September 14, 2006

Dear Interested Parties:

Pursuant to Labor Code Section 1770, the Acting Director of Industrial Relations has received a request for a public works coverage determination for the above-referenced project which includes building of a 32 story Hilton San Diego Convention Hotel. The request asserts that the rent reduction of $46.5 million given to the development partners by the Board of Port Commissioners meets the criteria of a “public works” under Labor Code Section 1720, pursuant to which contractors and subcontractors must pay their workers applicable prevailing wages for work done under contract and paid for in whole or part out of public funds.

In connection with the coverage determination request, the Acting Director received the following documents:

Project & Contact Information
San Diego Unified Port District – Agenda Item 23
San Diego Unified Port District – Lease to One Park Boulevard, LLC
San Diego Union Tribune newspaper articles regarding the Hilton Hotel project
May 12, 2004 San Diego Unified Port District memorandum regarding payment of prevailing wages on the Hilton Hotel Development.
In order to expedite our determination, we are requesting the following additional information:

- Option Agreement between Hilton San Diego Convention Center and Board of Port Commissioner dated August 6, 2002
- Amendments 1, 2, and 3 to Option Agreement
- Development Loan Agreement
- Management Agreement between One Park Boulevard, LLC and Hilton Hotel Corporation
- Financial Documents (grants, loans, promissory notes, or contributions)
- Construction contract (with all attachments and addenda);
- Financial Documents (grants, loans, promissory notes, or contributions);
- Any other documents that may relate to this project.

You may provide position statements on why some or all of this project is or is not a public work, including position on what version of Labor Code section 1720 applies and what Director precedential determinations the parties rely on. This information can be faxed to (213) 576-7735 or mailed to the following address:

Department of Industrial Relations
Office of the Director-Legal Unit
Attn: Dora Linzan
320 W. 4th Street, Suite 600
Los Angeles CA 90013

In accordance with California Code of Regulations Section 16001(a), please supply the above-mentioned documents to our office within the next 15 days. Please be sure to copy all addressees with your response.

If there are other parties who are considered “interested parties”, as defined in Cal. Code Regs., title 8, section 16000, please forward this letter to them and notify me of these parties.

If you have any questions, feel free to contact me at (213) 620-6553.

Sincerely,

Dora Linzan
Senior Special Investigator
MEMORANDUM

DATE: May 12, 2004

TO: Karen Weymann, Assistant Director, Real Estate

FROM: Rita Cordova, Analyst, Equal Opportunity Management

COPY: Shirley Grothen, Director, Equal Opportunity Management
      Dave Catalino, Deputy Port Attorney II

SUBJECT: Payment of Prevailing Wages on the Hilton Hotel Development

This response is in reference to the email you sent dated April 30, 2004, to Shirley Grothen, Director, Equal Opportunity Management, regarding the payment of prevailing wages on the Hilton Hotel development.

The following documents were reviewed with regards to the question of payment of prevailing wages raised in the email you received and forwarded from Hensel Phelps:

- SDUPD Agenda Item 23, Dated January 28, 2003
- SDUPD Agenda Item 24, Dated January 28, 2003
- SDUPD Agenda Item 8, Dated August 12, 2003
- Senate Bill No. 975, Chapter 938
- California Labor Code Section 1720-1743
- California Code of Regulations, Title 8, Section 16000, Chapter 8, Subchapter 3, Article 1
- Department of Industrial Relations prevailing wage case determinations between June 1998 - January 2004

To answer the specific question, the Port District is considered a public entity and subject to Senate Bill 975 and California Labor Code Section 1720-1743, however, the Hilton Hotel development is not considered a public works project subject to the payment of prevailing wages based on the following analysis:

Labor Code section 1720 (a) (1) generally defines public works to mean "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds . . . ." The Project is construction but will be built under contract between Developer and their construction contractors.

Section 1720 (b) generally defines "paid for in whole or in part out of public funds" as "payment of money or the equivalent of money by the [District] directly to or on behalf of the public works developer . . . transfer by the [District] of an asset of value for less than fair market price . . . fees, costs, rents, . . . loans, interest rates or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived or forgiven by the [District] . . . money
loaned by the [District] to be repaid on a contingent basis . . . credits that are applied by the [District] against repayment obligations to the [District].”

California Code of Regulations, Title 8, Section 16000, Chapter 8, Subchapter 3, Article 1: Public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by an awarding body.

Per verbal discussion with you on Monday, May 10, 2004, it is our understanding that the following applies:

- The Project construction costs will be borne by the Developer from private sources.
- The Developer, a private entity, will secure and repay funding through a private funding source, which are not public funds.
- The District will not supervise, own, utilize or manage the Project during or after construction.

For the reasons and the conditions stated above, we find this is not a public works project subject to the payment of prevailing wages.

If you have information contrary to the above listed conditions, please contact me at (619) 686-6412.

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1 Reference used: DIR Case Determination: Doubletree Hotel Development Project/City of Anaheim, PW 2002-090 (May 13, 2003)