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VIA E-MAIL bmarshall@bvcsd.org AND U.S. MAIL

Beverli A. Marshall
General Manager
Bear Valley Community Services District
28999 S. Lower Valley Road
Tehachapi, CA 93561

Re: Bear Valley Springs Association--Prevailing Wage Issues on Repair and Maintenance of Common Areas and Facilities
Our File No. 47152.1

Dear Ms. Marshall:

We are special counsel for the Bear Valley Springs Association ("BVSA"). BVSA asked us to review Bear Valley Community Services District's (the "District's") recent assertions that BVSA must certify that it will pay prevailing wages to contractors performing construction work on facilities the District has leased to BVSA. We have concluded that the District's assertions do not have a legal or factual basis as applied to the requirements of the Lease and the underlying facts. The District must provide specific authority and factual support for its claims about prevailing wages beyond generally citing prevailing wage statutes and must seek concurrence from the California Department of Industrial Relations ("DIR") with the District's analysis.

The District and BVSA entered a Community Facilities Lease ("Lease") in 2007 under which the District agreed to lease to BVSA "the real property and Facilities" described in Exhibit "A" to the Lease, along with any Facilities developed by BVSA during the Lease term. (Lease, Sec. 1(a).) The Lease states that the District's consideration for the Lease was "the rent to be paid by the Association and…the covenants and provisions to be kept and performed by the Association under this Lease." (*Id.*) BVSA agreed to "operate, manage, maintain, repair, replace, restore, improve and develop the Facilities [as defined in Exhibit "A" to the Lease] as required." (Lease, Sec. 2.) Among other things, the Lease requires BVSA to keep the Facilities in good repair and to maintain and improve the Facilities "to meet the needs of the Association membership." (Lease, Sec. 4(a).) BVSA's failure to maintain the Facilities would be a breach of the Lease. (Lease, Sec. 4(c).)

As part of its duties to maintain and improve the Facilities, BVSA has recently attempted to obtain the District's approval to remove and replace the asphalt shingles for the roof of the Whiting Center Gymnasium and perform an asphalt repair project. The Lease provides that BVSA cannot alter or add to the Facilities without the prior written consent of the District, which consent will not be unreasonably withheld. (Lease, Sec. 16(b). The District refused to provide the necessary approval for BVSA to contract for this necessary work unless BVSA either certifies that it will pay prevailing wages for the contractors that will perform these projects or obtains an opinion from the DIR the projects are not covered by prevailing wage statutes. Notably, the District had not insisted on this condition during the previous 19 years that the Lease has been in effect. Also, the District not cited any change in the applicable law regarding the payment of prevailing wages to support its sudden implementation of this requirement upon BVSA.

BVSA asked the District in a May 8, 2026 letter to provide a legal and factual basis for its new condition for approving BVSA's request to contract for performing the work required of BVSA by the Lease. BVSA explained that private funds paid by its members were to be used to pay the contractors for the roof repair project and that no public funds would be used. As the District demanded, BVSA requested a written opinion from DIR regarding the issue but has not received a response almost three months after its request. In the meantime, BVSA has been required to put aside necessary repair and maintenance projects as a result of the District's new conditions for approving such projects.

The District responded to BVSA's request on May 18, 2026 in a letter signed by you. That letter confirmed that, for the District to approve the roof repair project, BVSA would need to certify in writing that it will pay prevailing wages to contractors or obtain written confirmation from the DIR that this project would not require payment of prevailing wages. The letter further asserted that the funds paid by BVSA were in part "public funds" under the applicable statutes because the Lease contained a waiver of BVSA's payment of fair market rent. We understand that the District has expanded its insistence on this condition for all maintenance and repair projects undertaken under the Lease for BVSA to obtain the District's approval.

Although the District's position is purportedly based upon prevailing wage statutes, it ignores relevant facts underlying the Lease. The Lease states that the District's consideration for entering the Lease is both "the rent to be paid by the Association" and "the covenants and provisions to be kept and performed by the Association." BVSA's performance of these "covenants and provisions" include BVSA's typical annual expenditure of more than $3 million to perform its repair and maintenance obligations. Labor Code section 1720(b)(4) defines the term "paid for out of public funds" in this context to include "fees, costs, rents, insurance or bond premiums, 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 state or political subdivision." Regardless of whether BVSA pays "rent," its obligations under the Lease are substantial and the District has provided no evidence that the value associated with these obligations is less than the "fair market value" of the Lease. The District has not identified any applicable authority, statutory or otherwise, which requires that the contracting party's expenditure of private funds for repairing and maintaining public property be ignored in analyzing the "fair market value" of a lease. Such authority would include a factual situation where the lessee, like BVSA, expends funds raised from private sources to repair and maintain property leased from a public entity without being able to use that property to operate a profit-making business or to sub-lease that property.

BVSA has previously requested that the District, if it continues to adhere to its current position regarding payment of prevailing wages by BVSA based upon its novel interpretation of prevailing wage law, immediately provide BVSA with legal and factual authority that support its position. Given the dearth of relevant authority provided by the District, we repeat that request. Also, in view of the backlog of important maintenance and repair work that cannot be completed because of the District's position, BVSA again requests that the District provide a written determination from the DIR supporting its position no later than 15 days from the date of this letter. Absent a written determination to that effect from DIR, the Association will be required to consider moving forward with the Whiting Center Roof Replacement Project, the Phase III Asphalt Repair Project or any future projects, repairs or replacements in order to fulfill its maintenance, repair, and replacement obligations included in the 2007 Lease Agreement and the Bear Valley Springs CC&Rs.

Very truly yours,

Hanson Bridgett LLP

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