



**NOTICE AND CALL OF SPECIAL MEETING
OF THE ENGINEERING & OPERATIONS
BOARD OF DIRECTORS'
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
February 16, 2016
8:30 AM
Approximate Meeting Time: 2 Hours**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Engineering & Operations Board of Directors' of the Moulton Niguel Water District ("MNWD") has been called by the Chairman of the Board of Directors' to be held on February 16, 2016, at 8:30 AM, at MNWD's Administrative Offices located at the address above. The following business will be transacted and is the Agenda for this Special Meeting:

AGENDA

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE JANUARY 18, 2016 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING
3. PUBLIC COMMENTS
Persons wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time. (As required by law, public comments during a Special Meeting may address only specific items listed on the agenda, no other matters.)

PRESENTATION ITEMS

4. Condition Assessment of the Central Intertie Pipeline
5. Baker Water Treatment Plant Project Update

DISCUSSION ITEMS/ACTION ITEMS

6. Recycled Water System Extension Labor Compliance Program

INFORMATION ITEMS

7. Private Development Status
8. Agora Concept Water Supply Assessment
9. Plant 3A Creek Mitigation Plan

10. Quarterly Capital Improvement Program Report
11. Quarterly Communications License Program Report

ADJOURNMENT

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than twenty-four (24) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at www.mnwd.com.

The foregoing Notice was personally delivered, faxed, mailed or e-mailed to each member of the MNWD Board of Directors at least twenty-four (24) hours prior to the scheduled time of the Special Meeting so noticed above; and posted twenty-four (24) hours prior to the time of the Special Meeting at the usual agenda posting location of MNWD (bulletin board outside main office entrance).



DRAFT
MINUTES OF THE REGULAR MEETING OF THE
ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT

January 18, 2016

A Regular Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 8:30 AM on January 18, 2016. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 8:42 a.m.)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Gina Hillary	Director of Human Resources
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Trevor Agrelius	MNWD
Drew Atwater	MNWD
Johnathan Cruz	MNWD
Todd Dmytryshyn	MNWD
Megan Geer	MNWD
Ronin Goodall	MNWD
Tracy Ingebrigtsen	MNWD
Steve Merk	MNWD
Mark Mountford	MNWD
Todd Novacek	MNWD

#2.

Eva Plajzer	MNWD
Megan Schneider	MNWD
Adrian Tasso	MNWD
Rod Woods	MNWD
Andrew Zelinko	MNWD

1. CALL MEETING TO ORDER

The meeting was called to order by Scott Colton at 8:30 a.m.

2. APPROVE THE MINUTES OF THE DECEMBER 14, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY DUANE CAVE, MINUTES OF THE DECEMBER 14, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE, VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.

3. PUBLIC COMMENTS

None.

PRESENTATION ITEMS

4. Advanced Metering Infrastructure Update

Joone Lopez gave a brief introduction to the topic. Marc Serna presented the Advanced Metering Infrastructure presentation. Discussion ensued regarding the topic.

Brian Probolsky arrived at 8:42 a.m.

DISCUSSION ITEMS

6. Personnel & Salary Policy Revisions and MOU Side Letters

This item was taken next on the agenda. Joone Lopez and Gina Hillary gave an introduction and background on the item. Discussion ensued regarding the Personnel & Salary Policy Revisions and MOU Side Letters.

INFORMATION ITEMS

9. Operations Center Consolidation Update

This item was taken after item #6 on the agenda. Matt Collings provided an update on the Operations Center Consolidation Improvement Project. The District is currently working on the Environmental Analysis of the proposed Operation Center project. Monthly meetings with the HOAs surrounding the project site will continue this month.

DISCUSSION ITEMS CONTINUED

5. Crown Valley Parkway Line Break

Joone Lopez introduced the topic. Steve Merk and Todd Novacek presented the Crown Valley Parkway line break repair work.

Brian Probolsky left at 9:32 a.m.

INFORMATION ITEMS CONTINUED

7. On-Call Emergency Construction Services

Marc Serna and Eva Plajzer gave background information about the on-call emergency construction services agreement.

8. Private Development Update

This item will be discussed at the Finance & Information Technology Board meeting.

10. Quarterly Construction Progress Report

Steve Merk and Rod Woods answered questions regarding the quarterly construction progress report.

11. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

None.

12. Late Items (Appropriate Findings to be Made)

Staff has none.

CLOSED SESSION

13. CONFERENCE INVOLVING A JOINT POWERS AGENCY: SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA)

Pursuant to Government Code Sections 54956.96 and 54956.8

#2.

Discussion will concern: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: AWMA Bridge is located at the intersection of AWMA Road and Alicia Parkway at the entrance to the County's Woods Canyon/Aliso Canyon Wilderness Parks

Agency negotiators: Betty Burnett, SOCWA General Manager; Jim Burror, SOCWA Director of Operations

Negotiating party: County of Orange/Stacy Blackwood

Under negotiation: Price and terms of payment

Name of local agency representative on SOCWA Joint Powers Agency Board: Director Larry Lizotte

The Board went into closed session at 10:17 a.m. to discuss the following matter. It was noted that Director Probolsky had left the meeting prior to this closed session and has also recused himself from going into closed session on this subject matter in prior meetings. The Board exited closed session at 10:35 a.m. Scott Colton noted that there was no reportable action.

ADJOURNMENT

The meeting was adjourned at 10:37 a.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** February 16, 2016

FROM: Marc Serna, Director of Engineering and Operations
Rod Woods, Principal Engineer

SUBJECT: Recycled Water System Extension Labor Compliance Program

DIVISION: District-wide

SUMMARY:

Issue: The Board of Directors approved the Construction Contract Award in November 2015. The Proposition 84 grant agreement requires a Department of Industrial Relations-certified Labor Compliance Program to be enforced during construction.

Recommendation: It is recommended that the Board of Directors approve the resolution entitled, "To Establish a Labor Compliance Program".

Fiscal Impact: Project No. 2014.011 is budgeted in Fund 6, Water Efficiency with a current project budget of \$3,080,000. In addition, a grant in the amount of \$500,000 was obtained from the California Department of Water Resources, Proposition 84. Costs expended to date for this project are approximately \$110,000 for design and environmental services.

BACKGROUND:

The South Orange County Watershed Management Area submitted a joint 2014 Integrated Regional Water Management Drought Grant Proposal to the California Department of Water Resources, Division of Integrated Regional Water Management Financial Assistance Branch for Proposition 84 funding. The Grant Proposal addresses drought impacts on the region by implementing recycled water system expansion projects in Moulton Niguel Water District (District), Santa Margarita Water District, and South Coast Water District service areas. The grant and implementation agreements were executed in May 2015 and June 2015, respectively. The District's portion of the grant is \$500,000 for the Recycled Water System Extension Project (Project).

#6.

Recycled Water System Extension Labor Compliance Program

February 16, 2016

Page 2 of 2

The District's Project will provide up to 102 acre-feet per year of recycled water in lieu of potable water to 12 recycled water services in the Laguna Audubon HOA and 20 other recycled water services at various locations in the Cities of Aliso Viejo, Laguna Hills, and Laguna Niguel. In addition to these 32 recycled water services, the Project will also install about 7,500 feet of 8-inch, 6-inch, and 4-inch diameter recycled water pipelines within the Cities of Aliso Viejo, Laguna Hills, and Laguna Niguel. On November 16, 2015, the Board of Directors awarded the construction services contract to Ferreira Construction Company, Inc for construction of the Project.

DISCUSSION:

One requirement of the Proposition 84 grant agreement is that the District enforce a Department of Industrial Relations (DIR) certified Labor Compliance Program (LCP) during construction. A LCP is a comprehensive document that contains labor compliance standards required by state laws, regulations, and directives as well as District policies and contract provisions as related to contractors' payment of applicable general prevailing rates and applicable procedures. The LCP sets forth provisions for the active enforcement and monitoring of the contractors' payment of prevailing wage rates, as established by the DIR. The LCP will require applicable contractors and subcontractors to submit copies of certified payroll records demonstrating their compliance with payment of prevailing wage rates. It will also require periodic onsite interviews with the contractors' employees to confirm proper payment of wages. The LCP will only be applicable to projects funded by Proposition 84.

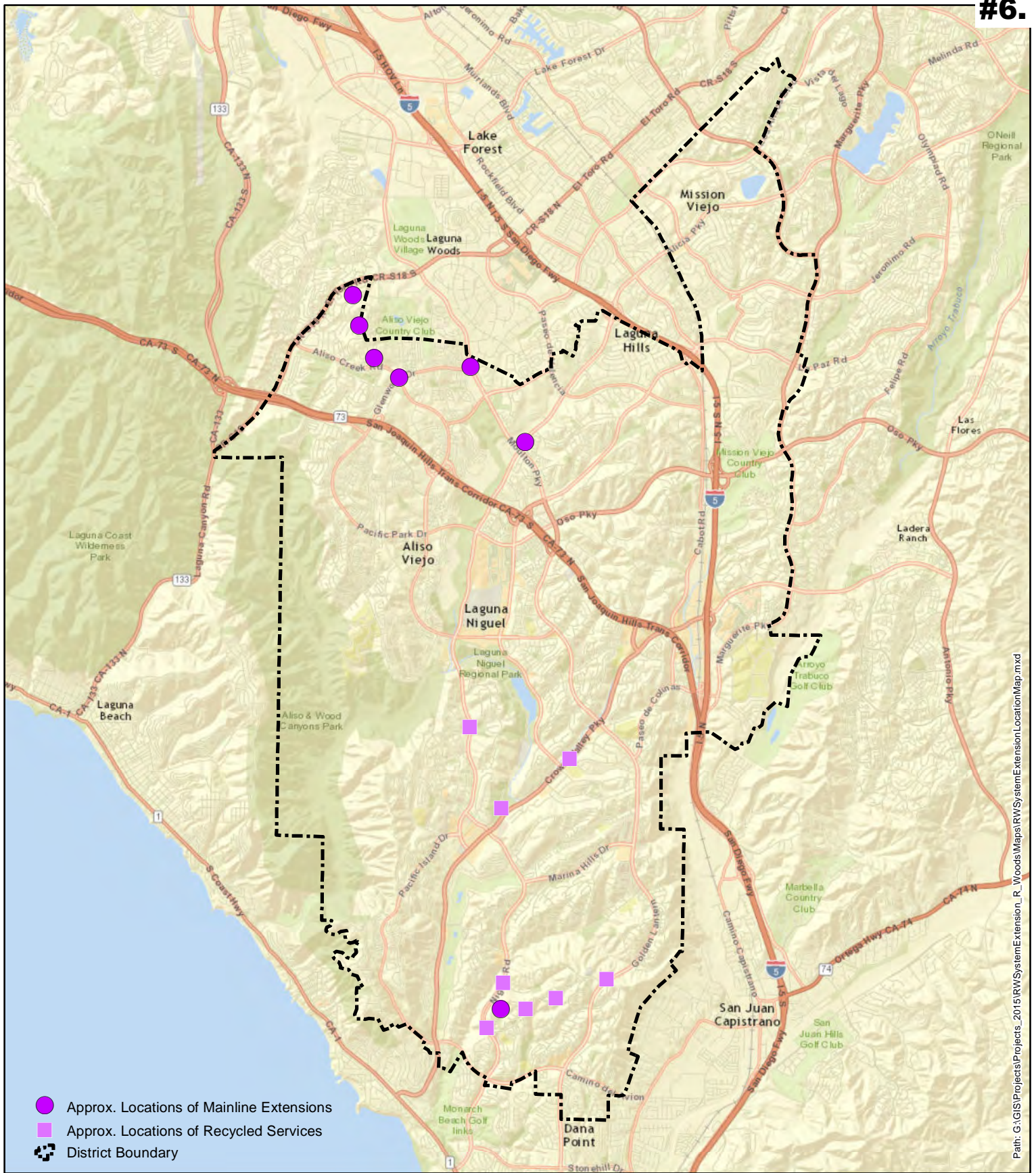
District retained Labor Compliance Providers, Inc. (Consultant) to assist in the preparation, approval by DIR, and enforcement of the LCP. Consequently, staff, together with District's legal counsel and Consultant, developed a LCP. A resolution by the Board of Directors approving a LCP is necessary for DIR to approve the LCP. Once the Board of Directors approves the LCP, the Consultant will concurrently submit the LCP to DIR for approval and implement it in the field. The Consultant has a 100% success rate obtaining approval from DIR and does not foresee significant changes.

Attachment:

Exhibit A – Location Map

Exhibit B – Resolution to Establish a Labor Compliance Program

Exhibit C – Draft Labor Compliance Program



- Approx. Locations of Mainline Extensions
- Approx. Locations of Recycled Services
- District Boundary

Path: G:\GIS\Projects\Projects_2015\RWSystemExtension_R_Woods\Maps\RWSystemExtension\LocationMap.mxd



Scale = 1:84,700

**Exhibit A - Location Map
Recycled Water System Extension Project
2014.011**

RESOLUTION NO. 16-____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
TO ESTABLISH A LABOR COMPLIANCE PROGRAM**

WHEREAS, the South Orange County Watershed Management Area submitted a joint 2014 Integrated Regional Water Management Drought Grant Proposal to the California Department of Water Resources, Division of Integrated Regional Water Management Financial Assistance Branch for Proposition 84 funding;

WHEREAS, the Grant Proposal addresses drought impacts on the region through implementing recycled water system expansion projects by the Moulton Niguel Water District, Santa Margarita Water District, and South Coast Water District;

WHEREAS, the Moulton Niguel Water District (“District”) has proposed a project (“Project”) that will provide up to 102 acre-feet per year of recycled water in lieu of potable water to 12 recycled services in the Laguna Audubon HOA and 20 other recycled services at various locations in the Cities of Aliso Viejo, Laguna Hills, and Laguna Niguel with associated 7,500 feet of pipelines;

WHEREAS, the District received a \$500,000 grant for the Recycled Water Extension Project No. 2014001 (“Project”);

WHEREAS, on November 16, 2015, The Board of Directors of the District awarded a construction contract for the Project to Ferreira Construction Co. Inc.;

WHEREAS, Public Resources Code 75075 requires an awarding body that awards any contract for a public works project financed in any part from funds made available pursuant to Proposition 84 to adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to that public works project;

WHEREAS, the District seeks to establish a Department of Industrial Relations-approved in-house Labor Compliance Program approved by the Department of Industrial Relations;

WHEREAS, the District may utilize the services of a labor compliance program consulting firm to execute the services of the District’s labor compliance program should it be approved by the Department of Industrial Relations.

NOW, THEREFORE, the Board of Directors of the Moulton Niguel Water District does hereby **RESOLVE, DETERMINE AND ORDER** as follows:

#6.

Section 1. Board of Directors of the Moulton Niguel Water District hereby establishes a **Labor Compliance Program** geared to monitor and enforce contractors' compliance with California labor and apprenticeship laws for its public works construction projects financed in any part by Proposition 84.

ADOPTED, SIGNED and APPROVED this 18th day of February, 2016.

MOULTON NIGUEL WATER DISTRICT

President/Vice President
MOULTON NIGUEL WATER DISTRICT and the
Board of Directors thereof

Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT and the
Board of Directors thereof

**MOULTON NIGUEL WATER DISTRICT
Orange County, California**

DRAFT

LABOR COMPLIANCE PROGRAM

January 2016

This LCP is only applicable to public works projects awarded by the District using funds derived from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (“Prop 84”).

Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
SECTION I PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS.....	2
A. Types of Contracts to Which Prevailing Wage Requirements Apply	2
B. Applicable Dates for Enforcement of the LCP	2
SECTION II COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS.....	2
SECTION III PRE-CONSTRUCTION CONFERENCE	3
SECTION IV REVIEW OF CERTIFIED PAYROLL RECORDS.....	4
A. Certified Payroll Records Required	4
B. Apprentices	7
C. Audit of Certified Payroll Records	8
SECTION V REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER	8
A. Failure to Comply with Prevailing Wage Rate Requirements.....	8
B. Falsification of Payroll Records, Misclassification of Work and/or Failure to Accurately Report Hours of Work.....	8
C. Failure to Submit Certified Payroll Records.....	8
D. Failure to Pay Fringe Benefits	9
E. Failure to Pay Correct Apprenticeship Rates and/or Misclassification of Workers as Apprentices	9
F. Taking of Kickbacks.....	9
SECTION VI ENFORCEMENT ACTION.....	9
A. Duty of the Awarding Body.....	9
B. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate	9
C. Withholding Contract Payments When Underpayment Has Occurred.....	10
D. Forfeitures Requiring Approval by the Labor Commissioner	11
E. Determination of Amount of Forfeiture by the Labor Commissioner	12
F. Liquidated Damages	14
G. Request for Review	14
H. Deposits of Penalties and Forfeitures Withheld.....	15
I. Debarment Policy.....	16

TABLE OF CONTENTS
(continued)

	Page
SECTION VII NOTICE OF WITHHOLDING AND REVIEW THEREOF	16
A. Notice of Withholding of Contract Payments (NWCP)	16
B. Review of NWCP	16
SECTION VIII DISTRIBUTION OF FORFEITED SUMS	18
SECTION IX OUTREACH ACTIVITIES	19
A. Providing Information to the Public	19
B. In-service Management Training on the LCP	19
SECTION X ANNUAL REPORTS	19
A. Annual Reports on Prevailing Wage Monitoring	19
B. Annual Report on the LCP to the Director of the Department of Industrial Relations	20
ATTACHMENT A.....	21
ATTACHMENT B.....	24
ATTACHMENT C.....	26
ATTACHMENT D.....	27
ATTACHMENT E.....	30
ATTACHMENT F	31
IMPLEMENTATION PLAN	34
OPERATIONAL MANUAL.....	36
PROCEDURES	40

INTRODUCTION

The Moulton Niguel Water District (“District”) institutes this Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to the labor compliance provisions of applicable State and Federally-funded public works contracts. This program is provided as part of the District’s continuing commitment to the requirements of LCP laws and regulations.

This LCP is applicable to all public works projects awarded by the District using funds derived from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (“Prop 84”). On applicable projects, the District intends to actively enforce this LCP by monitoring the applicable construction sites for payment of prevailing wage rates and to require contractors and subcontractors with workers on applicable projects to submit copies of certified payroll records demonstrating their compliance with payment of prevailing wage rates.

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

California Labor Code section 1776 requires contractors to keep accurate payroll records 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 LCP contains the labor compliance standards required by state laws, regulations, and directives, as well as District policies and contract provisions, which include, but are not limited, the following:

1. Contractors’ payment of applicable general prevailing wage rates.
2. Contractors’ employment of properly registered apprentices.
3. Contractors’ provision of certified payroll records upon request but not less than weekly.
4. Monitoring applicable construction sites for the verification of proper payments of prevailing wages rates and work classification.
5. Conducting pre-construction conferences with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Preparation and submittal of annual reports.

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 the appropriate prevailing wage rates for particular construction trades and crafts by county.

A. Types of Contracts to Which Prevailing Wage Requirements Apply

The District institutes this LCP pursuant to Labor Code Section 1771.5. As provided in Public Resources Code section 75075, an awarding body for any public works contract financed in any part from funds made available pursuant to Proposition 84, Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (“Prop 84”) shall adopt and enforce a labor compliance program pursuant to Labor Code section 1771.5(b) with respect to that public works project. Accordingly, upon approval by the Director of the Department of Industrial Relations, the District’s LCP shall apply to public works contracts using funds derived from Prop 84.

B. Applicable Dates for Enforcement of the LCP

The applicable dates for enforcement of awarding body Labor Compliance Programs are established by section 16422 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the District’s LCP until after the program has received initial or final approval.

SECTION II

COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

The District shall solicit all upcoming applicable public works projects funded in whole or in part by bonds issued by the State of California and requiring LCP compliance to be awarded according to a competitive bidding process as defined by the District’s Purchasing Policy. All bid advertisements (or bid invitations) and public works contracts shall contain appropriate language concerning the requirements of the Labor Code. Pursuant to Labor Code 1725.5 (SB-854) all contractors and subcontractors who bid or work on a public works project must register and pay an annual fee to California Department of Industrial Relations (DIR) for the Contractor Registration. Contractors shall register with the DIR via its online portal: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>. Although there are exceptions to the registration requirement for bidders in circumstances where a CSLB license would not be required at the time of bidding, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR.

SECTION III

PRE-CONSTRUCTION CONFERENCE

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

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

The LCO will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements (attached hereto as **Attachment A**) and will discuss in detail the following checklist items:

1. The contractor’s duty to pay prevailing wages [Labor Code section 1770 et seq.];
2. The contractor’s duty to employ registered apprentices on public works projects [Labor Code section 1777.5];
3. The penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment [Labor Code sections 1775, 1777.7, and 1813];
4. The requirement to maintain and submit copies of certified payroll records to the District 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 projects even if their portion of the work is less than one half of one percent of the total amount of the contract.
5. The prohibition against employment discrimination [Labor Code sections 1725 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended];
6. The prohibition against accepting or extracting kickback from employee wages [Labor Code section 1778];
7. The prohibition against accepting fees for registering any person for public work [Labor

Code section 1779] or for filing work orders on public works [Labor Code section 1780];

8. The requirement to list all subcontractors that are performing at least one half of one percent of the total amount of the contract [Public Contract Code section 4100 et seq.];
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed [Labor Code section 1021; Business and Professions Code section 7000 et seq.];
10. The prohibition against unfair competition [Business and Professions Code sections 17200-17208];
11. The requirement that the contractor and subcontractor be properly insured for Workers' Compensation [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 public works project;
13. The federal prohibition against hiring undocumented workers and the requirement to secure proof of eligibility/citizenship from all workers.
14. The requirement to provide itemized wage statements to employees under Labor Code section 226.

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

At the Pre-Construction Conference, the LCO will provide the contractor with a copy of the District'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, and State apprenticeship requirements. A copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861) and Prevailing Wage Rate Determinations may be obtained at the Department of Industrial Relations website (http://www.dir.ca.gov/DLSR/statistics_research.html).

It will be the contractor's responsibility to provide copies of the LCP package to all 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 District projects subject to the LCP *in accordance with Labor Code §1776*. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the District 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 that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed. The passage of SB-854 requires all public works contractors and subcontractors to furnish electronic certified payroll records directly to the Labor Commissioner/DLSE. For all new projects awarded on or after April 1, 2015, the contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner using the DLSE's online portal: <https://apps.dir.ca.gov/ecpr/DAS/AltLogin>

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 District at any time and shall be provided within ten (10) days following receipt of the request.

2. Use of Electronic Reporting Forms.

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

- a. The reports must contain all of the information required by Labor Code section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of

Industrial Relations’ suggested “Public Works Payroll Reporting Form” (Form A-1-131);

- 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 a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature; and
- 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.

3. **Full Accountability**

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

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

The contractor shall provide records required under this section to the District within five (5) days of each payday, and shall make these records available for inspection by the Department of Industrial Relations, and shall permit such representatives of each to interview trades workers during working hours on the project site.

4. **Responsibility for Subcontractors**

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

- a. The contractor shall monitor the payment of the specified general prevailing

#6.

per diem wages by each subcontractor to its employees by weekly review of the subcontractor's certified payroll records.

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

5. **Payment to Employees**

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (e.g., Sunday through Saturday) and an established payday (e.g., every Friday). On each and every payday, each worker must be paid all sums due 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 contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of prevailing wage requirements, certified payroll reporting, and workers' compensation laws.

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

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered 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 wages 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 of 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.

C. If the contractor is registered to train apprentices, the contractor shall furnish written evidence of the registration (i.e., the 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 other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status. **Audit of Certified Payroll Records**

Audits shall be conducted by the LCO 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.

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 LCO 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 contracts. 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 District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated.
- 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. Failure to provide certified payroll records as prescribed, will result in the withholding of contract payments pursuant to labor code §1771.5 (b)(5) and §16435 (d) of Title 8 of the California Code of Regulations and as further described in Section 6 (B) of this manual.
- 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 Apprenticeship 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 District, as the awarding body having an approved LCP, has a duty to the Director of the Department of Industrial Relations to enforce the prevailing wage requirements found in Labor Code section 1720 et seq. and the prevailing wage procedural regulations of the Department of Industrial Relations in a manner consistent with the practice of DLSE and regulations found at section 16000 et. seq. of Title 8 of the California Code of Regulations.

Pursuant to California Code of Regulations §16434, Duties of Labor Compliance Program:

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

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

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

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

#6.

- (3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
 - (4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
 - (5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.
- (c) The duties of a Labor Compliance Program with respect to apprenticeship standards are as follows:
- (1) Either the Awarding Body or the Labor Compliance Program acting on its behalf shall: (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.
 - (2) The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including: (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or
- (d) For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Appendix C following this section provides a suggested format for tracking and monitoring enforcement activities. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this section, a written

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

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

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

- 1. “Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729. A release bond under Civil Code section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law;
- 2. “Contracts,” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
- 3. “Delinquent payroll records” means those not submitted on the basis set forth in the District contract and the Labor Compliance Program;
- 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 ten (10) days after the awarding body has given the contractor notice of inaccuracies/omissions detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies/omissions do not amount to 1 percent

#6.

of the entire certified weekly payroll in dollar value and do not affect more than half of 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.

Pursuant to Labor Code section 1776, the contractor shall, as a penalty to the District, forfeit twenty-five dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

C. Withholding Contract Payments When Underpayment Has Occurred

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 section 16000 et. seq. of Title 8 of the California Code of Regulations;
 - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in section 16000 et seq. of Title 8 of the California Code of Regulations and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification, or trade in which they were employed and the amounts paid;
 - c. Estimated amounts of “illegal taking of wages”; and
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.
 - 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.
 - f. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
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 District, forfeit not more than two hundred dollars (\$200) 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 District on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 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 District for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both.
- 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 LCP, and which are appealable by the contractor before the Director of the Department of Industrial Relations under Labor Code sections 1742 and 1742.1 and pursuant to sections 17201 through 17270 of Title 8 of the California Code of Regulations.
- 3. If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1,000.00, the forfeiture 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 §1771.6(a); (2) an audit as defined in §16432(e) of the California Code of Regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code §1775.
- 4. For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with §16437 of the California Code of Regulations.

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

- a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in section 16000 of Title 8 of the California Code of Regulations and Labor Code section 1771;

#6.

- 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; and
- 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, section 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

E. Determination of Amount of Forfeiture by the Labor Commissioner

- 1. Where the LCO requests a determination of the amount of forfeiture, the request shall include a file or report along with a Notice of Deadline for Forfeitures 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(s) in narrative form;
 - d. Evidence that an “audit” or “investigation” occurred in compliance with section 16432 of Title 8 of the California Code of Regulations;
 - e. Evidence that the contractor was given the opportunity to explain why it believes there was no violation(s); or that any violation(s) 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 District 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(s) 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 District 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 LCO or designee's communication to the contractor of the obligation in the bid invitations, at 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; and

- h. The previous record of the contractor meeting prevailing wage obligations.
 - i. Whether the Labor Compliance Program has been granted approval on only an interim or temporary basis under §16425 or 16426 of the California Code of Regulations or whether it has been granted extended approval under §16427 of the California Code of Regulations.
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 thirty (30) days before the final payment or, if that deadline has passed, no less than one hundred eighty (180) days following the filing of the notice of completion as long as funds remain in the contract.
 3. A copy of the file or report shall be served on the contractor at the same time as it is sent to the Labor Commissioner.

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

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 LCPs having initial approval pursuant to section 16426 of Title 8 of the California Code of Regulations: on the date the Labor Commissioner serves by first class mail on the District 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.

F. Liquidated Damages

1. In accordance with Labor Code section 1742.1(a), after sixty (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 issued 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. If within sixty (60) days following service of the assessment or notice, the full amount including penalties has been deposited with the Department of Industrial Relations 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 Department of Industrial Relations 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 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 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 LCP enforcement action, the Labor Commissioner may intervene to represent the District 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 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 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 District 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 District 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 District are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State of California and the District, as the court may decide.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the District is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code section 96.7.

I. Debarment Policy.

It is the policy of the District that the public works prevailing wage requirements set forth in the Labor Code sections 1720-1861, be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the 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 a 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 (NWCP)

After determination of the amount of forfeiture by the Labor Commissioner, the District 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 Civil Procedure Code section 1013 by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The 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 District is attached hereto as Attachment D.

B. Review of NWCP

1. An affected contractor or subcontractor may obtain a 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 NWCP, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. A copy of

the required Notice of Transmittal to be utilized by the District 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 Government Code section 11502(b). 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 twenty (20) day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence pursuant to Labor Code section 1742(b) form attached hereto as Attachment F.

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, findings, and an order. This decision shall be served on all parties pursuant to Code of Civil Procedure section 1013 by first-class mail at the last known address of the party on file with the 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 (California Code of Regulations, Title 8, Chapter 8, Subchapter 6 sections 17201-17270) may be found at www.dir.ca.gov and are available for review at the District's Administration Office located at 27500 La Paz Road, Laguna Niguel, California 92677.

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 Code of Civil Procedure section 1094.5 within forty five (45) days after service of the decision. If no petition for writ of mandate is filed within forty five (45) days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

#6.

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 District to withhold contract payments pursuant to Labor Code section 1771.8.

SECTION VIII

DISTRIBUTION OF FORFEITED SUMS

Before making payments to the contractor of money due under a contract for public work, the District 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 District 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 District 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 Labor Code section 96.7. Penalties shall be paid into the General Fund of the District that has enforced this chapter pursuant to Labor Code section 1771.8.

SECTION IX

OUTREACH ACTIVITIES

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

A. Providing Information to the Public

The LCO or designee shall be responsible for communication and outreach activities relative to public information on the District’s LCP:

1. Regular presentations to contractors at all Pre-Construction Conferences.
2. Ongoing communication via correspondence and with workers at District 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.

B. In-service Management Training on the LCP

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

SECTION X

ANNUAL REPORTS

A. Annual Reports on Prevailing Wage Monitoring

The District’s LCP will submit to the General Manager with copies to the Board of Directors 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 District public works projects;

#6.

- e. Summary of outreach activities;
- f. Certification of compliance with conflict of interest disclosure requirements as defined by Title 2, California 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 District's LCP will submit to the Director of the DIR an annual report on the operation of the 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, at 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 the 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.

ATTACHMENT A

1 OF 3

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

(In accordance with Section 16430 of Title 8 of the California Code of Regulations)

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

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

The contractor is responsible for obtaining and complying 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 public works projects pursuant to Labor Code section 1777.5.

3. Penalties

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

4. Certified Payroll Records

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

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

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

5. Nondiscrimination in Employment

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

6. Kickback Prohibited

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

7. Acceptance of Fees Prohibited

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

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (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 sections 3700 and 1861.

12. OSHA

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

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

For the Contractor

For the Moulton Niguel Water District:

Signature Date

Signature Date

ATTACHMENT B**1 OF 2****AUDIT RECORD FORM**
(For use with Section 16432 of Title 8 of the
California Code of Regulations)

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

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

2 OF 2

hours/week (8 CCR section 16200(a)(3)(F)), means review and audit of weekly certified payroll records;

6. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:
 - a. All elements defined as the General Prevailing Rate of Per Diem Wages in Section 16000 et seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site;
 - b. All elements defined as Employer Payments to Workers set forth in Section 16000 et. seq. of Title 8 of the California Code of Regulations, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the LCO's office and posted at the public works job site.

ATTACHMENT C

NOTICE OF DEADLINES FOR FORFEITURES
(8 CCR §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 District's 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 the District'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 District'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 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 District's 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 D

Labor Compliance Program Moulton Niguel Water District 27500 La Paz Road Laguna Niguel, CA 92677 Phone: (949) 831-2500	
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 _____ (Labor Compliance Program) 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 that the total amount of wages due is: \$ _____.

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$ _____.

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$ _____.

LABOR COMPLIANCE PROGRAM

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:**

Labor Compliance Program
[Insert District Name]
Review Office-Notice of Withholding of Contract Payments
[Insert District Address]

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 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(b), 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 sixty (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 sixty (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 **[Insert Name of District's Labor Compliance Officer]** at the following address:

[Insert District's Address]

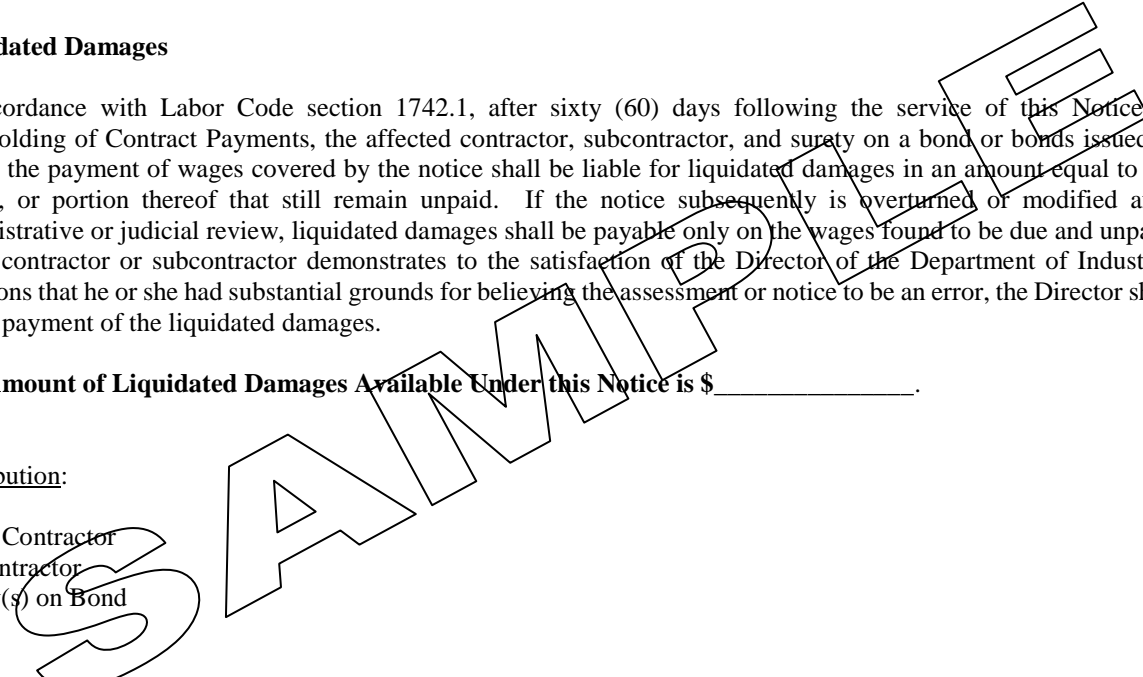
Liquidated Damages

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

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

Distribution:

Prime Contractor
Subcontractor
Surety(s) on Bond



ATTACHMENT E

LABOR COMPLIANCE PROGRAM [Insert District's Name] Review Office - Notice of Withholding of Contract Payments [Insert District's Address] _____ _____ Phone: Fax:	
Date:	In Reply Refer to Case No.:

Notice of Transmittal

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

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

Also enclosed please find the following:

- ___ Copy of Notice of Withholding of Contract Payments
- ___ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

By: _____

cc: Prime Contractor
Subcontractor
Bonding Company

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

ATTACHMENT F

1 OF 3

<p>LABOR COMPLIANCE PROGRAM [Insert District's Name] Review Office - Notice of Withholding of Contract Payments [Insert District's Address] _____ _____ Phone: Fax:</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
[Insert Name]
[Insert Address]

Subcontractor

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

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

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

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

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

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

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

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

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

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

[Insert District's Name]
[Insert Address]

Attention: [Insert Labor Compliance Officer's Name]

Request to Review Evidence

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

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

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.: _____

#6.

**MOULTON NIGUEL WATER DISTRICT
LABOR COMPLIANCE PROGRAM**

IMPLEMENTATION PLAN

IMPLEMENTATION PLAN

1. LCO or designee shall receive all construction contract work schedules.
2. LCO or designee shall participate in Pre-Construction Conference.
3. LCO or designee shall provide site monitors with work schedules.
4. Site monitors, both District employees and others, shall conduct site interviews and return interview sheets to LCO or designee.
5. LCO or designee shall enter information from interviews into database.
6. LCO or designee shall request certified payroll records from contractor and verify information from certified payroll records.
7. LCO or designee shall notify contractor in writing of any discrepancies with certified payroll records.
8. If clarification/correction is not received from the contractor within two weeks, LCO or designee shall commence an investigation.
9. Upon completion of the investigation, a report shall be sent to the Department of Industrial Relations with recommendations for penalties to be applied to the contractor.
10. LCO or designee shall prepare and submit public works violation reports to Labor Commissioner as required.
11. LCO or designee shall periodically communicate with contractors, workers, building and trade organizations, and other community entities and provide in-service management to District personnel.
12. LCO or designee shall retain prevailing wage records in order to prepare and submit an annual program report to the District's Governing Board, and the Director of the Department of Industrial Relations.
13. LCO or designee shall manage all facets and is the primary contact for the District's LCP.
14. LCO or designee shall provide site monitors with site visitation training and assign projects when applicable.

#6.

**MOULTON NIGUEL WATER DISTRICT
LABOR COMPLIANCE PROGRAM**

OPERATION MANUAL

OPERATION MANUAL**A. SITE VISITATIONS**

1. Safety is the paramount factor for any site visit to any District construction projects. Do not enter any area that appears unsafe. Site monitors are expected to exercise reasonable caution at all times.
2. All authorized personnel visiting any District construction site are required to be properly identified as a District representative by wearing visible picture ID's (badge), or identifying themselves as such. Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
4. Upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer prior to any interviewing. In the event there is not a construction trailer, you will check in at the site's administrative office. Identify yourself and state the purpose of the visit. Sign in if required to do so. If the site superintendent cites some reason that denies access to the site, promptly and politely remove yourself. Make a note of this occurrence and include in your report to the LCO.
5. Check to see that the following are displayed in the contractor's trailer:
 - Prevailing wage sheets posted
 - Sign-in Log (if such log is required of contractor)
 - Listing of subcontractors on site

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

B. INTERVIEWING

1. Once you have checked in with the site superintendent and obtain access to the site, try to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. Approach the workers individually in a non-threatening, professional manner. Identify yourself, indicate that you are a District representative, and that you need only a few seconds of their time to ask some very generic questions to ensure that they are receiving the proper rate of pay

#6.

for the type of work they are doing. Again, do not endanger yours or any tradesperson's safety in conducting these interviews. Do not insist that someone on a scaffold 40 feet in the air come down for an interview. Do not ask anyone to form a line until you can get to them; allow them to continue working until you can get to them individually.

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

2. Using the Labor Compliance Site Visitation Interview form, ask each person the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview.
3. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. The District works with both open and closed shop trades.
4. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the LCO.
5. If someone refuses to disclose his social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
6. If someone does not know their rate of pay (most tradespersons don't know), ask for a guesstimate. If the response is, "whatever prevailing wage is", so indicate on the form.
7. If someone indicates that he is an apprentice, make sure that you ask him what period. These can be anywhere from 1st to 10th. If he's not sure, ask him how many years he has been apprenticed in the specific trade and/or to guesstimate and so indicate on the interview form.
8. ALWAYS thank them for their time.

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

C. REPORTING

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

#6.

**MOULTON NIGUEL WATER DISTRICT
LABOR COMPLIANCE PROGRAM**

PROCEDURES

PROCEDURES

A. CERTIFIED PAYROLL VERIFICATION PROCEDURES FOR THE DISTRICT

1. All construction work schedules shall be provided to the LCO.
2. Upon receipt of certified payroll reports from general/subcontractors once a week, compare information from the Labor Compliance Visitation Log to the contractors certified payroll and the prevailing wage schedule.
3. Compare name and social security number with trade classification listed.
4. Ensure prevailing wage listed is correct for the classification listed using the prevailing wage schedule
5. Check for employment of apprentices, correct rate of pay, and proper ratio to journey workers.
6. 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 LCO will commence an investigation.
8. 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.
9. Retain all original interview forms and annotate the database as applicable.

B. SITE MONITOR PROCEDURES

1. Receive construction site work schedule from LCO.
2. Check in with site administrative office/site superintendent.
3. Utilizing the Labor Compliance Site Visitation Interview form, conduct interviews with workers.
4. Note on your form any infractions you may observe while conducting the interview.
5. Return interview form to the LCO.
6. Report any infractions you observed to the LCO.

C. COMPLIANCE MONITORING & AUDIT RECORD WORKSHEETS

Audit Record Worksheets [8 Cal. Code Reg. §16432]

- *Public Works Investigation Worksheet*
- *Public Works Audit Worksheet*

#6.

- *Prevailing Wage Determination Summary*
- *Suggested Single Project Labor Compliance Review and Enforcement Report Form [Appendix C following 8 CCR §16434]*

WAGE DETERMINATION INFORMATION

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

PREVAILING WAGE DETERMINATION SUMMARY

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

