

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
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November 14, 2003

Dennis M. Buckovetz  
100 Acacia Way  
Coronado, CA 92118

Re: Public Works Case No. 2003-007  
San Diego Padres Ballpark Project/Tailgate Park

Dear Mr. Buckovetz:

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 construction of the San Diego Padres Ballpark Project ("Ballpark Project"), including the infrastructure portion under which Tailgate Park is constructed, is a public work subject to the payment of prevailing wages.

In November 1998, the voters approved the development of the Ballpark Project pursuant to a Memorandum of Understanding among the San Diego Padres baseball team ("Padres"), the City of San Diego ("City"), a chartered city, the Redevelopment Agency of San Diego ("RDA") and Center City Development Corporation ("CCDC")<sup>1</sup>. The Ballpark Project is funded both by private funds from Padres and public funds. The public funding consists of \$205.9 million from City, \$76.4 from CCDC and \$21 million from the Port of San Diego ("Port"). CCDC acquired the necessary property. City paid for the demolition, installation of utilities and other infrastructure work, including public parking.

On February 8, 2000, a purchase and sale agreement was entered into under which City would acquire the property for and construct four parking lots (designated as B2, B3, P5 and P6) adjacent to the new Ballpark to be known as Tailgate Park. Port would then pay City the \$21 million through periodic payments as City incurs expenses in the construction of Tailgate Park. CCDC was responsible for acquiring the land on which the Ballpark

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<sup>1</sup> CCDC is a California public benefit non-profit corporation created by and as an agent of RDA to fulfill RDA's mission of eliminating blight in City's Center City District, where the Ball Park Project is being constructed. Because of this relationship, all further references concerning RDA will be to CCDC.

Project would be built. (City Manager's Report, February 2, 2001, pp. 2, 3). The parking lots are to conform to Port's requirements.

Port and City also agreed that the Padres would have exclusive use of Tailgate Park for all Padres home games, as well as on 10 other days to be designated by the Padres. Port will receive 25-35 percent of the gross revenues for those days, with an annual minimum payment by the Padres of \$150,000. On all other days, Port will receive 100 percent of the gross revenues.

City entered into a Design/Build Agreement with Sverdrup Civil, Inc. ("Sverdrup") as project manager for the development of the infrastructure portion of the Ballpark Project, over which City is acting as the coordinator.

Under what is now Labor Code section 1720(a)(1) (as amended by statutes of 2001, chapter 938, § 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 preconstruction phases of construction including, but not limited to, inspection and land surveying work.

You have requested a public works coverage determination regarding the construction of Tailgate Park. As Tailgate Park is one portion of the larger Ballpark Project, the public works status of Tailgate Park depends in large part upon whether the Ballpark Project is a public work.<sup>2</sup>

The Ballpark Project is construction, demolition and alteration done under contract and paid for with public funds from City, CCDC and Port. As such, it is a public work. For the same reasons, Tailgate Park is a public work.

City argues that Tailgate Park is exempt from the payment of prevailing wages because City is a chartered city. Under Article XI, section 5 of the California Constitution, "[i]t shall be competent in any city charter to provide that the city governed

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<sup>2</sup> City addresses the public work status of Tailgate Park alone. As discussed above, this is only a portion of the larger public work Ballpark Project. Even if Tailgate Park were a separate project, it is still a public work as either City or Port funds were paid to construct it under contract.

there under 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." City is a chartered city. Whether it may successfully invoke the chartered city exemption from prevailing wage requirements depends upon whether the Project is a municipal affair.

Projects that are purely, strictly or merely municipal affairs are governed by local ordinance unless they conflict with a statewide concern. *Baggett v. Gates* (1982) 32 Cal.3rd 128, 136, 185 Cal.Rptr. 232; *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2nd 115, 39 Pac.2nd 412. There are three principal factors governing whether a project is a municipal affair: (1) the extent of non-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose, including the geographic scope, of the project. *McGuire, supra*, *Young v. Superior Ct.* (1932) 216 Cal. 512, 516-517, 15 P.2d 163. Related to the nature and purpose of the project is the extra-municipal effect of the project. *Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2nd 766, 771-772, 336 P.2nd 514.

The following analysis of the status of the Ballpark Project leads to the conclusion that it is not a purely municipal affair.<sup>3</sup>

#### Extent of Non-Municipal Control

Generally, City is the public agency that controls the progress of the Ballpark Project. However, the design criteria of Tailgate Park were set, in the main, by Port, which is not a chartered city. See, *Rider v. City of San Diego* (1998) 18 Cal. 4th 1035, 1040, 77 Cal.Rptr.2nd 189. Port's involvement in the design progress lessens City's claim that it controlled the Ballpark Project.

#### Extent of Non-Municipal Funding

CCDC's involvement in providing funding for the Ballpark Project, including the purchase of the land on which Tailgate Park is built, demonstrates that the Ballpark Project is not solely a municipal affair as CCDC, as agent of RDA, is an arm of the

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<sup>3</sup> Again, for the same reasons set forth herein concerning the Ballpark Project, even an analysis of the Tailgate Park portion alone leads to the conclusion that Tailgate Park is not a municipal affair.

state, not municipal, government. City appears to argue that its chartered city exemption applies equally to CCDC, as CCDC is simply a part of City's governing structure. This is incorrect, and CCDC's contribution of the money for the land purchase is not subject to the chartered city exemption.

CCDC owes its existence to state law, without which it could not exist. Health & Saf. Code § 33100. CCDC's function is to carry out the state's policy to eliminate blight by economic development, controlled at the local level. *Redevelopment Agency of City of Berkeley v. City of Berkeley* (1978) 80 Cal.App.3d 158, 169, 143 Cal.Rptr. 633 ["The redevelopment of blighted areas was declared to be a governmental function of state concern, in the interest of health, safety and welfare of the people of the state and of the communities in which the areas exist."]. Redevelopment agencies' activities throughout the state carry out the state's policy. *In Re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2<sup>nd</sup> 21, 37 Cal.Rptr. 74, *Duskin v. San Francisco Redevelopment Agency* (1973) 31 Cal.App.3<sup>rd</sup> 769, 107 Cal.Rptr. 667, *Walker v. City of Salinas* (1976) 56 Cal.App.3<sup>rd</sup> 711.

Almost without exception, every court to examine the relationship between cities and their redevelopment agencies has found that the two are separate entities. See, for example, *Pacific States Enterprises v. City of Coachella* (1993) 13 Cal.App.4<sup>th</sup> 1414, *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton* (1985) 171 Cal.App.3<sup>rd</sup> 95, *Walker v. City of Salinas*, *supra*, *Long Beach Community Redevelopment Agency v. Morgan* (1993) 14 Cal.App.4<sup>th</sup> 1047, 18 Cal.Rptr.2<sup>nd</sup> 100. This is true even where, as here, RDA's governing board is identical to City's City Council. *Long Beach Community Redevelopment Agency v. Morgan*, *supra*. For this reason, RDA or its agent, CCDC, is not an arm of City, even though the CCDC and City work in concert to fulfill the state mandate to eliminate blight.

Similarly, Port is an agency composed of multiple cities, including City. As such, its scope is far broader than the geographical borders of City. *Rider v. City of San Diego*, *supra*. When Port and City act in concert, City's home rule autonomy as a chartered city does not apply to the consequent new authority. *Id.*, 18 Cal.4<sup>th</sup> at 1055. Port's contribution to the Ballpark Project is therefore not subsumed within City's chartered city exemption from the requirement to pay prevailing wages.<sup>4</sup>

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<sup>4</sup> Port's periodic payments to City for the development of Tailgate Park similarly means that it was Port, not City, that funded Tailgate Park's development.

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Geographic Scope

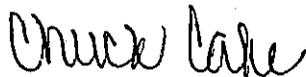
While the Tailgate Park portion of the Ballpark Project is solely within City's geographic boundaries, to the extent it was purchased and remediated for Port and its convention center, the clear intent of the Project is to supply parking for visitors to the area. This necessarily implies an extra-municipal intent.

On balance, because of the active involvement of RDA and Port in the development of and substantial investment of funds in the Ballpark Project coupled with the intent to attract out of town visitors to City, the Director is persuaded that the Ballpark Project is not purely a municipal affair. Therefore, the development of Tailgate Park is subject to the payment of prevailing wages.

For these reasons, the construction of the Ballpark Project, including the Tailgate Park portion, is a public work subject to the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake  
Acting Director