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**Michael J. Aguirre**  
CITY ATTORNEY

**MEMORANDUM OF LAW**

**DATE:** November 22, 2005

**TO:** Patti Boekamp, Director, Engineering & Capital Projects

**FROM:** City Attorney

**SUBJECT:** Prevailing Wages and TransNet-funded Local Street and Road Work Projects

**QUESTIONS PRESENTED**

Under California law, is the payment of prevailing wages required on TransNet-funded local street and road public works projects?

**SHORT ANSWER**

In general, no. The vast majority of the City of San Diego's local street and road public works projects remain municipal affairs notwithstanding the use of TransNet funds for those projects, and therefore payment of prevailing wages under state law is not required.

**BACKGROUND**

**A. Proposition A/TransNet**

In order to supplement revenues for transportation development and improvement in San Diego County, the state Legislature passed SB 361 [Bill] in 1985. According to the legislation, the supplemental revenue was to come from a county-wide transaction and use tax, which would be imposed pursuant to a voter-approved local ordinance. Cal. Pub. Util. Code § 132301. The Bill created the San Diego County Regional Transportation Commission [Commission], which would consist of the Board of Directors of the San Diego Association of Governments

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Chapter 1576 of the Statutes of 1985, codified in Cal. Pub. Util. Code §§ 132000–334 (San Diego County Regional Transportation Commission Act). *See* Appendix A for the legislative findings for the Bill, set forth in Cal. Pub. Util. Code § 132001.

[SANDAG], for the purpose of implementing the Bill's objectives, such as the drafting of the tax ordinance and the administration of the new revenues for transportation purposes. *Id.* at §§ 132050–51. The additional tax revenue was to be used toward purposes such as “the construction, capital acquisition, maintenance, and operation of streets, roads, and highways, including state highways, and the construction, maintenance, and operation of public transit systems, including exclusive public mass transit guideway systems.” *Id.* at § 132302. The Bill specified that the tax revenue was to supplement existing local transportation funding. *Id.* at § 132300.

In accordance with the Bill, the Commission put Proposition A before the voters of San Diego County. The voters approved Proposition A on November 3, 1987, authorizing the Commission “to establish by ordinance a one-half of one percent transactions and use tax for a period not to exceed twenty years, with the proceeds placed in a special fund solely for transportation improvements.” Prop. A, San Diego Transportation Improvement Program, Nov. 3, 1987. This new tax, the transportation system (or network) it funds, and the program by which the funds are allocated, are all commonly referred to as “TransNet.”

Pursuant to Proposition A's passage in 1987, the Commission enacted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan, Commission Ordinance 87-1 [1987 Ordinance], which delineated the specific substantive provisions and procedures for implementing the TransNet program. The Expenditure Plan portion of the 1987 Ordinance establishes that the sales tax revenue is to fund “countywide transportation facility and service improvements including highway improvements, trolley extensions and public transit improvements, bicycle facility improvements, and local street and road improvements.” 1987 Ordinance, § 2. After the deduction of certain administrative expenses and the allocation of \$1 million annually for bicycle facilities, TransNet revenues are to be allocated equally among three purposes: highways, public transit, and local streets and roads. *Id.* at § 4(A).

**With respect to allocations for local street and road purposes, TransNet specifies that one-third of available revenues “will be allocated on a fair and equitable formula basis . . . to each city and the County of San Diego [local agencies] to supplement existing local revenues.” *Id.* at § 1(D). Under that formula, each local agency first receives an annual base sum of \$50,000. *Id.* At**

**§ 4(C). The revenues remaining after that base sum distribution are allocated among the local agencies according to the following criteria: two-thirds based on total population and one-third based on “maintained street and road mileage.” *Id.* Section 8 of the 1987 Ordinance emphasizes the supplemental nature of TransNet funds: “[e]ach local agency receiving revenues pursuant to Section 4(C) shall annually maintain as a minimum the same level of local discretionary funds expended for street and road purposes as was reported [in a certain prior fiscal year].” An agency that fails to meet this “Maintenance of Effort” requirement will have its funding for the following year reduced by an amount equal to that by which the agency failed to meet its Maintenance of Effort level. *Id.* at § 8.**

Each local agency is to develop its own list of projects for which it wishes to receive TransNet funds. *Id.* at § 5(A)<sup>3</sup>. The list of projects must be developed in accordance with the following specified priorities: “to repair and rehabilitate existing roadways; to reduce congestion and improve safety; and to provide for the construction of needed facilities.” *Id.* at § 4(C)(4). After holding a public hearing on its proposed list of subjects, the local agency is required to submit its list to the Commission for approval. *Id.* The purpose of the approval requirement is to enable the Commission to ensure that the proposed project is consistent with the Commission’s regional transportation plan and program of projects. *Id.* at § 5(B).

In checking for consistency with the TransNet program, the Commission can refer to a list prepared by the California State Controller defining eligible street and road work activities. *See Handbook for the San Diego County Regional Transportation Commission’s Administration and Implementation of the Transportation Sales Tax Program (Update #1), at V-8–V-11 (Mar. 1988, rev. July 1988).* Included on the State Controller’s list as examples of qualifying street and road construction are the following: (1) “removal of old street and roadbeds and structures, and detour expense when connected with a construction project;” (2) “addition of a frontage street or road;” and (3) “the installation or original traffic signs and markers on routes.” *Id.* at V-9. Examples of qualifying maintenance work on the list include: (1) “repair of traveled way and shoulders;” (2) “cleaning, painting and repairing bridges and structures;” and (3) “servicing lighting systems and street or road traffic control devices.” *Id.* at V-11.

Public works projects by the City of San Diego [City] that the Commission approved for inclusion on its 1988 Five-Year Regional Transportation Improvement Program Project List [1988 RTIP List] include the following: (1) addition of an 18-inch RCP storm drain at Alley Block 53 and Fairmont Ave; (2) widen and realign the street at Eight Avenue, from “L” Street to Harbor Drive; (3) construct off-ramp and install traffic signal at the Famosa and Nimitz Boulevards interchange; and (4) expand the Traffic Signal Master Control System. *Id.* at Appendix B-2, pp. 9–14. The City’s other street and road public works on the 1988 RTIP List are similar to the foregoing, with the majority comprising work on storm drains and widening of streets.

TransNet, which was set to expire in April 2008, was extended for forty years when San Diego County voters approved another Proposition A on November 2, 2004. *See San*

<sup>3</sup> “Each local agency shall annually develop a five-year list of projects to be funded with revenues made available under Section 4(C).” 1987 Ordinance § 5(A).

“A local public hearing on the proposed list of projects shall be held by each local agency prior to submitting the project list to the Commission for approval pursuant to Section 6.” *Id.*

**Diego Transportation Improvement Program Ordinance and Expenditure Plan, Commission Ordinance 04-01. In addition to extending the duration of TransNet, the second Proposition A created an independent taxpayer oversight committee and adjusted how the funds are allocated. Apart from those changes, the TransNet program remains substantially the same.**

## DISCUSSION

**B. Payment of prevailing wages is not required under California law on the City's TransNet-funded local street and road work projects because they are municipal affairs**

**1. State prevailing wage law and the municipal affairs exemption**

In general, "all workers employed on public works" that are performed under contract are required to be paid "the general prevailing rate of per diem wages" [prevailing wages]. *See* Cal. Lab. Code §§ 1770–81. Section 1771 of the California Labor Code provides:

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**"Public works" is defined to include "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" and "[s]treet, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not." *Id.* at § 1720(a)(1) and (3), respectively. The term "worker" includes "laborer, worker, or mechanic." *Id.* at § 1723. Essentially, the California prevailing wage law requires employers who contract with public agencies for public works projects to pay their workers prevailing wages. Accordingly, the vast majority of the City's local street and road work projects that are funded, in whole or in part, by TransNet would be subject to the state prevailing wage law, since those projects typically are performed by contractors instead of by City forces and exceed \$1,000 in value.**

However, cities that have availed themselves of the autonomy granted them by article XI, section 5 of the California Constitution are exempt from general laws such as the prevailing wage law with respect to their own "municipal affairs." Article XI, section 5(a) of the California Constitution provides:

It shall be competent in any city charter to provide that the city governed thereunder 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.

**This provision of the California Constitution is commonly referred to as the “home rule” provision and the amendments to a city’s charter passed in accordance therewith are referred to as home rule amendments. See *Bishop v. City of San Jose*, 1 Cal.3d 56, 61 (1969). The City has availed itself of the constitution’s home rule provisions See San Diego City Charter art. I, §§ 1–2.<sup>6</sup> Accordingly, the City’s “powers over municipal affairs became all-embracing, restricted and limited by the charter ‘only,’ and free from any interference by the State through general laws.” *City of San Jose v. Lynch*, 4 Cal. 2d 760, 764 (1935)(citing *Civic Ctr. Ass’n v. R.R. Comm’n*, 175 Cal. 441, 448 (1917)). Stated differently, with respect to matters that are purely municipal affairs, the ordinances of a chartered city control and take precedence over conflicting general state law. See *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 348 (1981) (“a chartered city’s ordinances which deal with purely municipal affairs are valid even if they conflict with general laws”). The effect with respect to public works is that “[t]he prevailing wage law, a general law, does not apply to the public works projects of a chartered city, as long as the projects in question are within the realm of ‘municipal affairs.’” *Id.* at 348 (citing *City of Pasadena v. Charleville*, 215 Cal. 384, 392 (1932), *overruled in part on other grounds by Purdy & Fitzpatrick v. California*, 71 Cal. 2d 566 (1969)). Public works projects on local streets and roads are thus exempt from the prevailing wage law if they are within the realm of municipal affairs.**

The question then is whether local street and road work is a municipal affair. As an initial matter, neither the California Constitution nor any state statute provides a precise definition of “municipal affairs.” *Bishop*, 1 Cal. 3d at 62. While the California Supreme Court has held that “[m]unicipal affairs’ as those words are used in the Constitution, refer to the internal business affairs of a municipality,” *City of Walnut Creek v. Silveira* [*Silveira*], 47 Cal. 2d 804, 811 (1957) (citing *Fragley v. Phelan*, 126 Cal. 383, 387 (1899)), whether a given matter is in fact a municipal affair is ultimately a judicial determination that must be made on a case-by-case basis. *Bishop*, 1 Cal. 3d at 62–63; *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 537 n.5 (1973). According to caselaw, however, local street and road work has traditionally been a municipal affair. Furthermore, based on guidelines provided by caselaw for determining whether a matter is a municipal affair or a statewide concern a court is most likely to find the City’s TransNet-funded local street and road work projects to be municipal affairs. An analysis of these cases follows.

**a. Local street and road work in general is a municipal affair**

**“It is settled that the matter of opening, laying out and improving streets . . . are municipal affairs upon which the charter, in so far as it makes provision therefor, is**

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<sup>6</sup>See Appendix C.

paramount to general law.” *Lynch*, 4 Cal. 2d at 764. The California Supreme Court reiterated this point in *Committee of Seven Thousand v. Superior Court [Seven Thousand]*, 45 Cal. 3d 491 (1988), citing *Silveira*: “street work has long been regarded as a matter of local concern.” 45 Cal. 3d at 505.

In *Silveira*, the City of Walnut Creek wanted to make improvements to its streets in order to accommodate the increased traffic caused by the number of people coming in from outside the city. The improvements were to consist of “covering Walnut Creek which traverses the business area so that it may be used; to provide new streets, to extend non-through streets, [and] to widen other streets, in order to provide adequately for the greatly increased traffic circulation in the commercial area.” *Silveira*, 47 Cal. 2d at 812. The *Silveira* court held: “There can be no question that the proposed improvements fall within the definition of municipal affairs as that rule is set forth in the decided cases.” *Id.*<sup>7</sup>

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<sup>7</sup>The decided cases *Silveira* cited were, *inter alia*, *Byrne v. Drain*, 127 Cal. 663, 667 (1900) (“the matter of opening the streets of a municipality is a municipal affair is not disputable under the authorities”); *Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228, 232 (1916) (“That street and sewer work in a municipality, and the making of contracts therefor on the part of the municipality are ‘municipal affairs’ within the meaning of the constitutional provision cannot be doubted.”); and *Lynch*, 4 Cal. 2d 760.

Despite citing *Silveira* and acknowledging that street work has traditionally been a municipal affair, *Seven Thousand* reached a contrary result. *Seven Thousand* involved a state law that authorized Orange County and the cities located within it to fund the construction of major highway projects within the county by implementing thoroughfare and bridge fee programs and levying fees against new development in designated benefit areas. The California Supreme Court held that the roads constructed pursuant to the statute were matters of statewide concern due to the purpose of the statute and its impact. *See Seven Thousand*, 45 Cal. 3d at 505–06 (citations omitted). The court concluded: “While street work has long been regarded as a matter of local concern . . . it has also been recognized that construction of major highways has effects beyond municipal boundaries, . . . [and the statute at issue] was designed specifically for the funding of ‘major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system.’ . . . In other words, the contemplated transportation facilities are to be used primarily for travel between cities rather than within cities. The construction of roads located outside a city’s boundaries cannot be a strictly municipal affair.” *Id.* The *Seven Thousand* court reached its conclusion based on the highway projects’ scope and impact, two factors that will be further discussed below.

**b. *McGuire* analysis**

*Southern California Roads Co. v. McGuire* [*McGuire*], 2 Cal. 2d 115 (1934), provides a useful framework for analyzing whether a matter falls within the realm of municipal affairs or is a statewide concern. At issue in the case was the improvement, pursuant to state statute, of Sepulveda Boulevard, a street that was contained entirely within Los Angeles city limits.

*McGuire* held that the street improvement project was a matter of statewide concern instead of a municipal affair based on several considerations.

First, the court cited the language and purpose of the statute that provided for the improvement of Sepulveda Boulevard. The statute gave the California highway commission “jurisdiction and authority as provided in this section with respect to any state highway lying within any municipality as specifically described by law, also with respect to a state highway, the natural course of which runs or passes into or through any municipality or contiguous municipalities.” *McGuire*, 2 Cal. 2d at 117. The court also noted that the statute designated certain highways or routes as secondary state highways, and expressly listed those roadways by name, of which Sepulveda Boulevard was one. *Id.* at 118. By virtue of this statutory declaration and classification as a secondary state highway, the court found that Sepulveda Boulevard was no longer “an ordinary city street, and in fact, legally speaking, it is not a city street at all.” *Id.* at 120.

Second, the court found that while the statute delegated the authority to the City of Los Angeles to perform the improvement, the state retained considerable control and authority over the improvement and maintenance of the boulevard. The city was required to submit its improvement plans and specifications to the state highway commission for the latter’s approval,

which was final. *Id.* at 121. After such approval was granted, the city was not allowed to change the plans, except for minor details. *Id.* The statute also expressly gave the highway commission the right to improve and maintain the boulevard, and ultimate authority for the boulevard's maintenance. *Id.* If the state department of public works found the city's maintenance efforts inadequate or unsatisfactory, and the city failed to correct the inadequacies, the department had the power to conduct its own maintenance and charge its costs to the city. *Id.* Lastly, the *McGuire* court took into account the fact that almost the entire cost for the improvements was borne by state funds and federal grants to the state. *Id.*

Essentially, *McGuire* determined that the improvement of Sepulveda Boulevard was a matter of statewide concern for two reasons: (1) the statute designated the boulevard a state highway, thereby making it a statewide concern by definition; and (2) the state exercised a significant degree of control over the boulevard's improvement and maintenance, as evidenced by the source of the funds and the state's ultimate decision-making authority. Therefore, greater control by the state over a matter—such as a public works project—increases the likelihood that the matter will be found to be a statewide concern as opposed to a municipal affair.

**c. Scope/impact analysis**

Other considerations courts have evaluated in determining whether a matter is strictly a municipal affair or a statewide concern are its scope and impact. In *City of Pasadena v. Chamberlain*, 204 Cal. 653 (1928), the California Supreme Court held that the formation of a water district under the Metropolitan Water District Act for the purpose of distribution of water within and among several municipalities was not a municipal affair. The court stated that “the formation of a common purpose for the acquisition of water in large quantities from sources outside of such municipalities, and even outside of the area within which they exist, and the distribution of such water, when so acquired, among such cities, in accordance with a common plan, and with a view to achieving equitability in the distribution and use of such water,” could not conceivably be considered a municipal affair. *Chamberlain*, 204 Cal. at 660.

*Wilson v. City of San Bernardino*, 186 Cal. App. 2d 603 (1960), held that the formation of the San Bernardino Valley Municipal Water District was not a strictly municipal affair

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Several California Department of Industrial Relations [DIR] decisions (*see, e.g.*, Pub. Works Case No. 2000-074, Pub. Works Case No. 93-029) have cited *McGuire* as articulating three factors for determining whether a matter 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 of the project.” *McGuire*, however, did not explicitly identify the aforementioned three factors as discrete factors that were considered in reaching its conclusion. The *McGuire* court did not state that it was using a three-factored (or three-pronged) test, and no case citing *McGuire* has interpreted it as having established any such test. Nevertheless, to the extent the DIR continues to read *McGuire* as having clearly set out these three factors and continues to use them to determine whether a matter is a statewide concern versus a municipal affair, it may be prudent to follow suit. That said, it appears that the three factors can be collapsed into two, because the first and second factors are related, if not similar (*i.e.* extent of non-municipal control and source and control of project funding).



because “when a general law of the state, adopted by the state Legislature, provides for a scheme of public improvement, the scope of which intrudes upon or transcends the boundary of one or several municipalities, together with unincorporated territory, such contemplated improvement ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state.” *Wilson*, 186 Cal. App. 2d at 611.

**The water districts in both of these cases directly affected more than one city. The scope of the water district was greater than any one city because the district’s geographical boundary encompassed several cities. Furthermore, the water district’s impact was greater than any single city. The purpose of the water district (allocation of water resources among several municipalities), affected more than one city and in order to achieve that purpose, coordination among those various municipalities would be necessary.**

**2. The City’s local street and road work projects under the TransNet program are consistent with matters traditionally considered municipal affairs**

Given that local street and road work has traditionally been considered to be within the realm of municipal affairs, the relevant question is whether the specific local street and road work projects the City intends to undertake with TransNet funds are municipal affairs. The answer to this question has two facets: (1) whether the City’s local street and road work projects undertaken as part of the TransNet program are similar in kind to the street improvement work that has traditionally been considered to be within the realm of municipal affairs; and (2) whether, by being part of the TransNet program (in particular, receiving TransNet funds), the status of the City’s projects as municipal affairs is changed.

A comparison of the State Controller’s list of eligible TransNet projects with the City’s local street and road work projects on the 1988 RTIP List (see Section A for the lists) shows that the activities on both lists are consistent with street and road work that has traditionally been considered municipal affairs, *i.e.* “the matter of opening, laying out and improving streets.” *Lynch*, 4 Cal. 2d at 764. Thus, the City’s TransNet-funded local street and road projects are of the kind of typical public works projects a chartered city undertakes pursuant to its police powers.

However, a caveat must be stated: the foregoing conclusion is based on a comparison of representative samples of the types of projects included on the State Controller’s list and the

1988 RTIP List, as opposed to a comparison of every single project on the two lists.<sup>09</sup> Therefore, while highly unlikely given the similarity of projects between the two lists, it is possible that some of the City’s street improvement projects on the 1988 RTIP List would not be municipal affairs, perhaps because their scope or impact went significantly beyond the City. Furthermore, none of the City’s local street and road work projects that the Commission

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<sup>09</sup> An exhaustive comparison of this nature would have been impractical and would have added little in the way of providing a definite answer with respect to the City’s future street and road work projects to be funded by TransNet and whether the state prevailing wage law applies to them.

approved subsequent to the 1988 RTIP List were considered in making the above comparison. For this reason, the conclusions presented in this memorandum are of a general nature and their applicability to any particular project is qualified. Ultimately, whether state law requires payment of prevailing wages on a particular local street and road work project has to be made on a case-by-case basis because the outcome depends on the specific details of the project.

**3. The City's local street and road work projects do not fall outside the realm of municipal affairs by virtue of being part of the TransNet program**

Having determined that the City's local street and road work projects undertaken as part of the TransNet program are similar in kind to the street improvement work that has traditionally been considered to be within the realm of municipal affairs, the remaining question is whether those projects become statewide concerns as a consequence of being part of the TransNet program. The answer is no.

A court, analyzing the City's TransNet-funded street and road work projects under *McGuire*, would likely find that the projects were municipal affairs and not matters of statewide concern because any significant degree of control by the state was lacking. In order for the City to receive TransNet funds for its street and road work projects, they must be approved by the Commission. Based on the criteria set forth in the 1987 Ordinance, proposed projects should be approved if they are consistent with the Commission's regional transportation plan and they were given a public hearing. *See* 1987 Ordinance, § 5. The Commission's involvement in the City's local street and road work projects is minimal and far less than the California highway agency's involvement in the Sepulveda Boulevard project in *McGuire*, where the agency had final approval of plans (which could not be changed once approved) and where the agency was the ultimate authority over maintenance.

The fact that the source of TransNet funds is a countywide tax does not entail significant state (or county) involvement in the City's street and road work projects. The DIR held that the source of funds by itself does not place a project outside the scope of municipal affairs. *See Decision on Administrative Appeal in re: PW Case No. 93-029, City of Big Bear Waterline Reconstruction Project [Big Bear]*, at 11 (1994). In *Big Bear*, the DIR rejected the argument that the funding source is determinative as to whether a matter ceases to be a municipal affair, stating:

Operating Engineers first argues that the City cannot claim the charter city exemption from the obligation to pay prevailing wages because the receipt of state funds alone places the project outside the scope of a municipal affair. This argument is without merit. In past public works coverage determinations, this Department has consistently held that loan funds take on the character of the recipient. In this case, the state funds loaned to the City pursuant to the Bond law became municipal funds.

Accordingly, were there no other evidence that the project is a matter of statewide concern, the project would be a purely municipal affair and exempt from the obligation to pay prevailing wages.

*Id.* (footnote omitted).

The DIR ultimately ruled that Big Bear's waterline reconstruction project was subject to the obligation to pay prevailing wages because the degree of control and involvement by the State rendered the city's project a matter of statewide concern. *Id.* at 12. While the fact that the public works project was funded by a non-municipal source was insufficient by itself to take the public work outside the realm of municipal affairs, the bond law established certain requirements and procedures for approving projects for funding, which in turn resulted in significant state involvement. There is no similar involvement by any agency or entity outside the City with respect to its TransNet-funded street and road work projects.

A court is also likely to find that the City's TransNet-funded street and road work projects are municipal affairs under the scope/impact test. The scope and impact of the City's TransNet-funded street and road work projects are almost entirely local. The "scope" is local because the streets and roads that are to be improved and developed are located within the City's geographical boundary. The "impact" is local because the kind of work the City is seeking to perform with TransNet funding (which, based upon review of the City's projects on the 1988 RTIP List, are along the lines of repairing storm drains, constructing medians, and adding lanes) is not likely to have any discernible effect outside the City (such as on roads outside city limits). The City's TransNet projects are thus similar to the street improvement work in *Silveira* in terms of their scope and impact, and unlike the construction work at issue in *Seven Thousand*, which was to create a transportation system whose primary purpose was for inter-city, rather than intra-city travel, thus resulting in a scope and impact that were predominantly regional.<sup>00</sup>

The scope of the City's TransNet projects is local for the additional reason that the City is neither required nor needs to coordinate with other municipalities or agencies in order to proceed with work on its local street and road work projects. After the City's projects are approved for TransNet funding, the City maintains total control over those projects. In this regard, the City's TransNet projects are distinguishable from the improvement of Sepulveda Boulevard in *McGuire*, and the formation of water districts in *Chamberlain* and *Wilson*. In short, the City's local street and road projects that are undertaken as part of the TransNet program (*i.e.* those the Commission approves to be consistent with its regional transportation plan and thus awards TransNet funds) remain municipal affairs and therefore are exempt from the requirements of the state's prevailing wage law.<sup>01</sup>

### **C. The prior opinion of this Office to the contrary is disapproved**

This Office has previously opined that prevailing wages must be paid on projects utilizing TransNet funds. *See* 1990 City Att'y MOL 125. That opinion was based upon an interpretation of the language and history of Proposition A that the degree of state involvement

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<sup>00</sup> However, City projects on streets and roadways that are within the City but also constitute part of a state highway could be considered matters of statewide concern, thus requiring payment of prevailing wages. *See McGuire*, 2 Cal. 2d 115.

<sup>01</sup> The aforementioned caveat 11 also applies to this conclusion.

in the Proposition A arena was such that it rendered the City's TransNet projects to be more than purely municipal affairs. *Id.* at 132. Given that the TransNet tax and program was created by state legislation and that the Commission, an extra-City agency, was charged with administering the TransNet program, which included duties such as approving projects and allocating funds, the Office concluded that significant state involvement existed.

**While the Office's prior analysis correctly identified the proper area of inquiry, that analysis did not sufficiently examine the level of state involvement. As discussed above, the Commission's role in TransNet is limited. The Commission does not have the amount of discretion that the state agency did in *McGuire* with respect to approving projects. Nor does it have much discretion with respect to allocating funds, because TransNet has a discrete formula to handle the distribution of funds. Based on the minimal state involvement in the City's TransNet-funded local street and road work projects, and the localized scope and impact of those projects, they are firmly within the realm of municipal affairs. Therefore, this Office's prior opinion to the contrary is disapproved.**

### CONCLUSION

With a few possible exceptions, the City's local street and road work projects that are funded with TransNet monies are matters that fall squarely within the realm of the City's municipal affairs because, in general, public works projects involving local streets traditionally have been considered as such, significant state involvement is absent, and their scope and impact is of a local nature. As municipal affairs, they are therefore exempt from the requirements of the state's prevailing wage law.

Notwithstanding the following, each road project should be reviewed on a case-by-case basis to determine whether its scope, impact, purpose, and nature are local, as opposed to regional or statewide.

MICHAEL J. AGUIRRE, City Attorney

By

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ML-2005-23

Attachments: Appendix A,B,C