

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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May 6, 2008

Sarah Farley  
Farley Associates  
3145 Geary Blvd., #440  
San Francisco, CA 94118-3316

Re: Public Works Case No. PW 2008-006  
Kirby Building Tenant Improvements  
City of Santa Cruz

Dear Ms. Farley:

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 Code of Regulations, title 8, 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 tenant improvements to the Kirby Building in the City of Santa Cruz ("City") in space to be occupied by the Santa Cruz City-County Library System ("Project") is a public work; and, City's chartered city status does not exempt it from the requirement to pay prevailing wages.

#### Facts

City has contracted to acquire real property including a one-story building ("Kirby Building") from the Green Valley Corporation dba Barry Swenson Builder ("Contractor"). In addition to the purchase price of \$3.85 million, the July 2007 purchase and sale agreement between City and Contractor provides that City will pay Contractor \$1.3 million for the construction of certain tenant improvements in space to be occupied by City's two prospective tenants. City and Contractor subsequently entered into a separate construction contract for the tenant improvement work. Upon completion of construction, City will acquire title to the property. Two-thirds of the square footage of the Kirby Building will be leased by City to the Library Joint Powers Authority ("JPA"). The Santa Cruz City-County Library System ("Library") will use this space to house its headquarters and administrative services.<sup>1</sup>

The genesis of the Project is found in a 2005 report of the Santa Cruz County Grand Jury. The Grand Jury noted that the then-current administrative headquarters for Library was expensive, crowded and inefficient. Because the lease was set to expire in September 2007, the Grand Jury recommended that JPA begin to search for a less costly and more spacious alternative location. JPA assigned a task force to follow up the Grand Jury's recommendation, and the task force identified the Kirby Building as a potential location.

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<sup>1</sup>The remaining space will be occupied by City's water department. The requesting party's inquiry concerns only the space to be occupied by Library. Accordingly, the sole issue addressed in this determination is whether the tenant improvement work in the space to be occupied by Library is a public work subject to prevailing wage requirements.

JPA administers a Joint Powers Agreement (“Agreement”) between and among City, the County of Santa Cruz (“County”), the City of Capitola and the City of Scotts Valley, pursuant to the California Joint Exercise of Powers Act, Government Code section 6500 et seq. The stated purpose of the Agreement is to jointly provide county-wide library services. The JPA Board is composed of two members of County’s Board of Supervisors, two members of City’s Council, one member each from the Capitola and Scotts Valley Councils, and three at-large citizen members drawn from County. The JPA Board is chiefly responsible for Library’s budget.

Over seventy percent of Library’s budget is from a county-wide quarter-cent library sales tax. Other sources of funding include City’s general fund; property taxes collected on property within Capitola and Scotts Valley and on unincorporated property within County; and an annual grant from the State of California.

Under the Agreement, City provides legal, payroll, budget, purchasing, and other support services to Library, and Library employees are considered part of City’s civil service system regardless of the location where they work. The Agreement also provides that Library personnel are deemed to be dual employees of both City and JPA with respect to the terms and conditions of employment set forth in collective bargaining agreements between Library employees and City, and any such agreement or amendment is subject to the prior written approval of JPA.

To finance the acquisition of the Kirby Building and the cost of constructing the tenant improvements, the City of Santa Cruz Public Financing Authority issued lease revenue bonds in the amount of \$6.88 million. City’s Police Administrative Building was pledged as security. The Official Statement accompanying the bond issuance states that City is legally obligated to pay the debt service on the bonds from any and all City revenue, including its general fund.

The financing is structured, however, so that the general fund will be insulated from such liability because the debt service on the bonds will be paid by the prospective tenants of the Kirby Building: Library and City’s water department.<sup>2</sup> Approximately two-thirds of the debt service will be paid by JPA, in proportion to its two-thirds occupancy of the Kirby Building, and the other one-third will be paid by water department revenues. The debt service on the bonds will be fully paid in approximately twenty years. After that, Library’s occupancy will continue rent-free.

Because there is no guarantee that the county-wide library sales tax that funds over 70 percent of Library’s budget will be renewed when it expires in 2012, City acknowledges that there is some risk that JPA will not be able to continue to honor its lease payment obligations. In the event that the sales tax is not renewed, County has indicated that it will consider replacing JPA with another tenant.

City is a chartered city. Its most recent charter, adopted in 1948, contains a “home rule” provision (at section 401) stating that City retains control over its municipal affairs.

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<sup>2</sup>See City Council Agenda Report dated November 4, 2007, which states “All costs relating to bonds, including debt service, will be paid by the two departments based on their share of the building. The General Fund will not incur any costs relating to the bonds.”

### Discussion

Labor Code section 1720(a)(1)<sup>3</sup> provides, in pertinent part, that: “‘public works’ means ... [c]onstruction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds ... .” Section 1720(b)(1) includes within the definition of “paid for in whole or in part out of public funds” the “payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.”

The parties do not dispute that the Project entails construction done under contract. There also is no dispute that construction is paid for out of public funds. The lease revenue bond proceeds constitute the payment of money within the meaning of section 1720(b)(1). Therefore, the Project meets the definition of “public works” in section 1720(a)(1).

City asserts, however, that its chartered city status exempts it from the Labor Code’s prevailing wage requirements. Where a public works project is completely within the realm of the chartered city’s “municipal affairs,” it is exempt from California’s prevailing wage laws. *City of Pasadena v. Charleville* (1932) 215 Cal. 384 [disapproved on other grounds by *Purdy and Fitzpatrick v. State* (1969) 71 Cal.2d 566]. “Municipal affairs are matters which affect the local citizens rather than the people of the State generally.” 66 Ops.Cal.Atty.Gen. 266, 271-272. “[S]tatewide’ refers to all matters of more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide.” *Committee of Seven Thousand v. Superior Court, City of Irvine* (1988) 45 Cal.3d 491, 505.

Three factors are considered in determining whether a public works project is a municipal affair of a chartered city: (1) the extent of extra-municipal control over the project; (2) the source and control of funds used to finance the project; and (3) the nature and purpose of the project. *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115. Related to the nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517), and its extra-territorial effects (*Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-774).

Regarding the first factor, City is the only public entity having a role in the planning and execution of the Project, and City will be sole owner of the Kirby Building upon the Project’s completion. Therefore, the Project is not subject to extra-municipal control. Requesting party’s contention that extra-municipal control can be found in the fact that the Santa Cruz County Grand Jury conceived of the need for the Project is unpersuasive given that construction was carried out by City.

Regarding the second factor, proceeds from the sale of lease revenue bonds issued by City’s public financing authority constituted the immediate source of construction financing for the Project. City is obliged to service the debt arising from the bond issuance, and City property has been pledged as security for the debt. Ultimately, however, JPA will pay City its two-thirds

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<sup>3</sup>All statutory references herein are to the Labor Code, unless otherwise specified.

proportionate share of the debt service needed to pay the bonds. When the bonds are fully paid, JPA's lease payments will cease and Library will occupy its space in the Kirby Building rent-free. Moreover, JPA's lease payments will be drawn from JPA's budget, consisting of city, county and state funds. Library's continued occupancy will be contingent on an extension of the county-wide quarter-cent library sales tax. Under the second factor, financing for the Project is structured such that two-thirds of the bonded indebtedness will be retired from an extra-municipal source, the JPA lease payments. As such, consideration of this factor does not support City's contention that Project is a municipal affair.

Regarding the third factor, there is no dispute that the Project is entirely within City limits. The nature and purpose of the Project, however, is to provide a facility suitable to house the headquarters and administrative services of Library. City, County, Scotts Valley, and Capitola are members of JPA, the purpose of which is to provide county-wide library services. Library is funded by revenue raised throughout the county, and those revenues are budgeted by JPA. JPA's Board members are drawn from the entire county. City concedes that the operation of Library is extra-territorial in nature. Indeed, Library is sufficiently extra-municipal that it has invited the scrutiny of the Santa Cruz County Grand Jury. The Grand Jury's recommendation for a larger and less expensive headquarters facility put into motion the series of events that led to the Project. Accordingly, the Project is extra-territorial in its nature, purpose and effects.

City's argument that the nature and purpose of the Project is municipal in character emphasizes that Library employees are on City's payroll and are part of City's civil service system. City asserts that it is carrying out the Project to provide needed office space for City employees and to honor its contractual obligation to provide JPA with administrative and support services. These arguments are unpersuasive. First, the Agreement itself recites that Library staff have "dual employment" status with City and JPA. Moreover, City's obligation to provide support services to Library is derived from the Agreement, and the Project is being carried out to fulfill, in part, City's duties to JPA under the Agreement. The stated purpose of the Agreement is to *jointly* provide *county-wide* library services.

Based on consideration of the above factors, the Project is not a purely municipal affair under the home rule provision of City's charter. The chartered city exemption does not apply.<sup>4</sup>

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<sup>4</sup>This conclusion is consistent with the analysis employed in PW 2000-040, *Lease to Tulare County Family Support Services Program, City of Porterville* (March 12, 2001), in which the chartered city exemption was found not to apply to the construction of tenant improvements in a building leased by a private entity to the City of Porterville and simultaneously sub-leased by the City of Porterville to the County of Tulare. City has cited that determination in an effort to distinguish it on its facts. In *City of Porterville*, the master lease and sub-lease were entered into on the same date and both documents pre-dated the renovation work, while in the present case the execution of JPA's lease will follow completion of the Project. City asserts that, unlike *City of Porterville*, City here had no concrete assurance of any specific lease payment when City contracted for construction of the Project. City's argument assumes that the timing of the lease payments and execution of the lease detracts from the fact that the financing of the Project is structured so that City's costs will ultimately be reimbursed by an extra-municipal source of funds. As in *City of Porterville* where it was determined that the main purpose of the city's arrangement was to provide a location to house the county's Family Support Services Program, the main purpose of the Project and City's bond issuance in this matter is to provide a location for Library's administrative staff. In both cases, the source and control of funds, as well as the nature and purpose of the project, cannot be characterized as purely municipal in nature.

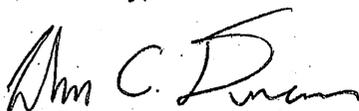
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In support of its position that the Project is a municipal affair, City cites *City of Redondo Beach et al. v. Taxpayers, Property Owners, et al.* (1960) 54 Cal.2d. 126. That case stands for the proposition that a chartered city's issuance of bonds for a municipal purpose (the construction of a small boat harbor) constitutes a municipal affair. In that case, however, the bond issuance itself was under attack, and the Supreme Court held, in part, that a chartered city was free to adopt the procedures of the Revenue Bond Law of 1941 without having to observe that law's restrictions and limitations. In discussing the extent of a chartered city's powers in that instance, the Supreme Court *assumed* that the construction of the harbor was a municipal affair. In this case, by contrast, the nature of the Project as purely municipal or extra-municipal is squarely at issue, and the limitations on a chartered city's authority to issue municipal bonds are not being disputed. *City of Redondo Beach*, then, is not pertinent to the issues here.

For the foregoing reasons, under the specific facts of this case, the Project is a public work that does not fall within the chartered city exemption and is therefore subject to California's prevailing wage laws.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John C. Duncan  
Director