

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
455 Golden Gate Avenue, Tenth Floor  
San Francisco, CA 94102  
(415) 703-5050



October 7, 2003

Steve Brezzo, Executive Director  
Laguna Beach Festival of the Arts  
650 Laguna Canyon Road  
Laguna Beach, CA 92651

Re: Public Works Case No. 2003-036  
Festival of Arts Workshop Project  
City of Laguna Beach

Dear Mr. Brezzo:

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 presented and an analysis of the applicable law, it is my determination that the demolition and reconstruction work and associated improvements ("Project") on property leased from the City of Laguna Beach ("City") by the Festival of Arts of Laguna Beach ("Lessee") is a public work subject to the payment of prevailing wages.

The applicable lease agreement between City and Lessee provides that City lease certain property belonging to City to Lessee for a period of 40 years. Lessee conducts an annual summer "Festival of the Arts" on the property. During the balance of the year Lessee permits the use of the property for other cultural and artistic activities.

The lease agreement provides for rent payable at a total rate of 9.5 percent of all gross revenues from sources defined in the agreement. City, however, agrees to deposit 6 percent of that amount into a dedicated "Festival Capital Improvement Trust Fund" ("Trust Fund").

The agreement further provides that the sums held in Trust Fund are dedicated to capital improvements ostensibly for the benefit of Lessee's festival. Capital improvements as defined by the agreement do not include "the cost of removable trade fixtures, equipment and machinery, furniture and furnishings and the cost of inventory and miscellaneous moveable personal property." Rather, they are limited to the premises or real property as defined by the agreement. In addition, City operates as a gate-keeper for the Trust Fund in that it reserves to itself the

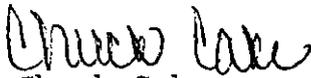
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ability to approve proposed capital improvement projects as well as the budget for those improvements.

Labor Code section 1720(a)(1)<sup>1</sup> defines a public work as "[c]onstruction, alteration, demolition, or repair work, done under contract and paid for in whole or in part out of public funds." Here, the Project is construction and demolition done under contract.<sup>2</sup> The issue raised by City and Lessee is whether the Project is being paid for with public funds. The amounts paid by Lessee as rent are deposited into the coffers of the City, a public entity, and are hence public funds. (See *Orangecrest Community Park/City of Riverside*, PW 99-023 (September 13, 1999.)) The rental payments do not lose their character as public funds merely because they are deposited into a trust fund dedicated to pay for works of improvement on publicly owned premises.

For these reasons, the Project is a public work for which prevailing wages must be paid. I hope this determination, satisfactorily answers your inquiry.

Sincerely,

  
Chuck Cake  
Acting Director

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<sup>1</sup> Except as otherwise indicated, all statutory references are to the Labor Code.

<sup>2</sup> Section 1720(a)(1) does not require that City be the entity that awards the construction contract nor does it have to be a party to the construction contract entered into between Lessee and a contractor in order for the work of improvement to be considered a public work. *City of Long Beach v. Department of Industrial Relations* (July 14, 2003) 110 Cal.App.4<sup>th</sup> 636, 1 Cal.Rptr. 3d 837, 845 citing to *Goleta Amtrak Station*, PW 98-005 (November 23, 1998). Further, the fact that City has no oversight with respect to the actual construction contract does not alter the public works status of this Project and the obligation to pay prevailing wages.