

March 29, 2010

Judy Bowers, Manager  
And Jim Bowers, Manager  
JMB Properties – Oregon, LLC  
1755 Garland Ln  
Boulder, CO 80304

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Tenant Improvements Project at 1175 Court Street, NE, Salem Oregon  
Requested by: Judy Bowers and Jim Bowers

Dear Ms. and Mr. Bowers:

On March 4, 2010, you submitted a request asking if the Prevailing Wage Rate law would apply to tenant improvements in the office building located at 1175 Court Street, NE in Salem, Oregon. Sufficient information to make a determination was received on March 24, 2010, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. JMB Properties-Oregon, LLC (JMB) is a foreign limited liability company, located in Colorado, and was first registered with the Oregon Secretary of State Corporation Division in 2004.
2. JMB is the owner of the office building located at 1175 Court Street, NE in Salem, Oregon. The office building is a two-story building consisting of a total of approximately 14,000 square feet. The elevator and the HVAC, solar voltaic electric, and solar hot water systems have been installed. Restrooms were completed in 2008. All of the exterior construction work has been completed. The City of Salem issued a certificate of occupancy for the “warm shell” of the building on September 28, 2008.
3. The “tenant improvements” consist of construction of the internal building space. According to the owner, specific improvements to be made, “in order for a tenant to occupy the building” include, but are not limited to, carpeting; ceilings; electrical, including fixtures; framing for interior walls, partitions and doors; HVAC distribution conduits; fire sprinklers, painting; and plumbing for break room, etc.
4. JMB is interested in leasing the building to a public agency. At the time the initial request for a determination was made, two different government agencies

were under consideration as a tenant of the building. If either of the agencies lease the building, it is likely that the agency would be occupying the entire building.

5. JMB will be responsible for the funding and installation of the tenant improvements up to \$500,000. The estimated cost of the improvements is \$473,307.20. No lease documents have been drafted at this time; however, if the cost of the improvements exceeds \$500,000, JMB may need to negotiate. At this time no funds of a public agency will be directly or indirectly used on this project.

## **CONCLUSIONS OF LAW**

1. ORS 279C.800(6)(b) excludes from the definition of public works “(t)he reconstruction or renovation of privately owned property that is leased by a public agency.” However, the elements of the interior structure that have been described as “tenant improvements” do not yet exist and are arguably part of the initial construction of the building. Therefore, because the project at 1175 Court Street, NE in Salem Oregon is construction of a privately owned building or structure in which over 25 percent or more of the square footage of the completed project will be occupied or used by a public agency, the definition of “public works” under ORS 279C.800(6)(a)(C) will apply to the project.
2. Pursuant to ORS 279C.810(2)(b), prevailing wage rate laws (ORS 279C.800 to 27C.870) do not apply to projects for which no funds of a public agency are directly or indirectly used. This exemption applies as long as no public funds are used on this project.

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the tenant improvement project at 1175 Court Street, NE in Salem Oregon.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

## **REQUEST FOR A RECONSIDERATION**

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed.

A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

## **RIGHT TO A HEARING**

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator  
Wage and Hour Division  
Bureau of Labor and Industries  
800 NE Oregon St., Suite 1045  
Portland, Oregon 97232

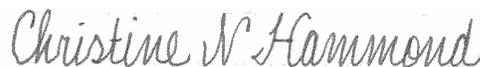
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: March 29, 2010

Brad Avakian, Commissioner  
Bureau of Labor and Industries



Christine N. Hammond, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On March 29, 2010, I mailed the Prevailing Wage Rate Determination for the tenant improvement project at 1175 Court Street, NE in Salem Oregon to the requestor, interested parties and public agencies associated with the project, as follows:

Judy Bowers, Manager  
And Jim Bowers, Manager  
JMB Properties – Oregon, LLC  
1755 Garland Ln  
Boulder, CO 80304

Kathryn Aylward,  
Contract and Business Services Director  
Office of Public Defense Services  
1320 Capitol Street NE,  
Salem, OR 97301-7869

Virginia Carey, Facilities Manager  
Department of Transportation  
885 Airport Road SE, Bldg X  
Salem, OR 97301-4790

Diana Yashar, Senior Leasing and Property Agent  
Department of Administrative Services  
Facilities Division  
1225 Ferry St SE U100  
Salem, OR 97301-4281

Dave Cozzie, Leasing and Property Agent  
Department of Administrative Services  
Facilities Division  
1225 Ferry St SE U100  
Salem, OR 97301-4281

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Susan Wooley  
PWR Technical Assistance Coordinator  
Wage and Hour Division  
Bureau of Labor and Industries