

DEPARTMENT OF INDUSTRIAL RELATIONS

**Katrina S. Hagen, Director**

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August 14, 2023

Eric Claros  
Director of Housing  
Housing Innovation and Strategies Division  
Los Angeles Housing Department  
1200 West 7th Street, 9th Floor  
Los Angeles, CA. 90017

Re: Public Works Case No. 2022-015  
Homeboy Affordable Housing Project  
City of Los Angeles Housing Department

Dear Mr. Claros:

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 Labor Code section 1773.5<sup>1</sup> and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Homeboy Affordable Housing Project for the City of Los Angeles Housing Department is a public work subject to the prevailing wage requirements.

### **Facts**

The City of Los Angeles Housing Department (LAHD) partners with nonprofits and developers to build affordable housing on City-owned land. The Homeboy Affordable Housing Project (the Project) consists of the construction and rehabilitation of existing buildings located at 901-903 Main Street, which are owned by the City of Los Angeles. The Project involves a below fair market value sale of these City-owned parcels to the developer: Friends of Homeboy, LLC. (Request for Coverage Determination (Request), p. 1.)<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

<sup>2</sup> "I FURTHER MOVE that, should the property be determined to be suitable for such a lease, the City Council instruct GSD, with the assistance of the City Attorney and the CAO, to negotiate a lease with Friends of Homeboy, LLC for the use of the site at a below market rate." (Motion, October 3, 2018, signed by Councilmember, 1st District, Gilbert A. Cedillo (Motion).)

Friends of Homeboy, LLC is a limited liability company, managed by Palmer Investments, Inc. (Operating Agreement of Friends of Homeboy, LLC.) The Board of Directors of Homeboy Industries (Homeboy) appointed Friends of Homeboy, LLC as the agent and exclusive designee of Homeboy Industries to negotiate, finalize, and enter into a land lease or purchase with the City of Los Angeles for the real property adjacent to Homeboy Industries' main campus located at 901 S. Main Street. (Homeboy Industries Resolution, March 22, 2023.) Friends of Homeboy, LLC is a single-purpose pass-through entity which at all times has and will be owned by a 501(c)(3) non-profit for the benefit of Homeboy Industries. (Response from LAHD (Mar. 22, 2023) (March LAHD Response).) Homeboy Industries is a section 501(c)(3) not-for-profit organization.

In the Request, LAHD claims that, “[o]ther than the sale of the land, the project does not involve any public financing and will be funded by private conventional financing, donations and fund raising.” (Request, p. 1.) The Project will be built in four phases.

Phase 1 consists of shared transitional housing for participants in the 18-month Homeboy Industries jobs training program. The participants would be newly released from prison and potentially facing homelessness. The intent of the Homeboy training program and proposed transitional housing is to support this vulnerable population and prevent them from becoming homeless. (Request, p. 1.) Phase 1 involves transitional housing for formerly incarcerated individuals that are current participants in Homeboy Industries' rehabilitation programming. The Homeboy program has a designed length of 18 months, during which time, the tenants will be able to reside at the property. The transitional housing will include approximately 158 beds, which will provide affordable transitional housing for persons who are both formerly incarcerated and gang-involved individuals that are participating or have participated in the Homeboy workforce training development program. (Homeboy Project: Scope of Work.)

This building will consist of 22 units and 158 beds of which “100% of these beds will be used for housing low-income and/or recently homeless tenants.” Also, one unit per floor will be used to house a resident advisor employed by Homeboy Industries. (Response from LAHD (Jun. 2, 2023) (June LAHD Response).)

Phase 2 consists of permanent housing open to Homeboy program graduates and staff. (Request, p. 1.) This provides permanent housing for formerly incarcerated individuals that are current and former participants of the Homeboy rehabilitation program, family members of such individuals, or Homeboy staff. The permanent housing consists of 27 dwelling units. Six of the units will be restricted to households earning 60% AMI or less. At least one household member must be either a Homeboy Program graduate or a Homeboy staff member. (Homeboy Project: Scope of Work.)

This second building consists of 27 units, of which “no less than 20% [of] the units will be used for housing low-income and/or recently homeless tenants.” Also, “the balance of the units will be occupied by a combination of (a) graduates of the Homeboy trainee program; and/or (b) Homeboy staff.” (June LAHD Response.)

Phase 3 consists of non-income generating office space that will provide job training, psychological counseling, education, tattoo removal, and administrative services for the housing tenants. (Request, p. 1.) This “Services Building” will provide additional ancillary support services, including mental health, substance use, tattoo removal, legal, education, case management, workforce development and housing navigation. The services will be available to Homeboy’s tenants residing in the two apartment buildings. All services will also be provided at no cost to tenants or others in Homeboy’s training program. (Homeboy Project: Scope of Work.)

Phase 4 is a Wellness Center. The Wellness Center is envisioned as a quiet, contemplative space for psychological and emotional healing and reflection. Both programmed and non-programmed uses are contemplated to take place in this facility. The Wellness Center will primarily provide services to current, future, and past residents. (Request, p. 1.) This Wellness Center is a building that will be used exclusively by Homeboy to provide a reflection center and ancillary support services to Homeboy’s tenants, including individuals participating in Homeboy’s training program. (Homeboy Project: Scope of Work.)

According to the City of Los Angeles Housing Department:

“There are many studies correlating the impact of incarceration on unhoused populations. In 2018, the Prison Policy Initiative conducted a study concluding that formerly incarcerated people are almost 10 times more likely to be homeless than the general public. In California, seventy percent of unsheltered homeless people in California reported a history of incarceration, according to a California Health Policy Strategies analysis using data from Los Angeles, Orange and San Diego counties. Our experience at Homeboy Industries more than echoes the devastating impact of incarceration on housing security. As a matter of process, we conduct an intake interview for every client at Homeboy capturing demographic and health related data as we assess their needs and formulate care plans. In 2022, 52% of our community reported lack permanent housing, experiencing housing instability or currently homeless. An additional 22% answered ‘unknown’ to their current living/housing situation. This individual data is maintained in our enterprise platform.” (June LAHD Response.)

Excluding real estate, the estimated project cost is \$56 million, all of which is from nonpublic sources. (June LAHD Response.) Homeboy intends to raise approximately \$30 million of equity and has received commitments sufficient to construct the building in phase 1. The source of the equity is from private grants and donations. The remaining balance of the project is to be debt financed. The debt financing will be sourced from a combination of non-profit lenders and/or conventional bank financing. (June LAHD Response.)

Homeboy intends to use rental income from tenants to cover the debt. Once the debt is paid, the rent monies will be used to operate the building, capital maintenance, and thereafter, endow Homeboy Industries with steady and predictable cash flows from

which it can provide ongoing services pursuant to its non-profit mission. (June LAHD Response.)

### Discussion

#### **A. The Project is a Public Work Under Section 1720(a)(1).**

Section 1771 generally requires the payment of prevailing wages to workers employed on public works. Labor Code section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)) defines “public works” to mean all of the following: “Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds . . . .” According to the Supreme Court of California, “there are three basic elements to a ‘public work’ under section 1720(a)(1): (1) ‘[c]onstruction, alteration, demolition, installation, or repair work’; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds.” (*Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1157.) A project that is “paid for in whole or in part out of public funds” includes a project that is subsidized through the “transfer by the state or political subdivision of an asset of value for less than fair market price.” (§ 1720, subd. (b)(3).)

It is undisputed that the Project involves a below fair market value sale of City-owned parcels to the developer, Friends of Homeboy, LLC, as the agent and exclusive designee of Homeboy Industries. (Request, p. 1.) It is also undisputed that the Project involves the construction of housing, a services building, and a wellness center, that will be done under contract. (Request, p. 1; Motion; Homeboy Project: Scope of Work.) Consequently, the Project is a public work under section 1720(a)(1).

#### **B. The Section 1720(c)(5)(D) Exception Does Not Apply to the Project.**

“However, the City believes this Project may be exempted under Labor Code section 1720 (c)(5)(D).” (March LAHD Response.) The sole issue presented is whether the Project, which is a public work under section 1720(a)(1), should nevertheless be exempt from the Prevailing Wage Law under the statutory exemption cited by LAHD, which provides as follows:

(c) Notwithstanding subdivision (b), all of the following apply:

...

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to this chapter if one or more of the following conditions are met:

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project

cost includes the value of donated labor, materials, and architectural and engineering services.

(§ 1720, subd. (c)(5)(D).)

In arguing for the application of this exemption, LAHD argues that the Project is statutorily exempt because it will be a facility operated by a non-profit to provide housing and ancillary services to formerly incarcerated individuals that are current participants in Homeboy Industries' rehabilitation programming, and also Homeboy Industries' staff.

But the exemption authorized in section 1720, subdivision (c)(5)(D) (hereafter section 1720(c)(5)(D)) is specifically for a construction, expansion, or rehabilitation project that provides "emergency or transitional shelter and ancillary services and assistance to *homeless adults and children*." (§ 1720, subd. (c)(5)(D), italics added.) Here, LAHD explains that the Project is quite expansive and aims to provide housing to Homeboy staff, Homeboy program participants and graduates, and their family members. There is no indication that these individuals are homeless.

Furthermore, it is only phase 1 that provides some transitional housing for participants in the 18-month Homeboy Industries jobs training program, who potentially face homelessness. (Request, p. 1.) One unit will be for a resident advisor, who is not homeless, and the remaining units are for a mix of "low-income and/or recently homeless tenants," but there is no indication that the transitional housing will be provided to homeless adults and children. Indeed, the housing could be provided solely to "low income" individuals, who are not necessarily homeless.

Phase 2 consists of *permanent* housing open to Homeboy program graduates and staff. (Request, p. 1.) This provides permanent housing for formerly incarcerated individuals that are current and former participants of the Homeboy rehabilitation program, family members of such individuals, or Homeboy staff. While Homeboy cites studies that show the formerly incarcerated indeed face many hardships, such as homelessness, there is no indication that phase 2 will provide housing for homeless adults and children. Moreover, phase 2 will provide permanent housing, rather than "emergency or transitional shelter," as required by section 1720(c)(5)(D).

Phases 3 and 4 provide ancillary services to tenants. As explained above, however, many of the tenants are not homeless adults and children. Also, Homeboy Industries intends to collect rental income from tenants to cover its debt, and thereafter to endow Homeboy Industries with steady and predictable cash flows. Although the Project may provide affordable housing, it does not appear to provide "emergency or transitional shelter" to "homeless adults and children," as required for the statutory exception to apply. (§ 1720, subd. (c)(5)(D).)

Because the Project does not provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children, the section

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1720(c)(5)(D) exception does not apply,<sup>3</sup> and prevailing wage requirements apply to the Project.

### **Conclusion**

For the foregoing reasons, the Homeboy Affordable Housing Project for the City of Los Angeles Housing Department is a public work subject to the prevailing wage requirements of the California Labor Code.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen  
Director of Industrial Relations

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<sup>3</sup> It is unnecessary to analyze the other elements of the exception, such as whether prevailing wage requirements are “otherwise required by a public funding program” (§ 1720, subd. (c)(5)) or whether the “nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased.” (§ 1720, subd. (c)(5)(D).)