

DEPARTMENT OF INDUSTRIAL RELATIONS  
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August 8, 2006

Bryan Berthiaume  
Director of Operations  
Foundation for Fair Contracting  
3807 Pasadena Avenue, Suite 150  
Sacramento, CA 95821

Re: Public Works Case No. 2005-012  
Sewer and Storm Lift Station Upgrade Project  
City of Visalia/Goshen Community Services District

Dear Mr. Berthiaume:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Sewer and Storm Lift Station Upgrade Project ("Project") undertaken by the City of Visalia ("City") is a public work, and City's chartered city status does not exempt it from the requirement to pay prevailing wages.

#### Factual Summary

The City of Visalia is a chartered city. City's present Charter contains a "home rule" provision that "The City of Visalia shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs ..."

In approximately August 2003, City began planning the Project to upgrade City's lift and pump stations ("lift stations").<sup>1</sup> As designed, the Project contains two components: upgrading of the electrical control panels and implementation of a wireless control system. Although the two components of the Project were designed concurrently, City subsequently decided that the work would be performed in two phases: City wanted to delay implementation of the wireless control system component of the Project in order to allow for completion of a new Citywide wireless network, unrelated to the

<sup>1</sup>The lift and pump stations are part of City's wastewater conveyance and treatment system. The technical differences between lift stations and pump stations are irrelevant for the purposes of the coverage analysis.

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Project. Therefore, the wireless control system implementation component was bid separately.

The first component of the Project is to upgrade the electrical control panels, which are large cabinets containing instruments and electronic components necessary for the proper operation of the lift stations. The work entails the bolting of new control panels to the inside of the lift station structures. The instruments and electronic components will be wired into place within the control panels. In January 2005, City contracted with American Incorporated to perform this work. The second component of the Project is to implement a Supervisory Control and Data Acquisition ("SCADA") telemetry system. This work entails mounting telemetric stations on the lift stations to communicate data, via radio, to a central location.<sup>2</sup> All the work on the Project will take place within City's geographic limits.

In June 1995, City entered into a Wastewater Services Agreement with the Goshen<sup>3</sup> Community Services District for the collection, transmission, treatment and disposal of Goshen's wastewater. Pursuant to this Wastewater Services Agreement, Goshen constructed a single 24-inch diameter pipe to deliver its wastewater to City.<sup>4</sup> From this pipe, Goshen's wastewater passes into City through lift station "A," which is located within and owned by City and is being upgraded as part of the Project. City processes the wastewater from Goshen in City's wastewater treatment plant.<sup>5</sup>

Under the Wastewater Services Agreement, Goshen pays monthly sewer service charges to City's Wastewater Enterprise, which is a business division within City staffed by City employees. Wastewater Enterprise funds are comprised of service charges paid by City residents and service charges paid by Goshen and its residents under the Wastewater Services Agreement. City and Goshen service charges are not segregated from each other. City represents that its Wastewater Enterprise receives approximately \$12 million, of

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<sup>2</sup>This includes attaching antennas to the lift stations using mounting accessories such as clamps, brackets, adapters and related hardware so that the telemetric stations will be able to withstand high winds.

<sup>3</sup>Goshen is an unincorporated town adjacent to the City of Visalia, in the County of Tulare.

<sup>4</sup>Ownership of the pipe was later transferred to City.

<sup>5</sup>According to amendments to the Wastewater Services Agreement, the average daily discharge of wastewater from Goshen has increased over time, from 253,000 gallons in 1996 to 363,000 gallons in 2005.

which approximately \$120,000 per year is from Goshen.<sup>6</sup> This Project is being paid for with Wastewater Enterprise funds.

### Analysis

A "public work" is defined by Labor Code section 1720(a)(1)<sup>7</sup> as: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds ... ."

The Project is being performed under the January 2005 construction contract between City and American Incorporated. City is paying for the Project with public funds from its Wastewater Enterprise funds. The Wastewater Enterprise is funded by service charges paid by City residents and also from service charges paid by Goshen and its residents under the Wastewater Services Agreement.<sup>8</sup>

The work performed to upgrade the lift stations constitutes "installation" under section 1720(a)(1). Installation is the bolting, securing or mounting of fixtures to realty (i.e., to the floor, ceiling or wall.) PW 2005-041, *Pre-rinse Spray Valve Program (Phase II) California Urban Water Conservation Council* (May 11, 2006).<sup>9</sup> Here, the electronic instruments and components will be wired into the control panels, the control panels will be bolted to the inside surfaces of the lift stations and the telemetric stations will be mounted and secured to the lift stations. Thus, through this work, the control panels and the SCADA stations are made part of the realty as fixtures.

Accordingly, the Project is installation, done under contract, and paid for with public funds. Thus, this Project meets the definition of a public work within the meaning of section 1720(a)(1).

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<sup>6</sup>In addition, Goshen pays City other fees (a conveyance system charge and a treatment connection charge) under the Wastewater Services Agreement for which Goshen receives grant and loan funds from the United States Department of Agriculture - Rural Economic and Community Development Service.

<sup>7</sup>All statutory references herein are to the Labor Code, unless otherwise specified.

<sup>8</sup>As noted above in footnote 6, some of the money paid by Goshen is funded by the United States Department of Agriculture. Public funds include "state, local and/or federal monies." Cal. Code Regs., tit. 8, § 16000.

<sup>9</sup>This is consistent with Civil Code, section 660, which defines "fixture" as that which is "permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws; ... ."

City asserts that its chartered city status exempts it from the payment of prevailing wages on this Project. Under Article XI, Section V of the California Constitution, a chartered city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." Where a public works project is completely within the realm of the chartered city's "municipal affairs," then it is exempted from California's prevailing wage laws. *City of Pasadena v. Charleville* (1932) 215 Cal. 384 [disapproved on other grounds by *Purdy and Fitzpatrick v. State* (1969) 71 Cal.2d 566].

Three factors are considered in determining whether a public works project is a municipal affair of a chartered city or a matter of statewide concern: (1) the extent of extra-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose of the project. *So. Cal. Roads Co. v. McGuire* (1934) 2 Cal.2d 115. Related to the nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517) and its extra-territorial effects. *Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-774.

Regarding the first factor, City is the awarding body. It planned and executed the Project. It determined the scope of work and awarded the contract. As such, City exercises complete control. Therefore, this factor would not defeat City's chartered city exemption.

Regarding the second factor, City argues that Goshen provides only minimal funding for the Wastewater Enterprise and that such minimal funding should not affect its chartered city exemption. In making this argument, City admits that the source of the funds used to finance this Project is both City and Goshen. Under the 1995 Wastewater Services Agreement, City treats wastewater from Goshen and, in return, Goshen pays City certain fees. The revenues from Goshen go to City's Wastewater Enterprise and total approximately \$120,000 per year. This money is not segregated from City funds and, therefore, some of the funds used to finance this Project come from an extra-municipal source, including loans and grants to Goshen from the United States Department of Agriculture. Accordingly, this factor weighs against City's claim of an exemption because of its chartered city status.

Regarding the third factor, City claims that the Project is entirely within City limits and benefits City residents only. The facts do not support City's position. Although the work is occurring within City's geographic limits, the Project has extraterritorial effects that extend beyond City's boundaries to Goshen, and provide a direct benefit to Goshen residents. See, *Pacific Telephone and Telegraph Co. v. City and County of San Francisco supra*, 51 Cal. 2d at pp. 771-774 [extraterritorial effects of telephone line work performed entirely within the City of San Francisco defeats chartered city exemption]. The wastewater systems of City and Goshen are connected via a pipe that transcends the boundaries of City. The Project includes upgrades to lift station A, which is used to convey wastewater from Goshen to City's treatment plant. The upgrades to City's lift station A directly benefit Goshen by improving the conveyance of Goshen's wastewater. Further, the Project as a whole will benefit Goshen by improving the service the system provides to all of its users, both within the City's borders and outside of them. This improved service is particularly important given that Goshen's demands on the wastewater system have increased over time. Because this Project clearly has extra-territorial effects, the nature and purpose of the Project cannot be considered purely a municipal affair, and thus this factor also weighs against City's claim of a chartered city exemption.<sup>10</sup>

For the foregoing reasons, the Project is installation, performed under contract and paid for with public funds; therefore, it is a public work within the meaning of section 1720(a)(1). In addition, under the facts of this case, given that the nature and purpose of the Project are not purely a municipal affair and that the Project funding has an extra-municipal source; City's chartered city status does not exempt the Project from application of California's prevailing wage laws.

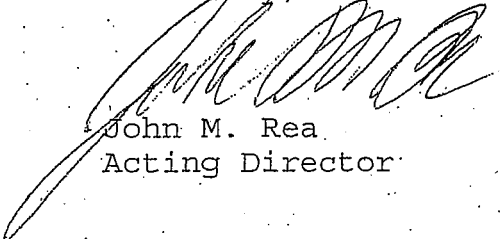
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<sup>10</sup>This conclusion is consistent with the Department's precedential decisions in PW 97-018/97-019 *Primary Plant Headworks and Cannery Segregation Project, City of Modesto* (March 17, 2000) and PW 93-029, *City of Big Bear Waterline Reconstruction Project* (October 21, 1994). The instant case may also be analogized to *City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239 [regional sewage project that transcended the boundaries of the chartered city and would benefit several neighboring municipalities, which each would pay a share of the project, was not a municipal affair] and *Gadd v. McGuire* (1924) 69 Cal.App. 347, 354 [storm sewer system that extended beyond the borders of a chartered city and was for the benefit of both city residents and those living outside of the city, lost its character as a municipal affair].

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director