



July 5, 2012

Eric W. Jamieson
Garrett Hemann Robertson PC
Willamette Professional Center
1011 Commercial Street NE
Salem, OR 97308-0749

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Vernonia School Deconstruction and Replacement Park Construction
Requested by: Garrett Hemann Robertson PC

Dear Mr. Jamieson:

On May 29, 2012, we received a coverage determination request you submitted on behalf of Vernonia School District, asking if the Prevailing Wage Rate law would apply to the demolition and deconstruction of the School District's former elementary, middle and high schools. Sufficient information to make a determination was received on June 28, 2012, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. In December 2007, the elementary, middle and high schools in Vernonia School District, all located on the same school campus, were severely flooded. Columbia County, on behalf of the School District, requested and was awarded a grant of approximately \$15,000,000 in FEMA funds through the Oregon Emergency Management's Flood Mitigation Assistance Program to acquire and demolish the existing schools, and relocate them out of the flood plain. The School District was responsible to implement the grant. The location chosen for the new school site, known as the New School Complex, was at the time occupied by Spencer Park, a public park owned by the City of Vernonia (the "City").
2. Spencer Park was originally developed using National Park Service ("NPS") Land and Water Conservation Fund ("LWCF") grant dollars. NPS rules require that any conversion of park lands that were developed with LWCF grant dollars be replaced in kind. Therefore, in order to build the New School Complex on the

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Spencer Park location, the School District was required to replace the park with a park of approximately the same size, monetary value and improvements. It was decided that the replacement park would be built at the former school site, and would also be called Spencer Park.

3. A Request for Proposal for the “Spencer Park Building Deconstruction” was issued by the School District on March 20, 2012, for the deconstruction and demolition of the former elementary, middle and high school. The work to be done includes “asbestos abatement, complete deconstruction and demolition of structures and features, reuse, recycling, removal of hazardous materials, and related procedures, except as ‘save and protect’ items” that are identified by the School District. The “save and protect” items include a covered basketball area, a public restroom/concessions stand, grandstands, and the existing parking area. In the original request for a coverage determination, it was stated the School District would be completing improvements to flood-proof the property not demolished. However, in an email dated June 28, 2012, you indicated this was not accurate and the School District would make no repairs, renovations or improvements to the restrooms, concession stand, grandstand or covered basketball area.
4. A Memorandum of Agreement between the Federal Emergency Management Agency, the Oregon State Historic Preservation Office, the Oregon Office of Emergency Management, Columbia County, and the School District, signed in November 2010, requires the School District to construct an exhibit/education panel on the replacement park site that incorporates salvaged architectural elements from the former school buildings.
5. In an Intergovernmental Agreement between the City of Vernonia and the School District, signed in November 2010, the School District agreed to work with the City to plan and construct the “Replacement Park.” The School District is to coordinate with the City to hire a landscape architect/parks planner to prepare plans and specifications for the Replacement Park, including bid documents. The District will be responsible for “developing a competitive bid package for construction of the Replacement Park and Replacement Facility, awarding the contract for construction, monitoring and managing the contractor during construction, and making all payments to the contractor as required by the construction contract.”

Although requested, the specifications for the Replacement Park were not provided. However, in your letter dated May 23, 2012, you stated the School District will “put in a baseball and soccer field” on the Replacement Park property. In your email dated June 28, 2012, you clarified that the work the District is responsible for will include the removal of the existing soil stockpile from the New School Complex, transporting and spreading that soil at the Replacement Park site, installing two gravel pathways to connect the existing

parking areas to the site amenities, and installation of a backstop and wooden dugouts for the baseball field.

6. The approximate costs for this project are:

| | |
|--------------------------------------|------------------|
| Demolition Work | \$ 467,400 |
| Earthwork | \$ 475,000 |
| Gravel paths, backstop and dugout | \$ 110,000 |
| Design Contingency | <u>\$ 58,500</u> |
| | \$1,110,900 |

CONCLUSIONS OF LAW:

1. The proposed project is a publicly-owned improvement that involves construction, reconstruction and/or major renovation, and is being carried on and contracted for by a public agency to serve the public interest. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(A). A project that includes demolition only (no construction, reconstruction, renovation and/or painting) does not meet the definition of “public works” under ORS 279C.800(6)(a)(A) and therefore would not be subject to the prevailing wage rate law. However, in addition to demolition, this project includes construction, reconstruction and/or renovation of the new Spencer Park.
2. The project will use public funds, and the total project cost will exceed \$50,000. Therefore, no exemptions from the prevailing wage rate law under ORS 279C.810(2) apply to this project.
3. Pursuant to ORS 279C.827(1), a public agency is prohibited from dividing a project, and therefore, both the deconstruction of the former schools and the construction of the replacement park must be considered one single project subject to the prevailing wage rate law.

DETERMINATION:

Based on the foregoing, the Prevailing Wage Rate law, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed Vernonia School Deconstruction and Replacement Park Construction 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 5, 2012

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries

Christine N. Hammond

CHRISTINE N. HAMMOND,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On July 5, 2012, I mailed the Prevailing Wage Rate Determination for the Vernonia School Deconstruction and Replacement Park Construction project to the requestor and associated public agency, as follows:

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Salem, OR 97308-0749

Dr. Ken Cox, Superintendent
Vernonia School District
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Cristin Casey
PWR Compliance Specialist
Wage and Hour Division
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