

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

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DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2009-035

CONSTRUCTION OF THE HEADQUARTER FIRE STATION

ARCATA FIRE PROTECTION DISTRICT/ARCATA VOLUNTEER FIRE  
DEPARTMENT, INC.

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**I. INTRODUCTION**

On December 9, 2009, the Director of the Department of Industrial Relations (“DIR”), issued a public works coverage determination (the “Determination”) in the above-referenced matter finding that the construction of the Headquarter Fire Station (the “Project”) for use by the Arcata Fire Protection District (“District”) constitutes a public work subject to prevailing wage requirements within the meaning of Labor Code section 1720.2.<sup>1</sup>

On January 7, 2010, the Arcata Volunteer Fire Department, Inc. (“AVFD”) timely filed a notice of appeal of the Determination pursuant to section 16002.5 of title 8 of the California Code of Regulations (the “Appeal”). AVFD also requested a hearing on the appeal.<sup>2</sup>

With regard to the request for hearing, section 16002.5(b) of title 8 of the California Code of Regulations provides that the decision to hold a hearing on appeal from a determination of coverage is within the Director’s sole discretion. Here, the facts

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<sup>1</sup> All subsequent statutory references are to the Labor Code unless otherwise indicated.

<sup>2</sup> It should be noted that the notice of appeal was filed by Clare M. Gibson, Esq. of Jarvis Fay Doporto & Gibson, LLP only on behalf of AVFD.

set forth in the Determination material to the coverage question are not in dispute. Because the issues raised in the appeal are solely legal, no hearing is necessary. The request for a hearing on the appeal is denied.

The argument on appeal has been considered carefully. For the reasons set forth in the Determination, which is incorporated into this Decision, and for the additional reasons stated below, the appeal is denied and the Determination is affirmed.

## II. FACTS

The facts set forth in the Determination are incorporated herein by reference and are supplemented as follows:

### A. The Coverage Request

Minutes from the AVFD Board Meeting of July 15, 2009, indicate that the “Building Chairs will be meeting on Friday morning with the public works director.” The same minutes note: “Speaking with Dave Tramberg [sic] (District’s attorney) and Brian Gaynor about reducing the possibility of paying Prevailing wage for the new station. Prevailing wage would add approximately \$750,000 to the cost of the building ... ” Minutes from the District Board Meeting of July 21, 2009, note: “Meeting held with Dave Tranberg regarding structure of contract. His opinion at this time is that prevailing wage would be required for Sunset fire station construction. Brian Gaynor believes that is not the case. Another meeting will be scheduled to include both attorneys.”

Minutes from the AVFD Board Meeting of August 18, 2009, note: “Dave White and Chief McFarland reported that after meeting with the District’s attorney and AVFD’s attorney, it was proposed to have a law firm in the Bay Area request a ruling letter from the California Dept. of Labor concerning our scenario. The anticipated cost will be about

\$2,000 for each organization. ... Part 2 of the recommendation from the attorneys was for Vice President McFarland to step down from the AVFD Executive Staff and to be removed from the signature cards for all AVFD accounts.” Minutes from the AVFD Board Meeting of August 21, 2009, note: “President Report ... The Board approved retaining a law firm in the Bay Area (along with the Fire District) to obtain a ruling from the CA Dept. of Labor regarding prevailing wage issues during the construction of the new fire station. As part of this issue, John McFarland has stepped down from Vice President of AVFD.”

B. The Lease Agreement

On November 6, 1995, AVFD and District entered into the Agreement and Lease whereby AVFD agreed to lease to District a building it owned at 631 Ninth Street in Arcata. The term of the lease commenced July 1, 1995, and continued for ten years until July 30, 2005. Under the terms of the Agreement and Lease, District agreed to pay AVFD \$3,400 per month in rent subject to renegotiation every two years, and also agreed to pay for utilities and a janitorial service. Although the Agreement and Lease expired on July 30, 2005, District has continued to lease the property from AVFD without a written lease.

Subsequently, AVFD decided to buy a property on which to build a new fire station. Minutes from the AVFD Board Meeting of May 16, 2007, note: “The President’s next major project continues to be the lease agreement with the Fire District.” Minutes from the District Board Meeting of June 26, 2007, note:

The Volunteers are requesting that the Board commit to occupying the new building and request a yearly lump sum payment (vs. monthly payments) enabling them to invest the larger sum. Discussion – Board disagreed with lump sum payment. Board agreement to drop the word “rent” and adopt a title agreeable to both parties. Board was requested by Captain Locatelli to study the response patterns vs. location of the M

Street property. "Blanket" statement should not be made that the District will go wherever they decide to build the new station.

Acquisition of the M Street property ultimately was not pursued. An alternate property on Sunset Avenue, referred to as the "Franke" property, was chosen. Minutes from the AVFD Board Meetings of August 16, 2007, and September 20, 2007, note: "District lease agreement continues to be the next hot subject, but it's taken a backseat to the recent Franke property situation." Minutes from the District Board Meeting of March 25, 2008, note:

The Chief and the Volunteer Association have been meeting to discuss the manor [sic] in which the District is paying the Volunteers. With the move to the new station, there may need to be a new method of payment for the monthly funds paid to the Volunteers for the District's use of the fire station. Discussion continues. Chief will keep the Board informed.

Minutes from the District Board Meeting of June 17, 2008, note: "Chief McFarland reported that the **Volunteers are requesting a formal written commitment from the District that we will rent the new building.** Tim Citro requested that he and Chief McFarland draft the language together." [Emphasis supplied.] Minutes from the AVFD Board Meeting of June 18, 2008, note: "He [Tim Citro] and Chief McFarland will be meeting to discuss the lease contract for the District's utilization of the new facility. At the June 17th District Board meeting, the Board directed Chief to negotiate said contract."

Minutes from the District Board Meeting of July 15, 2008, under the heading "Letter of Commitment to Occupy New Headquarters Facility/New Contract," note: "Chief McFarland reported that he had drafted a letter stating the District would occupy the new fire station and that the pay would be similar to the amount we are currently paying. He asked that this agenda item be postponed to the August meeting at which time

he will have a copy of the letter to discuss.” Minutes from the AVFD Board Meeting of July 16, 2008, note: “He and Chief McFarland will be negotiating the upcoming lease agreement.” Minutes from the AVFD Board Meeting of August 14, 2008, note: “After the property purchase is completed, President Citro will be working with Chief McFarland to come up with a new Volunteer/District agreement.” Minutes from the District Board Meeting of August 19, 2008, note: “Chief McFarland presented the ‘letter of commitment’ to occupy the new headquarters. Approved by board.”

The letter of commitment was executed on August 19, 2008. It is addressed to AVFD President Tim Citro and is signed by John Davis, Chairman of the Board of District. The subject is described: “Occupation of Proposed New Arcata Fire HQ.” The letter of commitment states:

The Board of Directors of the Arcata Fire Protection District are in concurrence with Fire Chief McFarland that upon completion of the proposed Arcata Fire Headquarters on Sunset Avenue that the District will occupy the facility immediately upon completion. ¶ The District offices as well as the fire apparatus housed at the current Arcata Station will merge with the personnel and apparatus from the Mad River Station to satisfy our intentions. ¶ We trust that District staff will continue to be directly involved in the planning phase of the facility and that this Board will be kept completely informed at all times. ¶ Compensation for the Volunteers will be similar to, but not exceed, the current exchange enjoyed by both the Volunteers and the District. The exact details for compensation of Volunteer services to the District will be determined and presented in contract format through the Volunteer President and Fire Chief working with their respective Boards of Directors. ¶ We look forward to a ground breaking anticipated in Spring 2009 and occupancy in 2010. Good luck in this exciting chapter of Arcata Fire history. ¶ Thank you for all that the Arcata Fire Volunteers continue to do for this District and the Community.

Subsequent to District providing AVFD with the above-quoted letter of commitment,<sup>3</sup> AVFD took possession of the property and incorporated as a 501(c)(3)

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<sup>3</sup> The grant deed for the Franke property was filed with the Humboldt County Recorder on December 5, 2008.

nonprofit corporation for fundraising purposes. Because the new fire station has not yet been built, District continues to occupy the existing fire station as a tenant of AVFD, notwithstanding expiration of the Agreement and Lease over five years ago. As of the date of the Determination, AVFD had not yet entered into a construction contract for the Project.

C. The Design of the New Fire Station

AVFD first retained RRM Design Group (“RRM”) to design the new station in 2007. RRM downsized. Former RRM architects formed SWH Architecture (“SWH”), which replaced RRM as the design firm for the Project in 2009. SWH meeting notes indicate the participation of District personnel at planning meetings. Notes obtained from SWH of a January 2007 RRM meeting indicate that the Chief was present. Notes obtained from SWH of a May 2007 RRM meeting state to “call Chief McFarland” and to “call Captain Tim.” Minutes from the AVFD Board Meeting of May 14, 2009, note: “President/Chairman Tim Citro reported on recent meeting with the project manager from a large local contractor. Tim, John and Dave attended the meeting.” RRM meeting notes indicate that several members of District, in addition to the Mayor of Arcata, were present for the project kick-off meeting in January 2009.

Chief McFarland and other District personnel were regularly included on e-mail communications to and from SWH. For example, on December 31, 2009, Brian Selkow of SWH directed an e-mail to David White of AVFD and District Fire Chief McFarland stating: “Please review the [site] drawings and let’s talk on Monday so that any adjustments can be made prior to next weeks meeting with the City.”

In the course of DIR's investigation of this matter, DIR investigative staff interviewed Mike Hagelsieb, formerly with RRM and now with SWH. Mr. Hagelsieb confirmed that District personnel would come to planning and design meetings and provide their input. As stated in the Determination, District personnel participated in these meetings on a regular basis and on District time as reflected in the Minutes from AVFD Board Meetings and in the Minutes from District Board Meetings from 2007 on.

### **III. DISCUSSION**

#### **A. The Appeal**

It would appear that the request for a public works coverage determination in this matter came to the Department for decision due to a split of opinion between two attorneys. District's attorney, Dave Tranberg, advised District that the Project would be subject to prevailing wages. Brian Gaynor, AVFD's attorney, disagreed. It was then decided that District and AVFD would hire a "Bay Area" firm to request a determination from the Director. Jarvis Fay Doportto & Gibson, LLP was retained for that purpose. On December 9, 2009, the Determination issued, finding that the Project is a public work subject to prevailing wages, consistent with the opinion of District's own attorney. Although under these unusual circumstances it might be expected that the Determination would bring this matter to a close given Mr. Tranberg's own conclusion that the Project would be subject to prevailing wages, this appeal ensued. None of the arguments raised on appeal, however, lead to a different conclusion.

Under section 1720.2, there are three conditions for coverage. The first two are undisputed. Subdivision (a) provides that the construction contract is between private persons. As of the date of the Determination, a construction contract had not yet been

entered into, but if and when it is, it will be between private persons, AVFD and a building contractor. Subdivision (b) provides that the property subject to the construction contract is privately owned and that upon completion of the construction work, more than 50 percent of the assignable square footage is leased to the state or a political subdivision for its use. Here, the property is privately owned by AVFD and upon completion of construction more than 50 percent of the building will be leased to District, a political subdivision of the state, for its use as a fire station.

The third condition of coverage is the subject of this appeal. Subdivision (c) provides that either the lease agreement is entered into prior to the construction contract or, if entered into after, that the construction work is performed according to the plans, specifications, or criteria furnished by the state or the political subdivision. The Determination found that the lease agreement was entered into prior to the construction contract, which was not yet in existence. The Determination further found that even if that were not the case, District furnished plans, specifications or criteria for the Project. Therefore, under either prong of subdivision (c), the Project is a public work.

On appeal, AVFD argues neither prong of subdivision (c) is met. According to AVFD, the agreement to lease embodied in the August 19, 2008, letter of commitment from District is not enforceable because it is missing an essential term. Also, according to AVFD, District is not furnishing plans, specifications or criteria for construction of the new fire station because the final working drawings and detailed specifications will be furnished to the contractor by AVFD, not District. For the following reasons, AVFD is wrong on both counts.



B. The Agreement to Lease As Embodied in District's Letter of Commitment Satisfies the Requirement Under Subdivision (c)(1) That the Lease Agreement Be Entered Into Prior to the Construction Contract.

In support of its position that the first prong of subdivision (c) has not been met, AVFD relies on a number of cases involving the issue whether an agreement to lease is an enforceable contract under the law of contracts. Under these cases, an agreement to lease may be an enforceable contract if it contains the essential terms of a lease, which are identification of the specific property to be leased, the lease term, and the rent. AVFD argues that the District's commitment letter contains one term, the identification of the property, but not the other two. Therefore, as argued, the commitment letter does not constitute an enforceable contract and thus does not satisfy the first prong under subdivision 1720.2(c)(1).

AVFD's argument is flawed in two respects. First, resolution of the issue presented does not require a finding that AVFD or District may be successful in an action to enforce their agreement. While AVFD is correct that statutes are to be interpreted based on their plain meaning, it is important as well to note the following:

"Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.) However, "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.]" *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) "[E]ach sentence must be read not in isolation but in light of the statutory scheme. [Citation.]" (*Ibid.*)

(*Glendale Redevelopment Agency v. County of Los Angeles* (2010) 184 Cal.App.4th 1388, 1397-98 (emphasis supplied).) California's prevailing wage laws were enacted to

protect and benefit workers and the public, and it is to be liberally construed. (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 950.)

The issue here is whether workers constructing a building to be leased by the District for operation of a fire station are entitled to the protections of California's prevailing wage laws. Subdivision (c)(1) captures as public work any construction where an owner of private property agrees to lease that property to a public entity tenant prior to the owner entering into the construction contract for that property. The rationale for finding such construction to be a public work is that where a private entity constructs a building for a public entity's use and occupancy, the building is treated as though it were a public building, with the construction being subject to prevailing wage requirements.<sup>4</sup>

Here, District was not necessarily going to follow AVFD to a new location without evaluating response times for that location. At the same time AVFD wanted District's agreement to lease the Franke property before AVFD proceeded to acquire it. As early as June of 2007, District and AVFD began negotiating the terms of the lease. On June 17, 2008, "Chief McFarland reported that the Volunteers are requesting a formal written commitment from the District that we will rent the new building." On that date, the District Board directed its Fire Chief, Chief McFarland, to "negotiate said contract." On July 15, 2008, "Chief McFarland reported that he had drafted a letter stating the District would occupy the new fire station and that the pay would be similar to the

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<sup>4</sup> See Enrolled Bill Report on Assembly Bill No. 3235 dated August 27, 1974 and prepared by the Department of Water Resources: "A building constructed privately for the express purpose of being leased to the state or a government entity is in effect a state building. Appropriately, its construction should come with the prevailing wage law." See also Local Mandated Program Unit Report dated August 28, 1974 prepared by the Department of Finance as part of its Enrolled Bill Report: "The passage of AB 3235 would bring 'build-to-suit' leases under the prevailing wage rate requirement ... ." "Build-to-Suit" is defined as: "An arrangement whereby a landowner offers to pay to construct on his or her land a building specified by a potential tenant, and then to lease land and building to the tenant." (Build to Suit: Definition from Answers.com at <<http://www.answers.com/topic/build-to-suit>> [as of Aug. 19, 2010].)

amount we are currently paying. He asked that this agenda item be postponed to the August meeting at which time he will have a copy of the letter to discuss.” On August 19, 2008, District’s letter of commitment was executed, with the understanding that the final lease document would be entered into after the property purchase was completed in December of 2008. As of at least a year later, AVFD had yet to enter into a construction contract for this Project.

Based on this factual record, it is abundantly obvious that there is a lease agreement between AVFD and District for District to occupy and lease the new fire station upon completion of construction. This lease agreement is sufficient to satisfy the requirements of subdivision (c)(1). To argue otherwise is to defeat the clear purpose of the law under section 1720.2, and the purpose of California’s prevailing wage laws generally, based on the possibility that an action to enforce the agreement under the law of contracts may not succeed.

The second flaw in AVFD’s argument is that it fails to take into account an entire body of case law supporting the enforceability of agreements even in circumstances where an agreement has not been reduced to the final formal document. For example, in *Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 624, the court found that the parties had a duty “to complete the documentation in good faith” where one party agreed to lease office space in a building not yet constructed at “market rates.” The court held that despite the lack of specificity regarding the rent, the contract was enforceable because of the good faith duty to complete the lease documents.

Furthermore, contrary to AVFD’s assertions, the lack of an essential term in a contract is not fatal to enforceability. The modern trend of the law favors the enforcement

of contracts, disfavors unenforceability due to uncertainty and endeavors to carry out the intention of the parties. (*Burrow v. Timmsen* (1963) 223 Cal.App.2d 283, 288.) “Neither law nor equity requires that every term and condition of an agreement be set forth in the contract.” (*Ibid.*) As the court in *Okun v. Morton* (1988) 203 Cal.App.3d 805, 817 stated regarding the enforceability of a partnership agreement:

“[T]he court should not frustrate [the parties’] intention if it is possible to reach a fair and just result, even though this requires a choice among conflicting meanings and the filling of some gaps that the parties have left.”

(*Ibid.*, quoting 1 Corbin on Contracts (1963) § 95, p. 400.)

These cases convey a clear judicial bias in favor of enforcing agreements notwithstanding missing terms. As courts have explained, missing terms may be established from other sources outside the parties’ agreement. (*Burrow v. Timmsen*, *supra*, 223 Cal.App.2d 283, 288.) As the court in *Burrow* stated:

The usual and reasonable terms found in similar contracts can be looked to, unexpressed provisions of the contract may be inferred from the writing, external facts may be relied upon, and custom and usage may be resorted to in an effort to supply a deficiency if it does not alter or vary the terms of the agreement.

Here, based on the prior lease agreement between AVFD and District, the extension of their landlord-tenant relationship beyond expiration of the prior lease agreement and the history of negotiations concerning occupancy of the new fire station, there is but one set of conclusions that can be reached. AVFD and District have enjoyed a landlord-tenant relationship as to the existing station since 1995. Presently, they enjoy a landlord-tenant relationship as to the existing station even in the absence of a formal lease. They will continue to enjoy a landlord-tenant relationship when they move to the new station upon completion of its construction.

As to AVFD's assertion that the lease agreement lacks essential terms, the August 19, 2008, letter of commitment identified the property to be leased. It also set forth the rent to be paid as "[c]ompensation ... similar to, but not [sic] exceed, the current exchange enjoyed by both the Volunteers and the District." Finally, while the letter of commitment contains no lease term by date of commencement and date of termination, it specifically provides that District "will occupy the facility immediately upon completion." While the length of the term is not specified, given the clear intention of the parties to enter into a landlord-tenant relationship, a court would supply this missing term by looking at other similar lease agreements or by using the 10-year lease term District and AVFD had agreed to in their prior Agreement and Lease.

Therefore, even if AVFD is correct that "lease agreement" under section 1720.2 should be construed solely by reference to the law of contracts without regard to the statutory scheme for enforcement of prevailing wages, the factual record before the Department supports the conclusion that there is a lease agreement between AVFD and District. It should be underscored that the building to be constructed is a fire station, not a generic office building or warehouse. As such, it serves a distinctly unique function. AVFD wants the Department to ignore an obvious reality, which is that given the singular purpose, function and use of the building to be constructed, it effectively can only be occupied by one possible tenant, District. The denial of a lease agreement between AVFD and District cannot, under these factual circumstances, be credited.

C. Alternatively, Even If There Were No Lease Agreement for Purposes of Subdivision (c)(1), Construction of the New Fire Station Is Being Performed According to the Plans, Specifications or Criteria of District Within the Meaning of Subdivision (c)(2).

Even if District and AVFD had waited until after the construction contract was entered into before agreeing that District would lease the new fire station upon completion of construction, the Project would still be a public work under subdivision (c)(2). Given the arguments raised by AVFD, a brief review of the legislative history of subdivision (c)(2) appears warranted.

In 1974, section 1720.2 was added to the Labor Code following legislative passage of Assembly Bill 3235. Six years later in 1980, section 1720.2 was amended by passage of Assembly Bill 2557, which added subdivision (c)(2). In then Assemblyman Bill Lockyer's letter to then Governor Edmund G. Brown of September 4, 1980, he explained the intent of the bill was to address those instances where "developers and the state, or a local government, have entered into implicit agreements that after the completion of the project the state or local government would lease at least 50 percent of the property. In this way, the developer avoids the requirement to pay prevailing wages on a public works project." As explained in the Enrolled Bill Report of the Department of Finance dated of September 12, 1980, recommending that the Governor sign the bill, "[t]his bill eliminates a current loophole which exempts certain construction projects from public works requirements even though construction is done at the behest of governmental entities."

As stated in the subdivision (c)(1) discussion above, there is nothing "implicit" about AVFD and District's lease agreement. It was negotiated by the Fire Chief himself, and memorialized in the August 19, 2008, letter of commitment. It is, indeed, quite

explicit. Even assuming, however, that the agreement was merely implicit, the Project would nonetheless be covered under subdivision (c)(2). AVFD claims the Project falls neither under subdivision (c)(1) nor (c)(2). Subdivision (c)(2), however, closed the only known loophole in the law.

In arguing that subdivision (c)(2) does not apply, AVFD asserts that the phrase “plans, specifications, or criteria” specifically refers to the final design documents that are prepared by a licensed design professional, paid for by the property owner, and furnished by the property owner to the building contractor. AVFD asserts that District’s involvement and participation in the planning process is not sufficient to establish that District is furnishing “plans, specifications, or criteria” within the meaning of subdivision (c)(2).

Under AVFD’s view, “plans, specifications, or criteria” can never be **furnished** by the public entity tenant within the meaning of subdivision (c)(2) because it is the property owner, not the tenant, who provides the final design documents to the building contractor. Such a reading would render this subdivision a nullity because the property owner, not the public entity tenant, is the party under contract with the building contractor, and therefore responsible for the final construction plans. As such, “plans, specifications, or criteria” necessarily must refer to design input provided by the public entity tenant. Generally, in order for a public entity to occupy a space, the space must conform to the public entity’s requirements as to use and functionality. This is particularly true where the space is as unique as a fire station. The public entity’s design input is then incorporated into the final blueprint prepared by the architect for the property owner.

The property owner naturally bears not only the cost of the architectural services but the entire cost of the construction. Coverage is not conditioned on the public entity tenant paying for the architectural plans, as AVFD asserts. Presumably, the property owner may be able to recover costs in whole or in part under the rent structure negotiated with the public entity tenant. In any event, the statute does not speak to the issue of cost liability as a factor in determining coverage.

Finally, the phrase “plans, specifications, or criteria” is written in the disjunctive. A fire district must operate out of a fire station that is designed according to the district’s specific operational needs. At a very minimum, District furnishes “criteria” when it provides information to AVFD and/or SWH concerning the type of equipment to be maintained at the new fire station, the number of firefighters to be accommodated, the types of offices required for other District personnel, and the needs unique to a headquarters. Fire protection concerns a matter of public safety. The assertion that District, as the public entity accountable to the public and to the taxpayers, is anything other than a full partner in the planning of the new fire station and thereby intimately involved in its design from the ground up is not credible.

A unique fact presented here is that the property owner and the public entity bear an unusually close relationship for a landlord and tenant. Almost all, if not all, District firefighters are also members of AVFD.<sup>5</sup> Under these circumstances, it is problematical to even attempt to differentiate between the two in terms of their respective involvement in the design process. The potential for problems arising out of this close relationship did not go unnoticed by District or AVFD. In the course of discussing the prevailing wage

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<sup>5</sup> Information about AVFD’s membership was obtained from interviews with Dave White on October 30, 2009; John McFarland on October 21, 2009; Desmond Cowan on October 21, 2009; and Russ Locatelli on October 14, 2009.




implications of the Project, it was recommended that Chief McFarland step down from the executive staff of AVFD and be removed from the signature cards for all AVFD accounts. As of August 21, 2009, Chief McFarland had resigned as Vice-President of AVFD.

It would appear the parties believed that Chief McFarland's resignation from the executive staff of AVFD would show that the District has no formal responsibility in the design aspect of the Project. For reasons explained above, however, subdivision (c)(2) is satisfied by the fact that District personnel including Chief McFarland have been, and will continue to be, involved in the planning process regardless of whether any of them hold office with AVFD. The totality of the factual record developed by DIR supports the conclusion reached in the Determination that construction is being performed according to the "plans, specifications, or criteria" of District within the meaning of subdivision (c)(2).

#### IV. CONCLUSION

For the reasons set forth in the Determination and in this Decision on Administrative Appeal, the appeal is denied and the Determination affirmed. This Decision constitutes the final administrative action in this matter.

Dated: 8/26/10

  
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John C. Duncan, Director