



June 29, 2016

Kevin W Merwin  
Noble Development Company IX, LLC  
2888 Crescent Avenue  
Eugene, OR 97408

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: 2080 Laura Street  
Requested by: Noble Development Company IX, LLC

Dear Mr. Merwin:

On May 16, 2016, you submitted a request asking whether a proposed project is subject to the prevailing wage rate law. Sufficient information to make a determination was received on June 27, 2016, and therefore, the commissioner issues the following determination:

### FINDINGS OF FACT

1. The Oregon Department of Administrative Services (“DAS”) issued a Request for Information (“RFI”) on December 11, 2015, for leasable office facilities in the Eugene/Springfield Oregon area to be leased by the Oregon Department of Transportation (“ODOT”) for general office use. The RFI specified that “the State of Oregon will consider build to suits but give preference for existing buildings in target area...”
2. On June 24, 2016, ODOT entered into a nineteen years and eleven months lease with Noble Development Company IX, LLC (“Noble Development”), a private entity, to lease 100 percent of a new commercial building that Noble Development intends to construct on privately owned property located at 2080 Laura Street in Springfield, Oregon.
3. Separate from, but “attached to and part of” the lease, a Work Letter requires Noble Development, acting through its general contractor, to “construct on the Property the improvements...set forth in the Project Proposal...” The “Project Proposal” contains the tenant improvements requested by ODOT.
4. The total project cost will be more than \$50,000.
5. No funds of a public agency will be directly or indirectly used.

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## CONCLUSIONS OF LAW

1. Under ORS 279C.800(6)(b)(A), “public works” does not include the reconstruction or renovation of privately owned property that a public agency leases. “Reconstruction or renovation of privately owned property which is leased by a public agency” is defined under OAR 839-025-0004(23) as including “improvements of all types within the framework or footprint of an existing building or structure.” In this case, there is no existing building, therefore the allowance under ORS 279C.800(6)(b)(A) does not apply to the project.
2. The project includes construction, reconstruction, major renovation or painting of a building and is being contracted for by ODOT through their lease agreement with Noble Development. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(A).
3. The project uses funds of a private entity for constructing a privately owned building in which a public agency will occupy 25 percent or more of the square footage of the completed project. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(C).
4. ORS 279C.810(2)(a) provides that the Prevailing Wage Rate laws will not apply to projects for which the contract price does not exceed \$50,000. The cost of the project will exceed \$50,000; therefore, this exemption does not apply to the project.
5. ORS 279C.810(2)(b) provides that the Prevailing Wage Rate laws will not apply to projects for which no funds of a public agency are directly or indirectly used.
6. No other exemption from the Prevailing Wage Rate laws under ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, apply to the 2080 Laura Street 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 2080 Laura Street 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 either by 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: June 29, 2016

Brad Avakian, Commissioner  
Bureau of Labor and Industries



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

## Certificate of Service

On June 29, 2016, I mailed, by certified mail, the Prevailing Wage Rate Determination for the 2080 Laura Street project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

Kevin W Merwin  
Noble Development Company IX, LLC  
2888 Crescent Avenue  
Eugene, OR 97408

Joshua Crain  
Leasing and Property Agent  
Department of Administrative Services  
1225 Ferry St SE U100  
Salem, OR 97301

Bryant D. Bischof  
Facilities Unit Manager  
ODOT Facilities Services Branch  
200 Hawthorne SE- Suite B240  
Salem, Oregon 97301-5192

Peter Robles  
Project Manager- Space Planning/Leasing  
ODOT Facilities Services Branch  
200 Hawthorne SE- Suite B240  
Salem, Oregon 97301-5192

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Hannah Wood, Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries