



May 6, 2013

Tony Hendryx
Regional Vice President
Ovations Food Services
One Center Court – Suite 150
Portland, OR 97227

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Food Service Equipment at Gordon Faber Recreational
Complex/Hillsboro Hops Stadium
Requested by: Ovations Food Services, LLC

Dear Mr. Hendryx:

On April 29, 2013 you submitted a request on behalf of Ovations Food Services, LLC asking if the Prevailing Wage Rate law would apply to the Food Service Equipment at Gordon Faber Recreational Complex/Hillsboro Hops Stadium project (“project”). Sufficient information to make a determination was received on May 3, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. The City of Hillsboro’s baseball stadium project is a public works project that involves the construction of a new baseball stadium facility. New construction at the Gordon Faber Recreational Complex/Hillsboro Hops Stadium (“facility”) is scheduled to be completed by June, 2013.
2. Short Season, LLC owns the Hillsboro Hops Minor League Single-A Baseball Club (“Hillsboro Hops”), for which the City of Hillsboro (“City”) is constructing the facility. Use of the baseball stadium facility will be licensed to Short Season to serve as the home facility for the Hillsboro Hops.

PORTLAND
800 NE Oregon St. Suite 1045
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(971) 673-0761
Fax (971) 673-0762

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Eugene, OR 97401-7103
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FAX (541) 686-7980

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FAX (541) 776-6284

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3. The City's baseball stadium project involves new construction that is abutted to an existing football field on the project site. The City's project includes new construction of concessions stands on what will be the baseball stadium's first base line. The existing football field and the new baseball stadium will share the existing football concessions which are located on what will be the baseball stadium's third base line.
4. Ovations Food Services, LLC ("Ovations") is in the business of managing and operating food, beverage, novelty and merchandise concessions services and catering services. Short Season has contracted with Ovations to manage and operate the food and beverage concessions and catering services at the facility.
5. Ovations has been contracted by Short Season to make modifications to the new and existing concessions stands at the facility. All modifications are subject to the City's approval and City approval has already been obtained.
6. The project will involve the installation of food and beverage equipment to the new first base line concessions stands and the modification of the existing concessions stands on the third base line. The modifications will include the upgrading of electrical, plumbing and HVAC systems to accommodate new restaurant equipment that will be installed.
7. Ovations estimates that their project will cost \$400,000. Funding for the project includes the following sources:
 - a. Funds of a public agency: \$0.00
 - b. Other Funds: \$400,00
 - i. Ovations Food Services - \$250,000
 - ii. Short Season - \$150,000

CONCLUSIONS OF LAW:

1. The "Hillsboro Baseball Stadium" project is a public works project under ORS 279C.800(6)(a)(A) because it is a project for the construction of a new baseball stadium facility that is being carried on and contracted for by the City of Hillsboro.
2. The City will own the facility, but the concessions stands equipment will be owned by Ovations, a private entity. ORS 279C.827(3) provides that if a project

includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner shall divide the project, if appropriate, after applying the considerations set forth in ORS 279C.827(1)(c) and OAR 839-025-0310. Some factors used in making this determination include:

- a. The physical separation of the project structures,
- b. The timing of the work on project phases or structures
- c. The continuity of project contractors and subcontractors working on project parts or phases,
- d. The manner in which the public agency and the contractors administer and implement the project,
- e. Whether a single public works project includes several types of improvements or structures, and
- f. Whether the combined improvements or structures have an overall purpose or function.
- g. Other relevant matters as may arise in any particular case.

A consideration of the factors weighs against dividing the project. Here, the City will own the project site and the concessions equipment will be owned by Ovation. However, there is no physical separation between the City's project and the proposed project because the proposed project involves the modification to concessions stands located within the City's project site. The combined improvements and/or structures have an overall purpose or function in that the proposed project deals with concessions stands within the framework of the City's baseball stadium project. Likewise, because the City owns the project site, the City must approve all modifications. The timing of the project is such that the City's project and the proposed project will be ongoing at the same time. Although the City project and the proposed project each have separate funding sources and each will have separate contracts for construction and separate contractors, these facts alone are not enough to weigh in favor of dividing the project.

DETERMINATION:

Based on the foregoing, the Food Service Equipment at Gordon Faber Recreational Complex/Hillsboro Hops Stadium project may not be divided from the City's Hillsboro Baseball Stadium project into public and private portions.

The Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed construction, reconstruction, major renovation and/or painting of the Food Service Equipment at Gordon Faber Recreational Complex/Hillsboro Hops Stadium 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

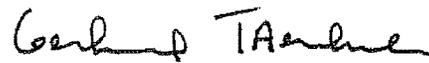
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: May 6, 2013

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

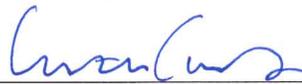
On May 6, 2013, I mailed the Prevailing Wage Rate Determination for the Food Service Equipment at Gordon Faber Recreational Complex/Hillsboro Hops Stadium project to the requestor, as follows:

Tony Hendryx
Regional Vice President
Ovations Food Services
One Center Court – Suite 150
Portland, OR 97227

Certified Mail – Return Receipt Requested
Article #: 7012 2210 0000 1197 7257

Toni Plunkett
Program & Support Manager
City of Hillsboro
150 E. Main Street
Hillsboro, OR 97123

Certified Mail – Return Receipt Requested
Article #: 7012 2210 0000 1197 7240



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