

DEPARTMENT OF INDUSTRIAL RELATIONS

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November 5, 2002

Donald C. Carroll, Esq.
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300 Montgomery Street, Suite 735
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Re: Public Works Case No. 2002-021
City Place Project
City of Long Beach

Dear Mr. Carroll:

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 City Place Project ("Project") is a public work subject to the payment of prevailing wages.

On September 12, 2000, Coventry Long Beach Plaza, LLC ("Developer"), the City of Long Beach ("City") and Redevelopment Agency of the City of Long Beach ("RDA") entered into an Owner Participation Agreement ("OPA") concerning the Project. The Project is best described by City's description to RDA's members:

The proposed project involves the redevelopment of the Long Beach Plaza mall and its multi-level parking structure and the development of the former International School site

The proposed project contemplates the demolition of the existing mall . . . , portions of the existing parking structure and the construction of the following components:

- Destination retail (mall site)
- Neighborhood retail (school site)
- Hotel use (3rd Street site)
- Residential uses (various sites)

(Memo to RDA members, August 28, 2000, pp. 1-2.)¹

¹ These phases constitute one Project for purposes of public works coverage analysis. *Vineyard Creek Hotel and Conference Center*, PW 2000-016 (October 16, 2000).

The Developer owns the mall. The RDA owns the mall parking structure and the former International School site.

The OPA provides that City will renovate and seismically improve the parking structure. City will issue bonds to pay off the existing indebtedness and to pay for the renovations. The City has agreed that prevailing wages will be paid for the construction work on the parking structure. In addition, City has agreed to reimburse Developer approximately \$2.9 million for extensive off-site improvements of the surrounding public streets. City has also agreed to pay the first \$2 million in traffic impact fees ("City shall be responsible for the payment of the first \$2,000,000 of the fee" (OPA, p. 50).

The remaining portion of the Project is construction on the existing mall property as well as the International School property. RDA would transfer the mall and International School locations, which are worth approximately \$6.2 million, to Developer for \$2 million. RDA will pay Developer's construction lender the \$2 million RDA receives from Developer for construction costs on the Project concurrently with Developer's payment of its equity contribution.²

Under what is now Labor Code section 1720(a)(1) (as amended by statutes of 2001, chapter 938, section 2) "public work" is defined as:

Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds For purposes of this paragraph, "construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work.

The Project is clearly construction since it involves the demolition of the existing mall and International School, as well as the reconstruction of the parking structure. The Project is performed under various contracts.

The Project is also paid for with public funds. RDA's \$2 million payment to Developer's construction lender for construction costs on the Project constitutes payment of public funds for the

² The total participation by the public agencies is \$17,392,000. RDA will provide \$6,700,000, and City will provide \$10,692,000. (Memo to RDA members, August 28, 2000, Chart of Financial Participation).

Letter to Donald C. Carroll, Esq.
Re: Public Works Case No. 2002-021
Page 3

Project.³ This payment alone is sufficient to meet the public funds requirement of section 1720(a)(1) such that the Project is a public work. In addition to the RDA payment, City's payment for the construction of the parking structure and City's \$2.9 million reimbursement to Developer for necessary off-site improvements are a further payment of public funds.⁴ Finally, the OPA also states that City will "pay" up to \$2 million in traffic impact fees. To the extent the payment of the traffic impact fees do not represent a waiver or forbearance of the fees, the OPA appears to contemplate such a payment of "public funds." *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576.

For the above reasons, the Project is a public work within the meaning of Labor Code section 1720(a)(1), and prevailing wages are required.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Chuck Cake
Acting Director

³ RDA estimated the International School site was worth \$6.2 million. Under some circumstances we would find that a below-market value sale of property in exchange for an agreement to perform construction would constitute payment for construction with public funds. Such issue does not have to be addressed here in light of the findings that there are other sources of public funds for the Project. *One Harbor Plaza, Suisun City Redevelopment Agency*, PW 2001-021 (June 24, 2002).

⁴ The OPA describes these payments as subject to City's charter city exemption under the California Constitution, Article XI, section 5. We do not agree that the charter city exemption is applicable when City reimburses Developer and is not a party to the construction contract.