

## DEPARTMENT OF INDUSTRIAL RELATIONS

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October 25, 2002

David B. Mulé, Esq.  
FitzGerald & Mulé  
3001 Tahquitz Canyon Way, Suite 105  
Palm Springs, CA 92262

Re: Public Works Case No. 2001-022  
Cathedral Canyon Mixed Use Development Project  
City of Cathedral City Redevelopment Agency

Dear Mr. Mulé:

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 Title 8, California Code of Regulations, 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 Cathedral Canyon Mixed Use Development ("Project") is a public work subject to the payment of prevailing wages.

The Redevelopment Agency of the City of Cathedral City ("Agency") contracted with Palm Canyon Partners, LLC ("Developer") to develop 3.63 acres of land in downtown Cathedral City. According to the Third Amended and Restated Disposition and Development Agreement ("DDA") between Agency and Developer, dated December 28, 1999, the Project entails several phases: (1) construction of a 14-screen Mary Pickford Theater; (2) retail development consisting of between 6,000 and 14,000 square feet exclusive of common areas; (3) office development of between 2,500 and 16,000 square feet; (4) residential development of at least 60 units; and (5) a parking structure. These phases, only two of which have been completed thus far,<sup>1</sup> constitute one Project for purposes of public works coverage analysis.<sup>2</sup>

Developer was granted Agency funding for several aspects of the Project's construction. The DDA recites the fact that Developer had previously been given \$2,000,000 (termed "initial assistance") for construction associated with site improvements.

<sup>1</sup> As of the date of this determination, the theater and the parking structure with 1,100 parking spaces have been completed.

<sup>2</sup> *Vineyard Creek Hotel and Conference Center, Redevelopment Agency - City of Santa Rosa*, PW No. 2000-016 (October 16, 2000).

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Under the DDA, Agency pledged to provide an additional sum of \$3,484,700 (termed "agency assistance") for the necessary site improvements. These site improvements are listed in Exhibit "G" to the DDA and include the following expenses: on-site grading and demolition, off-site work, architectural and engineering fees, soils report and testing, surveys, traffic studies, consultants, permits and foundation work.

The DDA also provides for Agency to grant Developer another \$1,000,000 (termed "agency advance") to be used for "grading and/or clearing the Property, preparing the Property for construction of the Theater Facility, and/or for construction of the foundation for the Theater Facility . . . ."

As another element of the agency assistance, the DDA also obligated the Agency to give Developer \$8,500,000 (termed "parking contribution") for construction of the parking structure needed to accommodate parking demand generated by the Project.

Agency has confirmed that all forms of financial assistance referred to in the DDA were paid in full to Developer during the course of the Project's construction. The DDA provides that Developer has no obligation to repay any portion of the initial assistance, the agency advance or the agency assistance.

What is now Labor Code section 1720(a)(1)<sup>3</sup> (as amended by statutes of 2001, chapter 938, section 2 (Senate Bill 975)) defines "public works" as "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds." The building of the Project is construction activity that was done under contract between Agency and Developer, between Developer and general contractor, RHI Performance Construction ("RHI") and between RHI and subcontractors.<sup>4</sup> The phrase "public funds" is defined by Title 8, California Code of Regulations, section 16000 to include "state, local and/or federal monies." Because Agency funds provided to Developer fall within this definition, public funds were expended in part for the construction of the Project.

For the foregoing reasons, the Cathedral Canyon Mixed Use Development Project is a public work within the meaning of section 1720(a), and the workers employed in its construction must be paid prevailing wages. This public works coverage

<sup>3</sup> Subsequent statutory references are to the Labor Code.

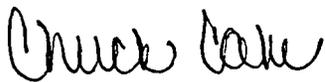
<sup>4</sup> The Agency has informed the Department that another general contractor, ARB, was responsible for the building of the parking structure.

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determination was requested in the context of a hearing under section 1742 concerning the alleged non-payment of prevailing wages by RHI on the Mary Pickford Theater construction. Accordingly, I specifically note that, as the Theater construction is a portion of the Project, prevailing wages must be paid to workers on the construction of the Mary Pickford Theatre.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director