Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

September 26, 2014

Gaelen McAllister
Resource Development Manager
Garten Services, Inc.
PO Box 13970
Salem, OR 97309

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Materials Recovery Facility
Requested by: Garten Services, Inc.

Dear Ms. McAllister:

On September 25, 2014, you submitted a request on behalf of Garten Services, Inc., asking if the Prevailing Wage Rate law would apply to the proposed Materials Recovery Facility project. Sufficient information to make a determination was received on September 25, 2014, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Garten Services, Inc. ("Garten"), a private non-profit entity, owns a materials recovery facility located at 3334 Industrial Way NE in Salem, Oregon.

2. Garten will be upgrading the facility with new recycling equipment. Other improvements include interior modifications for the new machinery, electrical upgrades, and pavement improvements. All work will be contracted through Garten.

3. The total project cost is $2,100,000. The project will use $264,940 in funds of a public agency in the form of a Community Development Block Grant given by the City of Salem. Other funding to be used on the project includes a grant for $1,580,800 from the U.S. Department of Commerce Economic Development Administration, as well as funding from private foundations and Garten international funds.

CONCLUSIONS OF LAW

1. The project will not be carried on or contracted for by a public agency. Therefore, the project does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).

2. The project is privately owned and uses funds of a private entity, but will not use $750,000 or more in funds of a public agency. Therefore, the project does not meet the definition of "public works" under ORS 279C.800(6)(a)(B).

3. No public agency will occupy or use any of the square footage of the completed project. Therefore, the project does not meet the definition of "public works" under ORS 279C.800(6)(a)(C).

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 Materials Recovery Facility project.

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, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 order 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.

Date: September 26, 2014

Brad Avakian, Commissioner
Bureau of Labor and Industries

Gerhard Taeubel

Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On September 26, 2014, I mailed the Prevailing Wage Rate Determination for the Materials Recovery Facility project to the requestor and associated public agencies, as follows:

Gaelen McAllister
Resource Development Manager
Garten Services, Inc.
PO Box 13970
Salem, OR 97309

Rena Peck
Urban Development Department
City of Salem
350 Commercial Street SE
Salem, OR 97301

Brian Alvis, Project Engineer
U.S. Department of Commerce
Economic Development Administration
915 Second Avenue, Room 1890
Seattle, Washington 98174-1012

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