sex:**

**QUESTIONS**

1. How long have you worked for this company (DOH)?
2. How long have you been the superintendent or foreman?
3. How did you hear about this job or company?
4. What is your recruitment or hiring process?
5. Are you involved in the hiring process?
6. Do you maintain a record or file of names addresses and phone numbers of off-the-street applicants (females, minorities, disabled and veterans) for employment?
7. Do you refer them to your hiring official and/or to the Union?
8. Does the Union allow you to do your own recruitment?
9. Are you responsible for work assignments, layoffs and terminations?

**Superintendent or Foreman Statement Form**

Side 2 of 2

**10. Are your personnel practices such as layoffs, terminations, etc..., monitored to insure that these practices have no discriminatory effect and ensures that the EEO Policy is being implemented?**

**11. Have any employees referred minorities, women, veterans or disabled individuals for employment opportunities with your company? Have any of these referrals been hired?**

**12. Have you received any formal or informal training, or discussion of the company's EEO Policy and affirmative action obligations as a government contractor?**

**13. Do you know who the company's EEO Coordinator is?**

**14. Do you inform and discuss the company's EEO Policy with your employees?**

**15. Does your company provide formal or on-the-job training to employees?**

**16. Do you ensure and maintain that construction sites are free from harassment, intimidation and coercion?**

**Additional Comments**

\_\_\_\_\_  
Superintendent/Foreman Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Labor Compliance Officer

\_\_\_\_\_  
Date





THE CITY OF SAN DIEGO

Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego, CA 92101-4506

April 21, 2003

Certified Mail

Mr. John Doe  
ACME Painting  
13414 Labor Street  
San Diego, CA 92103

*Sample*  
*Pre Award Letter*

Dear Mr. Doe:

The City of San Diego has identified your firm as the apparent low bidder for Contract #03-XXX Portable Contract Moving Services and has scheduled board approval of a contract requiring your compliance with Division 2 Part 7 of the California Labor Code. This will require payment of prevailing wages to all workers employed on the project and reporting of certified weekly payrolls. The Labor Code requires, prior to the start of work, that a person qualified to certify documents for your firm, attend a review meeting with the awarding body concerning the Labor Code prevailing wage laws.

The Labor Compliance Officer is formally requesting the appearance of the certifying person for the code review, the submittal of the required weekly certified payroll records or nonperformance reports, and the monthly submittal of employment utilization reports, all identified in the contract general conditions.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776(b) (2), which states, "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations" and California Code of Regulations Section 16430 (a) (2).

The goal of the Labor Compliance Officer is to provide necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code. Please call the City of San Diego's Labor Compliance Officer at (619) 533-4275 to set an appointment and receive necessary forms prior to the start of your project.

Respectfully,

Labor Compliance Program Administrator





THE CITY OF SAN DIEGO

Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego, CA 92101-4506

April 27, 2003

Certified Mail

Jane Doe  
ACME Flooring  
8320 Camino Santa Fe  
San Diego, CA 92103

*Sample*  
*Post Award Letter*

Dear Ms. Doe:

The City of San Diego has awarded your firm a contract requiring your compliance with Part 7, Chapter 1 of the California Labor Code. This will require payment of prevailing wages to all workers employed on the project and reporting of the weekly payroll to the City's Labor Compliance Officer.

The Labor Code requires, prior to the start of work, that a person qualified to sign and certify for your firm, attend a review with the awarding body of the Labor Code prevailing wage laws.

The Labor Compliance Officer goal is to provide the necessary information, assistance, forms and procedures to allow your project to move forward on schedule and in compliance with the State's Labor Code.

Please call the City's Labor Compliance Officer at (619) 533-4275 to set an appointment and receive the necessary forms prior to the start of your project.

Respectfully,

Labor Compliance Program Administrator



THE CITY OF SAN DIEGO

Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego, CA 92101-4506

April 23, 2003

Certified Mail

John Doe  
ACME Construction Co.  
3170 Labor Street  
San Diego, CA 92083-8318

**Sample**  
**1st Request for**  
**Certified Payrolls**

Mr. Doe:

The City of San Diego's Labor Compliance Officer is formally requesting copies of Certified Payroll Records and Monthly Employment Reports for the modernization of Cubberly, Jones and Fletcher. We are requesting records from the beginning of the project through project completion for your firm and all subcontractors.

This request is made pursuant to, and authorized by, California State Labor Code Section 1776 (b) (2) and Section 1776 (g) (3) and the contract general conditions requiring weekly employee payments and weekly certified payroll submittals.

Labor Code Section 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code 1776 (g) (3) states: "The contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please forward all weekly Certified Payroll Records and Monthly Employment Reports on the City and State approved forms previously provided to: City of San Diego, Labor Compliance Officer, 202 "C" Street, Mail Station 56P, San Diego, CA 92101.

If you have any questions, contact me at (619) 533-4275.

Respectfully,

Labor Compliance Program Administrator

**Prime Contractor:**  
**Project:**

Original Request: 02/08/03

This Request: 02/08/03

1. **Monthly Employment Reports must be provided for:**
2. **Apprenticeship Training Agreement (similar to Form DAS 1) must be provided for:**
3. **Apprenticeship Training Agreement (similar to Form DAS 7) must be provided for:**
4. **Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:**
5. **Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for:**
6. **Fringe Benefits Statements must be provided for:**
7. **Signed certified Payroll report or statement of Non-Performance with original signatures must be provided for:**

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

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

# ***Sample***

## ***Missing Document List***

**ACME HIGH SCHOOL RE-ROOF**  
**PRIME CONTRACTOR: ACME ROOFING CO., INC**

Original Issue date: 00-00-0000

Latest Issue: 00-00-0000

REPORTING CONTRACTOR :COMMERCIAL AND INDUSTRIAL ROOFING CO.,INC								City of San Diego comments		
CONTRACTOR PROVIDED INFORMATION										
Employee Name & Social Security Number	Work Classification	Week Ending	Rate Paid	Fringes Paid	Gross Per Hour	Hours Worked	Gross Amount Paid	Prevailing Wage Rate	Amount they should have been paid	Difference
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
					\$0.00		\$0.00		\$0.00	\$0.00
								Total Contractor Difference:		<b>\$0.00</b>

SAMPLE

\$0.00

Total Project Difference



THE CITY OF SAN DIEGO

Labor Compliance Program  
202 "C" Street, MS 56P  
San Diego, CA 92101-4506

March 1, 2003

Certified Mail

Mr. Doe  
ACME Construction Co.  
115 Market Place, Suite A  
San Diego, CA 92103

*Sample*  
**Certified Payroll Correction Letter**

Dear Mr. Doe:

The City of San Diego's Labor Compliance Officer has formally requested copies of Certified Payroll Records and Monthly Employment Reports for Bid Project Portable Contract 82-Phase 2. We have reviewed your submittal and require additional information.

This new request is made pursuant to, and authorized by, California State Labor Code Sections 1774, 1775, 1776, 1777.5, 1777.7, 1810, 1813 and 1815. Additionally, the contract general conditions require weekly certified payroll record submittals to the City's Labor Compliance Officer and weekly payment of employee wages.

Labor Code §1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code §1776 (g) states: "The contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portions thereof, for each worker, until strict compliance is effectuated."

Please correct and supply the data requested in the attachments and submit on approved forms to: City of San Diego, Labor Compliance Officer, 202 "C" Street, Mail Station 56P, San Diego, CA 92101. If you have any questions, contact me at (619) 533-4275.

Respectfully,

Labor Compliance Program Administrator

Enc. (2)

# Labor Compliance Program Regulations

## REQUEST FOR APPROVAL OF FORFEITURE

### 1. AWARDING BODY / THIRD PARTY LCP:

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

### 2. PROJECT INFORMATION:

Project Name:	Contract Number:
Project Location:	
Bid Advertisement Dates:	Estimated Date Project is to be completed:
Acceptance Date of Project by the Awarding Body:	Notice of Completion/Date Recorded with County Recorder:
Other Relevant Deadline (specify):	Amount being held in Retention:

### 3. CONTRACTOR INFORMATION:

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

**4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:**

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

[Provide narrative summaries covering the following]:

- A. *Statement of Issues.*
- B. *Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*
- C. *Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*
- D. *Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*
- E. *Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

**ATTACHMENTS**

- 1. Audit Summary (Appendix B)
- 2. 1<sup>st</sup> Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

---

*Send the Request and all Attachments to:*

Division of Labor Standards Enforcement  
Bureau of Field Enforcement  
Attn.: Regional Manager  
300 Oceangate Blvd., No. 850  
Long Beach, CA 90802

**COPIES OF THIS REQUEST, INCLUDING ALL ATTACHMENTS, SHALL BE SERVED ON THE AFFECTED CONTRACTOR AND AFFECTED SUBCONTRACTOR AT THE SAME TIME THAT IT IS SENT TO THE DIVISION OF LABOR STANDARDS ENFORCEMENT.**

## **Labor Compliance Program Regulations – Appendix B**

Audit Record Worksheets [8 Cal. Code Reg. §16432]

- Public Works Investigation Worksheet
- Public Works Audit Worksheet
- Prevailing Wage Determination Summary



DEPT. OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

PUBLIC WORKS INVESTIGATION WORKSHEET

Classification Code

EMPLOYEE'S NAME		SOCIAL SECURITY NUMBER						DEPUTY		OFFICE			DATE	Employer			Case Number					
PERIOD ENDING YEAR wk end		HOURS OF WORK						TOTAL	TOTAL	ACTUAL RATE	OTHER	TOTAL WAGES	Required	OTHER	TOTAL	AMOUNT	No. of Violations	PENAL-	No. of Violations	PENAL-	TOTAL	Amount Due and Owing
		-Thu	-Wed	-Tue	-Mon	-Sun	-Sat	Fr	DAYS	HOURS	ST	COMPEN-	Wage	COMPEN-	WAGES	DUE AND		TIES		TIES	TRAINING	
		DATE	DATE	DATE	DATE	DATE	DATE	DATE	WORK-	WORKED	OT	SATION	Rates	SATION	REQUIRED	OWING		1775__		1813__	FUND	
								ED	ST,OT,DT	DT		Sl,Ol,DL										
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					
	ST																				Rate	
	OT																					
	DT																					

ST hours worked  
 OT hours worked  
 DT hours worked

TOTALS



PREVAILING WAGE DETERMINATION SUMMARY

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

WAGE DETERMINATION INFORMATION

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

**Single Project Labor Compliance Review and Enforcement Report Form**

[Appendix C following 8 CCR §16434]

Awarding Body: \_\_\_\_\_

Project Name: \_\_\_\_\_

Name of Approved Labor Compliance Program: \_\_\_\_\_

Bid Advertisement Date: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Notice of Completion Recordation Date: \_\_\_\_\_

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

3. Notification to Project Workers of Labor Compliance Program's Contact Person. (Explain Manner of Notification for each project work site.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Certified Payroll Record Review

a. CPRs Received From:

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

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

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

_____	_____
_____	_____

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

a. Independent Confirmation of CPR Data

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

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

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

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

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

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

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

\* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

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

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

7. Requests for Approval of Forfeiture to Labor Commissioner

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

8. Litigation Pending Under Labor Code Section 1742

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

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

\_\_\_\_\_  
Authorized Representative for Labor Compliance Program

## **Attachment G**

### **GHG Analysis**





**AB 900  
GREENHOUSE GAS ANALYSIS  
FOR THE  
STADIUM RECONSTRUCTION PROJECT  
SAN DIEGO, CALIFORNIA**

***Prepared for:***

City of San Diego  
Public Works Department  
525 B Street, Suite 500, M.S. 908A  
San Diego, CA 92101

***Prepared by:***

AECOM  
401 West A Street, Suite 1200  
San Diego, CA 92101

August 2015



---

## TABLE OF CONTENTS

<b><u>Section</u></b>	<b><u>Page</u></b>
SECTION 1 – ANALYSIS OF IMPACTS .....	1
1.1 Project Description.....	1
1.2 GHG Emissions .....	1
1.3 Methodology Summary .....	2
1.4 Construction Emissions .....	3
1.5 Operational Emissions .....	6
SECTION 2 – REFERENCES.....	15
APPENDIX A. CalEEMod and Greenhouse Gas Data	

---

**LIST OF TABLES**

<b><u>Table</u></b>	<b><u>Page</u></b>
1 Stadium Reconstruction and Qualcomm Stadium Demolition .....	3
2 Construction Schedule .....	4
3 Proposed Project Construction-Related GHG Emissions .....	5
4 Summary of Events at Qualcomm Stadium and Anticipated Events at the New Stadium.....	6
5 Estimated Electricity and Gas Consumption .....	8
6 Existing and Proposed Project Construction and Operational GHG Emissions.....	13

---

# SECTION 1

## ANALYSIS OF IMPACTS

### 1.1 PROJECT DESCRIPTION

The Stadium Reconstruction Project (Project) is located on approximately 166 acres in the City of San Diego. The Project site is bounded by Friars Road on the north, Qualcomm Way on the west, Interstate 15 on the east, and Interstate 8 on the south. The adjacent land uses include residential uses on the north and northwest across Friars Road and on the east across Interstate 15. Commercial land uses are located adjacent to the Project site on the west and south. Regional access is from Interstate 15 to the east, Interstate 8 to the south, and Interstate 805 approximately 1,200 feet to the west. Regional access is also provided by San Diego Metropolitan Transit System (MTS) Bus and Trolley.

The northeast portion of the Project site would be developed with the Project while the existing Qualcomm Stadium would remain operational until the Project is completed. Following the operation of the new stadium, the existing Qualcomm Stadium and parking lot would be demolished and redeveloped consistent with the Project design. The new stadium would be developed on approximately 17 acres compared to the approximate 15 acres for the existing Qualcomm Stadium. In addition, square footage in the Project would be approximately 1,750 thousand square feet (ksf) compared with the approximate 1,350 ksf at the existing Qualcomm Stadium. Total seating capacity would be reduced from the existing 70,500 attendees to approximately 68,000 for the Project. The Project would include sustainable design measures, including achievement of Leadership in Energy and Environmental Design (LEED) Gold Certification.

### 1.2 GHG EMISSIONS

Certain gases in the earth's atmosphere, classified as greenhouse gases (GHGs), play a critical role in determining the earth's surface temperature. GHGs are present in the atmosphere naturally, are released by natural and anthropogenic sources, and are formed from secondary reactions taking place in the atmosphere. Natural sources of GHGs include the respiration of humans, animals, and plants; decomposition of organic matter; and evaporation from the oceans. Anthropogenic sources include the combustion of fossil fuels, waste treatment, and agricultural processes. The following GHGs are widely accepted as the principal contributors to human-induced global climate change and are relevant to the analysis:

- Carbon dioxide (CO<sub>2</sub>)

- 
- Methane (CH<sub>4</sub>)
  - Nitrous oxide (N<sub>2</sub>O)

Emissions of CO<sub>2</sub> are byproducts of fossil fuel combustion. CH<sub>4</sub> is the main component of natural gas and is associated with agricultural practices and landfills. N<sub>2</sub>O is a colorless GHG that results from industrial processes, vehicle emissions, and agricultural practices.

Global warming potential (GWP) is a concept developed to compare the ability of each GHG to trap heat in the atmosphere relative to CO<sub>2</sub>. The GWP of a GHG is based on several factors, including the relative effectiveness of a gas to absorb infrared radiation and length of time (i.e., lifetime) that the gas remains in the atmosphere (“atmospheric lifetime”). The reference gas for GWP is CO<sub>2</sub>; therefore, CO<sub>2</sub> has a GWP of 1. The other main GHGs that have been attributed to human activity include CH<sub>4</sub>, which has a GWP of 28, and N<sub>2</sub>O, which has a GWP of 265 (IPCC 2013). For example, 1 ton of CH<sub>4</sub> has the same contribution to the greenhouse effect as approximately 28 tons of CO<sub>2</sub>. GHGs with lower emissions rates than CO<sub>2</sub> may still contribute to climate change, because they are more effective at absorbing outgoing infrared radiation than CO<sub>2</sub> (i.e., high GWP). The concept of CO<sub>2</sub>-equivalents (CO<sub>2</sub>e) is used to account for the different GWP potentials of GHGs to absorb infrared radiation.

### **1.3 METHODOLOGY SUMMARY**

To qualify for Assembly Bill (AB) 900, the Project must not result in any net additional emissions of GHGs, as determined by the California Air Resources Board (ARB). According to ARB, the documentation must at minimum quantify:

- Baseline Annual Emissions: Define the baseline annual GHG emissions sources against which the proposed project’s GHG emissions will be compared;
- Project Operational Annual Emissions: Both direct and indirect GHG emissions associated with the project’s demolition, construction, and operation, including emissions from the project’s projected energy use and transportation related emissions; and
- The net emissions of the project after accounting for any mitigation measures that will be monitored and enforced consistent with Public Resources Code section 21183(d).

Consistent with ARB Guidelines, the analysis includes operational emissions for the existing Qualcomm Stadium for all years from 2015 through 2019. Baseline annual emissions are considered to be the last year of operations for the existing Qualcomm Stadium (i.e., operational emissions in 2019).

The analysis includes construction and operational emissions for the Project as discussed in more detail in this report. Construction emissions are included for all years from 2016 through 2020. Operational emissions are estimated from 2019 through 2035 for comparison to the baseline annual emissions. Operational emission sources include on-road motor vehicles (mobile), energy (electricity and natural gas), water and wastewater, solid waste, area (landscaping equipment), and stationary (generators).

#### 1.4 CONSTRUCTION EMISSIONS

The proposed sequence of construction, operation, and demolition is shown in Table 1. The new stadium would be constructed while the National Football League (NFL) and National Collegiate Athletic Association (NCAA) games would continue to be played in Qualcomm Stadium. The timeline for construction would begin in late 2016 with construction equipment mobilization and preparation, and would end with the demolition, cleanup, and parking lot reconstruction in the fall of 2020. The goal would be to have the new stadium ready for the NFL and NCAA 2019 football seasons.

**Table 1  
Stadium Reconstruction and Qualcomm Stadium Demolition**

Activity	Approximate Duration (calendar days)	Approximate Start Date	Approximate Finish Date
Construction Mobilization	40 days	Dec 2016	Jan 2017
New Stadium Construction	960 days	Jan 2017	Aug 2019
Qualcomm Demolition and Parking Lot Reconstruction	400 days	Sep 2019	Oct 2020
NFL 2017 Season	166 days	Aug 2017	Jan 2018
NFL 2018 Season	165 days	Aug 2018	Jan 2019
NFL 2019 Season	164 days	Aug 2019	Jan 2020
NFL 2020 Season	169 days	Aug 2020	Jan 2021

Source: Data compiled by AECOM in 2015

Construction preparation would begin along with some equipment mobilization toward the latter part of the 2016 NFL season. Once the season ends, full construction would begin. Construction would continue through the 2017 and 2018 NFL seasons. Construction activities would not occur on game days.

Construction of the Project would occur in several phases. The detailed construction phases used for the emissions analysis are shown in Table 2.

**Table 2  
Construction Schedule**

Construction Phase	Duration (Weeks)
<b>Site Work</b>	
Initial Site Work	4
Utilities	4
Earthwork	16
Final Grade	4
<b>Stadium Construction</b>	
Foundation/Subfloors	12
Steel/Structural/Erection	24
Rein. Conc. Decking/Rough in	28
Roof	12
Finishes	24
Commissioning	12
<b>Demolition</b>	
Abatement	8
Salvage	4
Prep & Implode	4
Remove & Sort Debris	8
Phase 2 Asphalt Demo/Earthwork	10
Phase 3 Asphalt Demo/Earthwork	10
Phase 4 Asphalt Demo/Earthwork	14

In terms of exhaust emissions rates of the construction equipment fleet in California, emissions rates are expected to decrease over time as stricter standards take effect. Advancements in engine technology, retrofits, and turnover in the equipment fleet are anticipated to result in lower levels of emissions. Emissions were assessed for each year that construction would occur. Tier 4 construction equipment would be required to reduce short-term construction air impacts, as well as reduce GHG emissions.

Most traffic impacts are anticipated to occur within key periods during the construction and demolition schedule where both workers and truck trips would reach highest frequency per day. Construction/demolition haul routes would be established, and a construction/demolition traffic management plan would be implemented. Construction workers and contractors are anticipated to drive and park on-site. On average, approximately 80 workers and 25 visitors are anticipated to travel to the Project site per construction day.



The truck trips hauling soil and materials off-site to landfills would be the trips with the most traffic impacts. These heavy truck trips are anticipated to occur during both the new stadium construction and the Qualcomm Stadium demolition phases. During the new stadium construction site work phase, most of the heavy truck trips would be hauling earth to the site in preparation for construction. Approximately 24,500 truck trips would be required to import the soil from available project sites within the San Diego area.

After the implosion, the materials would be sorted for reuse, recycling, and lastly landfill disposal. Seventy-five percent of construction and demolition debris would be required to be diverted from landfills and recycled. The demolition debris would be removed from the site; it is expected that approximately 920,000 cubic yards of material would need to be hauled from the site to Miramar Landfill for clean soil, Otay Landfill for soil exceeding gasoline and diesel contamination, or Soil Safe in Adelanto for contaminated soil. Approximately 48,100 truck trips would be required to haul the debris away.

Construction-related emissions associated with construction activities were modeled using the California Emissions Estimator Model (CalEEMod), Version 2013.2.2. CalEEMod allows the user to enter project-specific construction information, such as types, number, and horsepower of construction equipment, and number and length of off-site motor vehicle trips. Construction-related GHG exhaust emissions for the Project were estimated for construction worker commutes, haul trucks, and the use of off-road equipment.

Construction-related GHG emissions were estimated at an annual maximum of 21,320 metric tons (MT) CO<sub>2</sub>e per year during 2019, and 48,270 MT CO<sub>2</sub>e over the entire 5-year construction period. Table 3 presents the Project’s annual and total construction emissions.

**Table 3  
Proposed Project Construction-Related GHG Emissions**

Construction Year	GHG Emissions (MT CO <sub>2</sub> e)
2016	822
2017	11,690
2018	11,717
2019	21,320
2020	2,723
<b>Total</b>	<b>48,272</b>

Notes: MT CO<sub>2</sub>e = metric tons of carbon dioxide equivalent.

Source: Modeled by AECOM in 2015

## 1.5 OPERATIONAL EMISSIONS

The new stadium would be designed specifically for use by an NFL team. The new stadium, however, is expected to be used for other non-NFL events that are similar to the types of events that have occurred at Qualcomm Stadium. Table 4 includes a list of event types that have occurred at Qualcomm Stadium over the past 5 years. These types of events would also be anticipated to occur at the new stadium.

**Table 4**  
**Summary of Events at Qualcomm Stadium and Anticipated Events at the New Stadium**

Event	Qualcomm Event Days <sup>1</sup>	Qualcomm Event Attendance <sup>1</sup>	Qualcomm Event Parking <sup>1</sup>	Projected New Stadium Event Days <sup>2</sup>	Projected New Stadium Attendance <sup>2</sup>	Projected New Stadium On-site Parking Usage <sup>2</sup>
<b>STADIUM EVENTS</b>						
<b>NFL Football</b>						
NFL Pre- & Regular Season	10 home games	65,000	14,589	10 home games	68,000	14,000
NFL Post-Season	0	–	–	2 games (every 5 years)	72,000	12,000
Super Bowl	0	–	–	1 game (every 5 years)	72,000	10,000 <sup>3</sup>
<b>Collegiate Football</b>						
San Diego State University	6 games	30,000	5,474	6 games	30,000	10,000
Poinsettia Bowl	1 game	30,000	6,837	1 game	40,000	10,000
Holiday Bowl	1 game	50,000	9,894	1 game	60,000	10,000 <sup>3</sup>
Mountain West Championship	–	–	–	1 game	37,000	12,000
<b>Other Events</b>						
High School Football	3 games	4,000	1,100	3 games	18,000	5,250
Soccer Games	2	20,000–50,000	2,650	5	60,000	12,000
Concerts	0 <sup>4</sup>	–	–	2	60,000	12,500
Monster Trucks	1	50,000	12,474	1	60,000	12,500
Supercross	1	50,000	12,782	1	65,000	14,000
<b>MISCELLANEOUS EVENTS</b>						
Large Events	4	15,001-20,000	–	10	15,001-20,000	
Medium Events	4	5,001-15,000	–	26	5,001-15,000	
Small Events	30	501–5,000	–	55	501–5,000	
Minor Events	170	Less than 500		195	Less than 500	

<sup>1</sup> Recent event averages.

<sup>2</sup> These projections are estimates of maximum events, attendance, and parking for the first 5 years of new stadium operation.

<sup>3</sup> Large portions of parking area are inaccessible for parking due to event tents, media zones, and increased bus/shuttle parking.

<sup>4</sup> The recent One Direction concert was the first in the past 12 years and does not present statistical significance for characterizing the base line. This concert had 13,456 cars enter the site with a disproportionately high level of drop-offs/pick-ups due to the crowd pre-teen/teen demographic.

Operational GHG emissions may be both direct and indirect emissions. Direct area-source emissions would be associated with activities such as maintenance of landscaping and grounds.

---

Natural gas combustion for space and water heating is also a direct area source of GHG emissions.

Indirect emissions sources include emissions from electricity generation at off-site utility providers. Consumption of water and generation of wastewater would also result in indirect GHG emissions because of the electricity consumption associated with the off-site conveyance, distribution, and treatment of water and wastewater. Solid waste disposal and wastewater treatment from operation of the new stadium would result in indirect, off-site emissions of GHGs. Indirect emissions also include mobile sources generated by vehicle trips from attendees, workers, vendors, and event participants.

CalEEMod estimates operational phase GHG emissions associated with development of a project, including transportation, electricity, natural gas, solid waste, water and wastewater, and area-source emissions. Operational phase GHG emissions were estimated for Qualcomm Stadium and the new stadium at full buildout to determine the net change in operational emissions. It should be noted that the Project is not a typical land use development project and therefore, when possible, this analysis uses stadium-specific consumption rates (e.g., electricity, natural gas, mobile sources, water, and solid waste) based on the existing Qualcomm Stadium historical data to model existing and Project operational activities. For the new stadium, consumption rates from the existing Qualcomm Stadium were adjusted to account for the differences in the new stadium.

### **Mobile Sources**

Mobile source emissions for all events types (e.g., NFL games, college football, etc.) were estimated using CalEEMod and trip generation information from the traffic study. The traffic study evaluated the various existing and proposed events that would occur at the Project site over a calendar year. The traffic study estimated the number and types of vehicle trips that occur during annual operation of the existing Qualcomm Stadium and the projected number and type of vehicle trips that would occur during annual operation of the new stadium. Existing game day trip generation was calculated using parking gate counts, trolley ridership, and recent attendance data from past games. Future trip generation was estimated based on projected event frequency and attendance, the reduction of on-site parking spaces, and the implementation of the Transportation Demand Management (TDM) plan.

CalEEMod contains emission factors from EMFAC 2011 that incorporate the emission reductions associated with Pavley I (AB 1493) and Low Carbon Fuel Standard (LCFS). The amount of reductions associated with Pavley I emission standards would increase from its

inception year (2009) to the last year where it would affect vehicle emission standards (i.e., model year 2016 vehicles). Similarly, the first year of LCFS implementation was 2011, after which required reductions would increase until 2020, which is the full implementation year for LCFS. In addition, the fleet turnover and increases in fuel and emission efficiencies independent of AB 1493 and LCFS would further reduce emissions.

In addition to trip generation rates, the default fleet mix in CalEEMod was adjusted to account for the vehicle types that would be applicable to the Project. On-road motor vehicles for the visitors to the stadium would primarily be passenger vehicles (i.e., light-duty autos and light-duty trucks) and shuttle/charter buses. This is a higher percentage than the County average, which would include more heavy-duty vehicles.

## Energy

The operational phase of the Project would consume energy for multiple purposes including, but not limited to, building heating and cooling, lighting, and electronics. The energy sector would include both electricity and natural gas consumption. The Project would result in an increase in floor area for support, team facilities, and administrative functions and number of events compared to Qualcomm Stadium. The new stadium would be built to current Title 24 code and CALGreen requirements, which require a higher level of energy, heating, ventilation and air conditioning (or HVAC), and lighting efficiencies over the existing Qualcomm Stadium.

Electricity consumption was based on actual meter readings at Qualcomm Stadium between 2014 and 2015. The Energy Modeling Report modeled electricity and natural gas consumption associated with the Project and the existing Qualcomm Stadium (AECOM 2015a). Table 5 shows the results of the energy analysis.

**Table 5  
Estimated Electricity and Gas Consumption**

	<b>Existing Qualcomm Stadium</b>	<b>New Stadium</b>	<b>New Stadium with LEED Gold</b>
Gas (therms)	44,758	56,259	45,007
Electricity (MWh)	5,768	6,322	5,058

Notes: MWh = megawatt hours  
Source: Estimated by AECOM 2015

---

Even with Title 24 code and CALGreen requirements, as shown in Table 5, annual electricity usage would be expected to increase with the new stadium from 5,768 MWh to 6,322 MWh, or an approximately 10 percent increase compared to the existing Qualcomm Stadium. Annual natural gas consumption would increase from 44,578 therms to 56,259 therms, or an approximately 26 percent increase.

The new stadium would also incorporate several design measures that would reduce GHG emissions and include achieving LEED Gold Certification. At the time of this analysis, the exact LEED credits and Project features that would be selected to achieve LEED Gold Certification (i.e., 60–79 LEED credits) have not yet been determined. LEED Gold Certification would be met using energy conservation measures and renewable energy to further reduce the energy consumption.

Key energy conservation measures included in the Project are:

- Energy-efficient lighting (including where appropriate light emitting diode [LED] lighting) throughout the interior of the new stadium, spectator spaces, stadium lighting, and exterior parking lot lighting.
- Comprehensive lighting control system utilizing motion sensors and photocells to ensure lighting is only in operation when required and at the minimum required illumination levels (avoid over lighting).
- LED scoreboard and field signs (LED scoreboard can reduce energy consumption by 90 percent, from 1.2 million kilowatt hours (kWh) for incandescent lights to 130,000 kWh for LED lights (Game Changer Report).
- Energy-efficient escalators with multimode operation (e.g., sleep mode). Optimization of kitchen use/facilities together with high efficiency (e.g., Energy Star) appliances.

The Project would be designed to have “no net increase” in total annual energy consumption related to electricity and natural gas use over the existing Qualcomm Stadium. As shown in Table 5, the analysis assumed that LEED Gold Certification would result in a 20 percent reduction from the estimates included in the Energy Modeling Report. Therefore, energy consumption for the Project with LEED Gold Certification would be 5,058 megawatt hours and 45,007 therms per year.

The new stadium would also include solar photovoltaic (PV) panels that would provide a minimum of 100 kilowatts of renewable energy developed on-site. The reduction in GHG

---

emissions were estimated for the amount of solar generation that would be provided by the Project.

For electricity-related GHG emissions, emission factors specific to San Diego Gas and Electric (SDG&E) were used for the analysis. The SDG&E-specific emission factor accounts for the current electricity portfolio mix used to produce power for the Project and compliance with Renewable Portfolio Standard (RPS). Executive Order S-14-08 established an RPS of 33 percent by 2020. To achieve the RPS in 2020, utilities such as SDG&E have been increasing their renewable resources for energy production. Therefore, all electricity consumption from SDG&E sources would decrease in GHG intensity (i.e., emissions generated per kilowatt-hour) as the RPS is met. Emission factors specific to SDG&E's projected 2020 electricity intensity assuming compliance with the 33 percent RPS were used to calculate electricity-related GHG emissions for the new stadium. These emission factors would account for the GHG-reductions associated with SDG&E increasing the percent of renewable energy in their electricity portfolio. The natural gas GHG emission factor was obtained from CalEEMod.

### **Water and Wastewater**

The water sector would include GHG emissions from water consumption and wastewater generation. Actual water consumption data from 2012 through 2014 were used for the existing Qualcomm Stadium. The existing Qualcomm Stadium used an average of approximately 18,500,000 gallons per year, or 56.8 acre-feet per year (AFY). Proposed annual water demands were compiled from estimates of three demand scenarios: (1) days when the new stadium does not host any event, (2) days when the new stadium hosts non-NFL events, such as San Diego State University Aztecs football, soccer games, concerts, motocross, or any event with less than 30,000 attendees, and (3) days when the Project hosts NFL games. The new stadium would result in an additional water demand of 67.4 AFY, or a total projected demand of 124.2 AFY.

For water consumption, water-related energy intensities (i.e., kilowatt-hour per gallon of water provided) were also obtained from CalEEMod, which contains southern California-specific water energy intensities from the California Energy Commission's Refining Estimates of Water-Related Energy Use in California. Water-related electricity consumption was calculated by multiplying the annual water consumption (e.g., million gallons) by the water-related energy intensity. Because the source, infrastructure, and electricity used to supply water to San Diego and the Project site varies, a California-specific electricity emission factor was used to calculate water-related GHG emissions.

---

In addition to the water-related GHG emissions, the Project would also generate wastewater as a result of its operations. For wastewater generation, this analysis conservatively assumed that 85 percent of the water consumption would be treated. In other words, 85 percent of the water used would be captured by the sewage system, which is the high end of the range of the wastewater capture (VWD 2010). CalEEMod calculates wastewater-related CH<sub>4</sub> emissions using methodologies and default assumptions from the Intergovernmental Panel on Climate Change's 2006 Guidelines for National Greenhouse Gas Inventories.

### **Solid Waste**

For solid waste, CalEEMod does not contain waste generation rates that would be applicable to the Project. Therefore, waste generation rates for the existing Qualcomm Stadium based on a waste generation rate per stadium seat factor (i.e., annual tons of solid waste per seat) were used to estimate annual solid waste generation (AECOM 2015b).

The new stadium would result in a net decrease in the total number of seats compared to the existing Qualcomm Stadium (i.e., from 70,560 existing seats to 68,000 seats for the new stadium). However, for the existing Qualcomm Stadium, the attendance rate (i.e., 65,432 attendees) was used to estimate existing solid waste generation. Estimated solid waste generation from the existing Qualcomm Stadium and new stadium would be approximately 2,748 tons and 2,856 tons per year, respectively. Emission factors developed for waste streams similar to the project type (i.e., sporting events, concerts, and other entertainment events) were used to quantify the solid waste emissions (OPR 2015).

### **Area Sources/Landscaping**

Maintenance of the field (natural or synthetic turf) and Project site would result in emissions from landscaping and related equipment. Synthetic field turf requires less frequent care than natural grass, but maintenance is still required. Maintenance emissions were calculated using CalEEMod for area sources.

### **Back-Up Generators**

The existing Qualcomm Stadium has one 40-horsepower generator at the east end of the stadium for use with one elevator only. The stadium utilizes a series of back-up transformers on redundant circuits to manage electrical failure. Operational emissions for the existing generator would result from intermittent use for maintenance and testing purposes. The generator was assumed to run approximately 1 hour each week for a total of 52 hours per year. The new

---

stadium was assumed to have adequate ramps and redundant transformers, so no back-up generators are included in the Project design.

### **Summary of Total Emissions**

Table 6 shows the annual operational emissions for the existing Qualcomm Stadium, construction of the new stadium, and operation of the new stadium. The existing Qualcomm Stadium emissions were estimated to be a maximum of GHG emissions at 20,711 MT CO<sub>2</sub>e per year in 2015. Operational emissions were also estimated for the existing Qualcomm Stadium through 2019. The 2019 emissions of 18,323 MT CO<sub>2</sub>e are considered the baseline emissions for the purposes of the AB 900 application.

Construction-related GHG emissions were estimated at an annual maximum of 21,320 MT CO<sub>2</sub>e per year during 2019, and 48,270 MT CO<sub>2</sub>e over the entire 5-year construction period. The maximum of GHG emissions were estimated at 20,711 MT CO<sub>2</sub>e per year in 2015.

As shown in Table 6, the operational emissions for the Project were estimated at 28,679 MT CO<sub>2</sub>e per year in 2019 (total 2019 emissions of 49,999 MT CO<sub>2</sub>e including construction) and 29,578 MT CO<sub>2</sub>e per year in 2020 (total 2020 emissions of 32,000 MT CO<sub>2</sub>e including construction). Annual emissions were estimated for operations through 2035 and compared to the baseline emissions for the existing Qualcomm Stadium. The total cumulative increase over baseline emissions was estimated to be 186,394 MT CO<sub>2</sub>e.

To apply for AB 900 CEQA streamlining, a project cannot result in a net increase of GHG emissions from construction or operational emissions. The following measure would be required.

### **Purchase Voluntary Carbon Credits**

Calculations of construction and long-term operational emissions that span the useful lifetime of the Project performed with methodology agreed upon by ARB in connection with the AB 900 certification shall be developed. Courtesy copies of the operational calculations shall be provided to ARB and the Governor's office as part of the AB 900 application. One or more contracts shall be executed to purchase voluntary carbon credits from a verified GHG emissions credit broker in an amount sufficient to offset construction and operational GHG emissions over the lifetime of the Project. Carbon credits shall be purchased at a net present value although the contracts could propose acquiring the credits in advance of the emission-generating activities to be offset. Copies of the contract(s) shall be provided in the AB 900 application to ARB and the Governor's office to verify that construction and lifetime operational emissions have been offset. The improvement



measure will become effective after final approval and certification of the AB 900 application by the Governor's office.

**Table 6  
Existing and Proposed Project Construction and Operational GHG Emissions**

<b>Emissions Source</b>	<b>Existing Qualcomm Stadium Emissions (MT CO<sub>2</sub>e)</b>	<b>New Stadium Emissions (MT CO<sub>2</sub>e)</b>	<b>Net Change in Emissions from Baseline (MT CO<sub>2</sub>e)</b>
2015	20,711		
2016 <sup>a</sup>	20,177	822	822
2017 <sup>a</sup>	19,524	11,690	11,690
2018 <sup>a</sup>	18,909	11,717	11,717
2019 <sup>b</sup>	18,323	49,999	31,675
2020 <sup>b</sup>		32,300	13,977
2021		27,349	9,025
2022		27,027	8,704
2023		26,706	8,383
2024		26,384	8,061
2025		27,860	9,536
2026		25,890	7,566
2027		25,716	7,393
2028		25,543	7,220
2029		25,370	7,047
2030		26,928	8,605
2031		25,124	6,800
2032		25,050	6,727
2033		24,977	6,654
2034		24,904	6,581
2035		26,534	8,210
<b>Cumulative Total</b>			<b>186,394</b>

Emissions shown in parentheses represent negative emissions (i.e., net decrease in emissions from existing conditions).

Totals may not add due to rounding.

<sup>a</sup> New Stadium emissions for 2016 through 2018 are construction-related emissions only. All construction emissions are considered to be a net increase for those analysis years.

<sup>b</sup> New Stadium emissions for 2019 and 2020 include both construction and operational emissions.

Source: Modeled by AECOM in 2015

---

This page intentionally left blank.

---

## **SECTION 2**

### **REFERENCES**

#### AECOM

2015a Energy Model Report. San Diego, CA.

2015b Waste Management Report. San Diego, CA.

#### Intergovernmental Panel on Climate Change (IPCC)

2006 2006 IPCC Guidelines for National Greenhouse Gas Inventories. Available at <http://www.ipcc-nggip.iges.or.jp/public/2006gl/>. Accessed July 24, 2015.

2013 Climate Change 2013: The Physical Science Basis. Available at <http://www.ipcc.ch/report/ar5/wg1/>. Accessed October 2014.

#### Office of Planning and Research (OPR)

2015 Application for Environmental Leadership Development Project: Golden State Warriors Event Center and Mixed-Use Development at Mission Bay Blocks 29-32. Available at [http://www.opr.ca.gov/docs/2015.02.17\\_GSW\\_Blocks29-32\\_AB900\\_Application\\_Submission.pdf](http://www.opr.ca.gov/docs/2015.02.17_GSW_Blocks29-32_AB900_Application_Submission.pdf). Accessed July 26, 2015.

#### Vallecitos Water District (VWD)

2010 Vallecitos Water District Master Plan. Available at <http://vwd.org/home/showdocument?id=911>. Accessed July 20, 2015.

---

This page intentionally left blank.

## **APPENDIX A**

# **CALEEMOD AND GREENHOUSE GAS MODELING DATA**



Summary of Construction and Operational GHG Emissions

Annual GHG Emissions (MT CO2e)

Emissions Source	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Existing Stadium	20,711	20,177	19,524	18,909	18,323																
AB 900 Baseline Emissions					18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323	18,323
Construction		822	11,690	11,717	21,320	2,723															
New Stadium Operations					28,679	29,578	27,349	27,027	26,706	26,384	27,860	25,890	25,716	25,543	25,370	26,928	25,124	25,050	24,977	24,904	26,534
Total Project Emissions		822	11,690	11,717	49,999	32,300	27,349	27,027	26,706	26,384	27,860	25,890	25,716	25,543	25,370	26,928	25,124	25,050	24,977	24,904	26,534
Net Change		822	11,690	11,717	31,675	13,977	9,025	8,704	8,383	8,061	9,536	7,566	7,393	7,220	7,047	8,605	6,800	6,727	6,654	6,581	8,210
Cumulative Total		822	12,511	24,228	55,903	69,880	78,906	87,610	95,993	104,054	113,590	121,156	128,550	135,770	142,817	151,422	158,222	164,949	171,603	178,184	186,394

Note:  
 New Stadium emissions for 2016 through 2018 are construction-related emissions only. All construction emissions are considered to be a net increase for those analysis years.  
 New Stadium construction and operational emissions for 2019 through 2035 are compared to the baseline emissions for the existing Qualcomm Stadium in 2019.

Summary of Construction and Operational GHG Emissions

Annual GHG Emissions	Emissions (MT CO <sub>2</sub> e)
2016	822
2017	11,690
2018	11,717
2019	21,320
2020	2,723
Total	48,270

EXISTING (QUALCOMM STADIUM) OPERATIONAL EMISSIONS (MT CO<sub>2</sub>e)

Emissions Source	2015	2016	2017	2018	2019
Energy (electricity and natural gas)	1,851	1,795	1,740	1,684	1,628
Area	0.14	0.14	0.14	0.14	0.14
Mobile (On-Road)	18,118	17,640	17,042	16,483	15,953
Generators	1	1	1	1	1
Solid Waste	515	515	515	515	515
Water-Related	226	226	226	226	226
Total	20,711	20,177	19,524	18,909	18,323

NEW STADIUM OPERATIONAL EMISSIONS (MT CO<sub>2</sub>e)

Emissions Source	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Energy (electricity and natural gas)	1,414	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367	1,367
Area	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14
Mobile (On-Road)	26,236	27,182	24,953	24,631	24,310	23,989	25,464	23,494	23,321	23,147	22,974	24,533	22,727	22,653	22,578	22,504	24,133
Generators	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Solid Waste	535	535	535	535	535	535	535	535	535	535	535	535	535	535	535	535	535
Water	493	493	493	493	493	493	493	493	493	493	493	493	493	493	493	493	493
Total	28,679	29,578	27,349	27,027	26,706	26,384	27,860	25,890	25,716	25,543	25,370	26,928	25,124	25,050	24,977	24,904	26,534



Operational GHG Emissions (Energy)

Existing Qualcomm Stadium Energy Consumption

Energy Type	Amount	Units
Electricity	5,768	MWh
Natural Gas	44,758	therms
Total		

Source: AECOM. 2015. Preliminary Energy Model Report for Qualcomm Stadium and New Stadium.

No Project (Qualcomm Stadium) Energy-Related Emissions

Energy Type	Emissions (MT CO <sub>2</sub> e/yr)
2015	1,851.22
2016	1,795.49
2017	1,739.76
2018	1,684.03
2019	1,628.30
Total	

New Stadium Energy Consumption

Energy Type	Amount	Energy Consumption with LEED Gold	Units
Electricity	6,322	5,057.88	MWh
Natural Gas	56,259	45,007.20	therms
Total			

Note: Although the new stadium commits to a "no net increase" over existing conditions for energy consumption, the analysis is based on a 20% improvement in energy consumption associated with LEED Gold certification.

Source: AECOM. 2015. Preliminary Energy Model Report for Qualcomm Stadium and New Stadium.

New Stadium Energy-Related Emissions

Energy Type	Emissions (MT CO <sub>2</sub> e/yr)	Emissions with LEED Gold
2019	1,823.09	1,458.47
2020 (and future years)	1,762.01	1,409.61

Emission Factors

Operational Year/ Pollutant	Emission Factor	Units	GWP
<b>Electricity with RPS (SDG&amp;E)</b>			
2010	723	lbs CO <sub>2</sub> e/MWh	
2015	617	lbs CO <sub>2</sub> e/MWh	
2016	595	lbs CO <sub>2</sub> e/MWh	
2017	574	lbs CO <sub>2</sub> e/MWh	
2018	553	lbs CO <sub>2</sub> e/MWh	
2019	531	lbs CO <sub>2</sub> e/MWh	
2020	510	lbs CO <sub>2</sub> e/MWh	
<b>Natural Gas</b>			
CO <sub>2</sub>	53.06	kg/MMBtu	1
CH <sub>4</sub>	0.005	kg/MMBtu	28
N <sub>2</sub> O	0.0001	kg/MMBtu	265

Sources:

2010, 2014, 2020, and 2035 SDG&E EF: [http://www.sandiego.gov/planning/genplan/cap/pdf/cap\\_at](http://www.sandiego.gov/planning/genplan/cap/pdf/cap_at)

2013 SDG&E EF: Energy Technical Report (AECOM)

Electricity (CH<sub>4</sub> and N<sub>2</sub>O): eGRID 2010 WECC California

2005 SDG&E EF: Local Government Operations Protocol (Table G.6)

Electricity (CH<sub>4</sub> and N<sub>2</sub>O): eGRID 2005 WECC California

NG EF: General Reporting Protocol Version 3.1

GWP: IPCC. 2013. Fifth Assessment Report: Climate Change 2013

## Operational Emissions (Renewable Energy)

### Annual GHG Emissions

Category	Amount	Units	Emissions (MT CO <sub>2</sub> e/yr)
2019	185	MWh	(44.58)
2020 (and future years)	185	MWh	(42.80)

### Emission Factors

Operational Year/ Pollutant	Emission Factor	Units
Electricity with RPS (SDG&E)		
2019	531	lbs CO <sub>2</sub> e/MWh
2020	510	lbs CO <sub>2</sub> e/MWh

#### Sources:

2010, 2014, 2020, and 2035 SDG&E EF: <http://www.sandiego.gov/planning/genplan/cap/pd>

2013 SDG&E EF: Energy Technical Report (AECOM)

Electricity (CH<sub>4</sub> and N<sub>2</sub>O): eGRID 2010 WECC California

2005 SDG&E EF: Local Government Operations Protocol (Table G.6)

Electricity (CH<sub>4</sub> and N<sub>2</sub>O): eGRID 2005 WECC California

NG EF: General Reporting Protocol Version 3.1

GWP: IPCC. 2013. Fifth Assessment Report: Climate Change 2013

Operational Emissions (Mobile)  
Existing Stadium Annual Emissions  
Annual GHG Emissions

Emission Estimates (MT CO2e/year)

Event Type	Events/Year	2015	2016	2017	2018	2019
Existing NFL Pre-Season	10	15,091,316	14,616,209	14,096,284	13,609,650	13,148,333
Existing NFL Post-Season (including Super Bowl)	0	-	-	-	-	-
SDSU Football (and Bowl Games)	8	6,057,761	5,867,741	5,659,573	5,464,725	5,279,881
Mountain West Championship	0	-	-	-	-	-
High School Football	3	1,186,361	1,149,061	1,108,224	1,069,999	1,033,755
Soccer Games	2	1,789,245	1,938,664	1,938,664	1,938,664	1,938,664
Concerts	0	-	-	-	-	-
Monster Truck	1	931,007	901,500	869,266	839,089	810,529
Supercross	1	1,050,187	1,017,062	980,828	946,909	914,773
Large Events	4	3,028,881	2,933,870	2,829,786	2,732,362	2,639,940
Medium Events	4	2,271,389	2,200,134	2,122,075	2,049,011	1,979,699
Small Events	30	5,677,193	5,499,062	5,303,933	5,121,289	4,948,033
Minor	170	2,859,887	2,765,217	2,662,975	2,567,202	2,477,452
Total Annual Mobile Source Emissions (lbs/year)		39,943,227	38,888,520	37,571,607	36,338,900	35,171,060
Total Annual Mobile Source Emissions (MT/year)		18,118	17,640	17,042	16,483	15,953

Operational GHG Emissions (Mobile)  
Project Stadium Annual Emissions

Event Type	Events/Year	Emission Estimates (MT CO2e/year)																
		2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
NFL Pre-Season	10	12,183.803	11,743.467	11,597,050.32	11,450,633.97	11,304,217.62	11,157,801.28	11,011.385	10,930,977.14	10,850,569.36	10,770,161.57	10,689,753.78	10,609,346	10,574,698.53	10,540,051.06	10,505,403.60	10,470,756.13	10,436,109
NFL Post-Season (including Super Bowl)	3		4,205,498					3,960,953					3,817,242					3,754,211
SDSU Football (and Bowl Games)	8	5,272,255	5,079,799	5,015,327.21	4,950,855.91	4,886,384.60	4,821,913.29	4,757,442	4,722,630.03	4,687,818.08	4,653,006.13	4,618,194.18	4,583,382	4,568,450.67	4,553,519.11	4,538,587.54	4,523,655.98	4,508,724
Mountain West Championship	1	776,796	749,331	739,703.33	730,075.76	720,448.20	710,820.63	701,193	696,056.08	690,919.10	685,782.11	680,645.13	675,508	673,312.13	671,116.12	668,920.11	666,724.10	664,528
High School Football	3	1,032,420	994,522	981,857.67	969,193.17	956,528.66	943,864.15	931,200	924,383.51	917,567.37	910,751.24	903,935.10	897,119	894,198.04	891,277.12	888,356.20	885,435.27	882,514
Soccer Games	5	3,889,793	3,746,646	3,698,511.22	3,650,374.75	3,602,238.28	3,554,101.80	3,505,965	3,480,280.40	3,454,595.48	3,428,910.55	3,403,225.63	3,377,541	3,366,560.66	3,355,580.61	3,344,600.56	3,333,620.52	3,322,640
Concerts	2	1,617,373	1,559,214	1,539,127.59	1,519,041.46	1,498,955.33	1,478,869.20	1,458,783	1,448,093.14	1,437,403.21	1,426,713.28	1,416,023.35	1,405,333	1,400,766.94	1,396,200.47	1,391,633.99	1,387,067.51	1,382,501
Monster Truck	1	808,687	779,607	769,563.80	759,520.73	749,477.67	739,434.60	729,392	724,046.57	718,701.61	713,356.64	708,011.68	702,667	700,383.47	698,100.23	695,816.99	693,533.76	691,251
Supercross	1	913,971	879,983	868,725.10	857,467.15	846,209.19	834,951.24	823,693	817,661.36	811,629.43	805,597.50	799,565.58	793,534	790,952.05	788,370.45	785,788.85	783,207.25	780,626
Large Events	10	6,590,318	6,349,748	6,269,159.02	6,188,569.88	6,107,980.75	6,027,391.61	5,946,802	5,903,287.54	5,859,772.60	5,816,257.67	5,772,742.73	5,729,228	5,710,563.34	5,691,898.88	5,673,234.43	5,654,569.97	5,635,906
Medium Events	26	12,851,092	12,380,378	12,223,229.30	12,066,080.60	11,908,931.90	11,751,783.21	11,594,635	11,509,791.24	11,424,947.97	11,340,104.70	11,255,261.43	11,170,418	11,134,028.42	11,097,638.67	11,061,248.92	11,024,859.17	10,988,469
Small Events	55	9,061,749	8,727,571	8,616,759.87	8,505,948.57	8,395,137.26	8,284,325.95	8,173,515	8,113,703.77	8,053,892.89	7,994,082.02	7,934,271.14	7,874,460	7,848,808.88	7,823,157.49	7,797,506.11	7,771,854.72	7,746,203
Minor	195	2,841,783	2,730,203	2,692,758.61	2,655,314.49	2,617,870.38	2,580,426.26	2,542,982	2,524,228.67	2,505,475.19	2,486,721.71	2,467,968.22	2,449,215	2,441,346.40	2,433,478.05	2,425,609.71	2,417,741.37	2,409,873
Total Annual Mobile Source Emissions (lbs/year)		57,840,040	59,925,968	55,011,773	54,303,076	53,594,380	52,885,683	56,137,939	51,795,139	51,413,292	51,031,445	50,649,598	54,084,993	50,104,070	49,940,388	49,776,707	49,613,026	53,203,555
Total Annual Mobile Source Emissions (MT/year)		26,236	27,182	24,953	24,631	24,310	23,989	25,464	23,494	23,321	23,147	22,974	24,533	22,727	22,653	22,578	22,504	24,133

Notes:  
 Assumes that NFL Post-Season events occur every 5 years starting in 2020.  
 Mobile source emissions estimated using CalEEMod and trip generation rates for individual events. Event emissions were multiplied by the number of events per year to estimate total annual emissions.  
 Emissions estimated using CalEEMod for 2019, 2020, 2025, 2030, and 2035. Other years interpolated based on trends between modeled years.  
 Assumes that mobile source emissions are constant after 2035

Individual Event Mobile Source Emissions (lbs CO2e)

Annual GHG Emissions

	2015	2016	2017	2018	2019
No Project NFL Pre-Season	1,509,132	1,461,621	1,409,628	1,360,965	1,314,833
No Project NFL Post-Season	1,664,545	1,612,035	1,554,601	1,500,840	1,449,906
Project NFL Pre-Season	-	-	-	-	-
Project NFL Post-Season	-	-	-	-	-
College Football	757,220	733,468	707,447	683,091	659,985
MWC Championship	-	-	-	-	-
High School Football	395,454	383,020	369,408	356,666	344,585
Soccer	894,623	866,322	835,388	806,431	779,013
Concerts	-	-	-	-	-
Monster Trucks	931,007	901,500	869,266	839,089	810,529
Supercross	1,050,187	1,017,062	980,828	946,909	914,773
Large Event	757,220	733,468	707,447	683,091	659,985
Medium Event	567,847	550,033	530,519	512,253	494,925
Small Event	189,240	183,302	176,798	170,710	164,934
Minor Event	16,823	16,266	15,665	15,101	14,573

New Stadium

	2019	2020	2025	2030	2035
No Project NFL Pre-Season	-	-	-	-	-
No Project NFL Post-Season	-	-	-	-	-
Project NFL Pre-Season	1,218,380	1,174,347	1,101,138	1,060,935	1,043,611
Project NFL Post-Season	1,452,130	1,401,833	1,320,318	1,272,414	1,251,404
College Football	659,032	634,975	594,680	572,923	563,591
MWC Championship	776,796	749,331	701,193	675,508	664,528
High School Football	344,140	331,507	310,400	299,040	294,171
Soccer	777,959	749,330	701,193	675,508	664,528
Concerts	808,687	779,607	729,392	702,667	691,251
Monster Trucks	808,687	779,607	729,392	702,667	691,251
Supercross	913,971	879,983	823,693	793,534	780,626
Large Event	659,032	634,975	594,680	572,923	563,591
Medium Event	494,273	476,168	445,947	429,631	422,633
Small Event	164,759	158,683	148,609	143,172	140,840
Minor Event	14,573	14,001	13,041	12,560	12,358

Generators  
Existing Stadium

Annual GHG Emissions

Equipment Type	Equipment Category	Number	Usage Factor (hrs/day or miles/day)	Power Rating (hp)	Total Days/VMT	CO <sub>2</sub>	CH <sub>4</sub>	CO <sub>2</sub>	CH <sub>4</sub>	Total GHG Emissions (MT CO <sub>2</sub> e)
Generator Sets > 25 and <= 50	Generator	1	1	40	52	31	0.01	0.80	0.00	0.73

Note: Existing stadium currently has one 40 hp generator. Assumes testing of generator one day per week.

New stadium assumes redundant transformers and no back-up generators would be required.

Global Warming Potential

Gas	Atmospheric Lifetime (years)	Global Warming Potential (100 year time horizon)
Carbon Dioxide	50-200	1
Methane	12 ± 3	28
Nitrous Oxide	120	265

Operational GHG Emissions (Solid Waste)

Annual GHG Emissions

Category	Amount	Unit	Solid Waste Generation Rate (ton/seat/yr)	Annual Solid Waste (tons)	Emission Factor (MT CO <sub>2</sub> e/MT Waste)	Emissions (MT CO <sub>2</sub> e/yr)
Existing Conditions (2015)						
Qualcomm Stadium	65,432	Seats	0.042	2,748	0.207	515.24
Proposed						
New Stadium	68,000	Seats	0.042	2,856	0.207	535.46
Note: MT CO <sub>2</sub> e = metric tons of carbon dioxide equivalent; MT = metric tons. Waste Generation Rate Source: AECOM. 2015. Waste Management Plan. San Diego, CA						

Operational GHG Emissions (Water Consumption)

Annual GHG Emissions

Category	MG	MWh	Emission Factor CO <sub>2</sub> (lb/MWh)	GWP	Emission Factor CH <sub>4</sub> (lb/MWh)	GWP	Emission Factor N <sub>2</sub> O (lb/MWh)	GWP	Total CO <sub>2</sub> e Emissions (MT CO <sub>2</sub> e/yr)
Existing Conditions (Qualcomm 2015)									
Water	19	206	610.82	1	0.02849	28	0.00603	265	57
Wastewater Energy	16	30	610.82	1	0.02849	28	0.00603	265	8
New Stadium (2019)									
Water	40	450	610.82	1	0.02849	28	0.00603	265	125
Wastewater Energy	34	66	610.82	1	0.02849	28	0.00603	265	18

Notes: MG = million gallons; MWh = megawatt-hours; CO<sub>2</sub> = carbon dioxide; lb = pounds; GWP = global warming potential; CH<sub>4</sub> = methane; N<sub>2</sub>O = nitrous oxide; MT CO<sub>2</sub>e/yr = metric tons of carbon dioxide equivalent.

Sources:  
 CEC. 2006. Refining Estimates of Water-Related Energy Use in California prepared by Navigant Consulting, Inc.  
 Electricity EF (Existing and Proposed): eGRID 2010 WECC California ([http://www.epa.gov/cleanenergy/documents/egridzips/eGRID\\_9th\\_edition\\_V1-0\\_year\\_2010\\_Summary\\_Tables.pdf](http://www.epa.gov/cleanenergy/documents/egridzips/eGRID_9th_edition_V1-0_year_2010_Summary_Tables.pdf))  
 Electricity EF (BAU): eGRID 2005 WECC California ([https://www.chargepoint.com/files/eGRID2007V1\\_1\\_year05\\_GHGOutputRates.pdf](https://www.chargepoint.com/files/eGRID2007V1_1_year05_GHGOutputRates.pdf))

	Indoor (kWh/MG)		Outdoor (kWh/MG)	
	Northern CA	Southern CA	Northern CA	Southern CA
Water Supply&Conveyance	2,117	9,727	2,117	9,727
Water Treatment	111	111	111	111
Water Distribution	1,272	1,272	1,272	1,272
Wastewater Treatment	1,911	1,911	-	-
Regional Total	5,411	13,021	3,500	11,110

CEC. 2006 (December). Refined Estimates of Water-Related Energy Use in California



Operational GHG Emissions (Wastewater)

Annual GHG Emissions

Facility/Jurisdiction	Influent Emissions					
	Influent (MG/yr)	Influent (gal/yr)	Influent BOD (mg/L)	Influent BOD (kg/yr)	Adjusted BOD Emission Factor (kg CH <sub>4</sub> /kg BOD)	Influent Emissions (MT CO <sub>2</sub> e)
Existing Qualcomm Stadium	15.7	15,725,000	200	11,903.83	0.48	160
New Stadium	34.4	34,405,280	200	26,044.80	0.48	350

Notes: MG/yr = million gallons per year; gal/yr = gallons per year; BOD = biochemical oxygen demand; mg/L = milligrams per liter; kg/yr = kilograms per year; kg CH<sub>4</sub> = kilograms of methane; MT CO<sub>2</sub>e = metric tons of carbon dioxide equivalent.

Source:

Intergovernmental Panel on Climate Change 2006. IPCC Guidelines for National Greenhouse Gas Inventories; Chapter 6: Wastewater Treatment and Discharge

Methane Parameters

Emission Factor (kg CH <sub>4</sub> /kg BOD) (EF = Max CH <sub>4</sub> * MCF)	Max CH <sub>4</sub> Producing Capacity (kg CH <sub>4</sub> /kg BOD)	Methane Correction Factor	CH <sub>4</sub> GWP	Conversion (liter/gal)	WW % of Indoor Water
0.48	0.6	0.8	28	3.785	85%

Equation 6.2 IPCC Chapter 6

Methane Producing Capacity and MCF are LGOP defaults consistent with CalEEMod (Appendix A)

GWP 100-year from IPCC 2013



***CALEEMOD OUTPUTS ARE PROVIDED ELECTRONICALLY  
DUE TO THE SIZE AND NUMBER OF PAGES***



## **ATTACHMENT 3**

**Addendum to Application for Environmental Leadership Development Project**

**City of San Diego Stadium Reconstruction Project**

**(Submitted September 2, 2015)**



THE CITY OF SAN DIEGO

September 2, 2015

Heather (Phillips) King, AICP  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

**Re: San Diego Stadium Reconstruction Project-Clarifications on AB 900 Application**

Dear Ms. King,

We very much appreciate your quick response to our AB 900 application. Below is the additional information/clarification as requested by ARB staff,

***1) Project Lifetime: Page 10 of the City's AB 900 application submitted 8/25/15 implies that GHG emissions would not accumulate beyond year 2035. We understand that the anticipated project lifetime is estimated at 30 years, which would make the project's lifetime 2019-2049. Therefore, the cumulative net increase in GHG emissions would include emissions that occur beyond year 2035. We understand that GHG emission factors stabilize in year 2035 according to acceptable data sources. We do not require GHG emissions be quantified for individual years beyond 2035, as it would be somewhat speculative to do so. However, please confirm that the applicant assumes that operational GHG emissions from the project would continue through year 2049 at a level similar to, or less than, the GHG emissions estimated for year 2035.***

Consistent with similar AB 900 applications (e.g., Golden State Warriors), emission estimates for the project were provided through 2035. We agree that it would be speculative to include emissions beyond those years, particularly if the project must offset those future emissions. The Draft EIR states that "the total construction GHG emissions associated with a project are amortized over 30 years for Project construction, and added to the operational GHG emissions." This approach was done to meet the City's requirements for the CEQA analysis and is based upon guidance from the Association of Environmental Professionals (AEP). The Conditional Use Permit will include a condition for the purchase of carbon credits, as discussed in our response to question 3, below. Based on the conservative assumptions for events in the draft EIR and AB 900 application, we assume that the operational GHG emissions would continue through 2049 at a level similar to, or less than, the GHG emissions estimated for 2035, although they are likely to decrease.

***2) Consideration of Feasible On-site GHG Reduction Measures: Because the proposed project would result in a net increase in GHG emissions even after accounting for on-site mitigation***

Engineering Branch • Public Works Department

525 B Street, Suite 750, MS 908A • San Diego, CA 92101

Tel (619) 533-5200 Fax (619) 533-4666



***(e.g., LEED Gold certification, on-site solar PV generation, and Transportation Demand Management Plan), the project applicant will need to secure additional voluntary GHG reductions to qualify for AB 900 certification. The cumulative net increase in GHG emissions over the project's lifetime could exceed 200,000 MT CO<sub>2</sub>e. Has the applicant determined that additional on-site voluntary mitigation is infeasible when compared to the cost to purchase this quantity of voluntary GHG offsets through a qualified emissions broker? If so, what on-site GHG-reduction measures were considered, and why were they rejected?***

As mentioned in the comment, the project would include LEED Gold certification, on-site solar PV generation, and a TDM plan. The details of the measures for LEED GOLD certification are not available at this time, but the project would likely include additional energy and water conservation measures that are not estimated in the AB 900 application. These measures include installing a comprehensive lighting control system utilizing motion sensors, use of an LED scoreboard and field signs, and energy- efficient heating and cooling systems. In addition, restrooms would be equipped with waterless urinals, low-flow toilets, and sensor faucets to reduce overall water use. The project would be designed to have “no net increase” in total annual energy consumption related to electricity and natural gas use compared to existing conditions.

The new stadium would include PV renewable energy that would provide a minimum of 100 kilowatts of renewable energy on-site. The solar shade canopies would be installed, at a minimum, over 220 parking spaces on an acre or be installed on as much as 5 acres (i.e., 500 kilowatts) depending on final design. However, additional solar PV panels greater than the 5 acres would be limited due to potential biological impacts related to avian collisions with the PV panels, the project's restrictions on construction and improvements within the San Diego River Influence Area of the parking lot, pyrotechnic zones, and space required for large events held in the parking lot which sometimes require temporary structures such as tents.

The TDM plan includes all measures that are considered feasible for on- and off-site vehicle emissions. Since the TDM Plan includes an ongoing annual assessment as a part of its implementation, additional best practices and implementation strategies could be incorporated into the plan. No additional on-site mitigation measures were considered feasible for the project.

***3) Timing of GHG Offsets: Please specify the timing of GHG offsets relative to the GHG emissions from construction and operational activities. The City's commitment to include the following as a project condition would be acceptable.***

***“GHG offset contracts for construction emissions that would occur between 2016 and project occupancy (anticipated in 2019) will be secured prior to occupancy. The remaining GHG offset contracts for construction emissions associated with demolition and removal of the existing Qualcomm stadium that would occur in or after 2019 would be secured during the year in which the emissions occur. GHG offset contracts for the net increase in annual operational GHG emissions will be secured during the year in which emissions occur over the life of the project. The project lifetime is defined as 30 years. Therefore, offsets would be required through year 2049; or if the actual useful life extends beyond year 2049, through the actual useful life of the project; or until the point in time when there is no longer a net increase in operational GHG emissions according to the methodology submitted as the basis for the project's AB 900 application.”***

The following language will be incorporated into the permit as a condition of approval.

The City's commitment to obtain GHG offsets for net additional greenhouse gases resulting from construction and operation of the Project will be included as permit conditions requiring the following:

1. No later than six (6) months after the issuance of a Temporary Certificate of Occupancy for the Project, the City shall provide to the California Air Resources Board (ARB), a calculation of the net additional emissions resulting from construction of the Project (the "Construction Emissions"), calculated using the same methodology used in the City's AB 900 application (the "Agreed Methodology"). The City shall enter into one or more contracts to purchase voluntary carbon credits from a qualified greenhouse gas emissions broker in an amount sufficient to offset the Construction Emissions. The City shall provide courtesy copies of any such contracts to ARB promptly following the execution of such contracts.
2. No later than six (6) months after Project Stabilization (the date following Project completion when ninety percent (90%) of the available booking dates for the Stadium are secured), the City shall submit to ARB a projection of net additional emissions resulting from operation of the Project, based on data accumulated to that date and reasonable projections of operational emissions for the useful life of the Project (currently estimated to be 30 years), to be calculated in accordance with the Agreed Methodology (the "Net Operational Emissions"). The City shall enter into one or more contracts to purchase voluntary carbon credits from a qualified greenhouse gas emissions broker in an amount sufficient to offset the Net Operational Emissions, on a net present value basis in light of the fact that the City is proposing to acquire such credits in advance of any creation of the emissions subject to the offset. The City shall provide courtesy copies of any such contracts to ARB promptly following the execution of such contracts.
3. If the Project is forecasted to reach no net emissions over the baseline established in the AB900 application during its useful life, then purchase of the carbon credits for the Net Operational Emissions will satisfy this condition. If not, then no later than six (6) months after the end of the Project's useful life, the City will provide ARB with a report including an estimate of the remaining actual life of the Project, a description of any proposed rehabilitation including additional measures to reduce emissions, a calculation of the net additional emissions resulting from continued operation of the Project to the end of its actual life taking into account measures intended to reduce emissions, and a proposed purchase of additional carbon credits or other mitigation to fulfill this condition.
4. These commitments will be referenced as enforceable conditions of the Conditional Use Permit and the Site Development Permit for the Project, and the City, by approving and issuing the permits, will agree to comply with these conditions.



**4) Copies of GHG Offset Contracts: Please clarify the underlined portion of the following statement: “Copies of the contract(s) shall be provided in the AB 900 application to ARB and the Governor’s office to verify that construction and lifetime operational emissions have been offset.” This seems impossible because contracts have not yet been procured. Please clarify, or indicate whether this part of the statement was made in error. ARB staff concurs with the remainder of the statement, and would still like to receive courtesy copies of the GHG offset contracts once those contracts have been executed.**

Yes, we made a typographical error with that statement. Based on discussions with ARB regarding the application and methodology, the application only contains a commitment to purchase those credits. The actual contract to purchase GHG offsets will occur as stated in the response to question 3, above. Copies of the contract will be provided to ARB at the time of purchase.

**5) Please confirm that projected area-source emissions from the new stadium during 2031-2035 should be 0.14 MTCO2e/year. We detect a possible excel formula series fill error that has a very nominal effect on the total GHG emissions results in those years.**

The comment is correct. The formula increased area source emissions from 0.14 MT CO2e per year in 2030 to 5.14 MT CO2e per year in 2035. Area-source emissions do not increase and are assumed to be constant for all operational years. The spreadsheet has been corrected, and the total annual emissions have been updated 6,534 MT CO2e to 26,529 MT CO2e in 2035.

Should you have further questions or concerns, please do not hesitate to contact me.

Sincerely,



Kris Shackelford, PE  
Senior Civil Engineer

Electronic cc: Mike Hansen, Director of Land Use and Environmental Policy, Mayor’s Office  
Tom Tomlinson, Acting Director, Planning Department  
Kerry Santoro, Deputy Director, Development Services Department  
Martha Blake, Senior Planner, Development Services Department  
James Nagelvoort, Director, Public Works Department  
Carrie Gleeson, Deputy City Attorney, City Attorney’s Office  
Terry Robert, California Air Resources Board  
Nicholas Rabinowitsh, California Air Resources Board  
Nicole Dolney, California Air Resources Board  
Jonathan Taylor, California Air Resources Board  
Scott Morgan, Governor’s Office of Planning and Research  
Ray Hrenko, AECOM  
Jeff Rice, AECOM