



July 1, 2013

Darrin Eckman, P.E.
Tenneson Engineering Corporation
3313 West 2nd Street, Suite 100
The Dalles, OR 97058

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Mosier Tank No. 4
Requested by: Tenneson Engineering Corporation

Dear Mr. Eckman:

On June 21, 2013 you submitted a request on behalf of Tenneson Engineering Corporation asking if the Prevailing Wage Rate law would apply to the Mosier Tank No. 4 project ("project"). Sufficient information to make a determination was received on June 27, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. The City of Mosier ("City"), Mosier Heights LLC ("Mosier Heights") and Mosier Bluffs LLC ("Mosier Bluffs") are funding the construction of a 178,000 gallon concrete water tank and associated site work that will provide potable water service to the City. Mosier Heights LLC and Mosier Bluffs LLC are private companies. The City of Mosier is a public agency.
2. Mosier Heights LLC is the owner and developer of the Tanawashee Subdivision located in Mosier. Mosier Bluffs is the owner and developer of the Mosier Bluffs Subdivision located in Mosier. The City approved several modifications to the Mosier Bluffs Subdivision development, and based on the conditions of approval, among other conditions, the City required that Mosier Bluffs construct an over-sized water tank on the Mosier Bluffs property.

PORTLAND

800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

SALEM

3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE

1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND

Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
(541) 322-2435
FAX (541) 389-8265

Oregon Relay TTY:711

MEDFORD

Apprenticeship and Training
119 N Oakdale Ave.
Medford, OR 97501-2629
(541) 776-6201
FAX (541) 776-6284



3. Because the water tank contemplated by the City and Mosier Bluffs will be larger than necessary to serve the needs of the Mosier Bluffs Subdivision, and represents a benefit to the Tanawashee Subdivision and to the City's municipal water system, Mosier Heights, Mosier Bluffs and the City have agreed to collaboratively finance, design and construct the water reservoir and all related improvements and necessary alterations to the City's municipal water system.
4. Mosier Heights, Mosier Bluffs and the City have signed a construction agreement that provides that the project will be constructed by Mosier Heights on privately owned land (Tract B of Mosier Bluffs Phase 2) and that the parties will share the cost of designing and constructing the project with the City paying 44% of the total project cost, Mosier Heights paying 56% of the total project cost and Mosier Bluffs contributing the real property upon which the project will be constructed.
5. The construction agreement requires Mosier Bluffs to convey title of the property to Mosier Heights prior to construction of the project.
6. The construction agreement states that Mosier Heights will complete the design and construction of the project, with oversight by the City Engineer. The agreement requires Mosier Heights to hire Tenneson Engineering Corporation to design the project. Under the agreement, design drawings for the project will be submitted to the City Engineer for review and approval. The agreement states that the City Engineer has already approved the construction contractor hired by Mosier Heights.
7. The City will design, finance and construct, with public funds, various off-site water system improvements that are necessary to integrate the project into the City's existing water system.
8. Within three days after the City certifies substantial completion of the project, the project and property will be deeded to the City for ownership and operation. At that time, the project will become part of the City's water system because the City is the water purveyor and is responsible to supply potable water to its residents.
9. The project is estimated to cost \$350,000. The City and Mosier Heights have established and funded a project-specific bank account and require signatures from both parties on any checks issued. Funding for the project includes the following sources:

- a. Funds of a public agency: \$154,000 (City of Mosier)
- b. Other Funds: \$196,000 (Mosier Heights LLC)

CONCLUSION OF LAW:

1. The proposed project meets the definition of “public works” under ORS 279C.800(6)(a)(A) because the Mosier Tank No. 4 project is a project for the construction of a water tank and associated site work that will be carried on or contracted for by the City of Mosier and that will use funds of a public agency.

Although Mosier Heights has contracted directly with a construction contractor, the City, Mosier Heights and Mosier Bluffs have a construction agreement that details obligations pertaining to the construction of the tank and associated site work. This construction agreement constitutes a contract for construction. A public agency “contracts for” a project if the agency enters into a binding construction agreement for the project, even if the agreement is not with the construction contractor directly.

The City also will carry on for the construction of the water tank because the City will have substantial control over the project. Here, the City has approval authority over the design drawings and has approved the construction contractor hired by Mosier Heights. The City is also funding 44% of the project and checks issued for the project require signatures from both the City and Mosier Heights. Finally, because the City will ultimately own and operate the project, the City will be designing and constructing off-site water system improvements to integrate the project into the City’s water system.

Therefore, the City is carrying on and contracting for the construction of the Mosier Tank No. 4 project and the definition of “public works” under ORS 279C.800(6)(a)(A) applies.

DETERMINATION:

The Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed Mosier Tank No. 4 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 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, OR 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: July 1, 2013

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

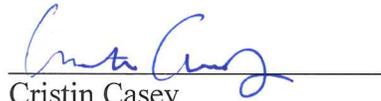
On July 1, 2013, I mailed the Prevailing Wage Rate Determination for the Mosier Tank No. 4 project to the requestor and affected agency, as follows:

Darrin Eckman, P.E.
Tenneson Engineering Corporation
3313 West 2nd Street, Suite 100
The Dalles, OR 97058

Certified Mail – Return Receipt Requested
Article #: 7012 1010 0001 2377 9812

City of Mosier
Attn: John Grim
P.O. Box 456
Mosier, OR 97040

Certified Mail – Return Receipt Requested
Article #: 7012 1010 0001 2377 9805



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries