



January 7, 2013

Blair J. Henningsgaard
Attorney at Law
PO Box 1030
Astoria, OR 97103

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Replacement Athletic Facility
Requested by: Blair J. Henningsgaard for Wilkins Consulting

Dear Mr. Henningsgaard:

On December 10, 2012, you submitted a request on behalf of Wilkins Consulting asking if the Prevailing Wage Rate laws would apply to a proposed project to build a replacement athletic facility for Astoria School District. Sufficient information to make such a determination was received on December 11, 2012, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Columbia Memorial Hospital (“the Hospital”), located in Astoria, Oregon, plans to expand its campus to accommodate new cancer treatment facilities and eventually replace its primary care center.
2. The Hospital is adjacent to John Warren Field, a football facility owned and used by Astoria School District (“the District”).¹ The football facility currently includes a football field, stadium, locker room facilities and storage facilities. The proposed hospital expansion would be on this property, and on the adjacent District bus barn facility, but is contingent on the Hospital’s ability to provide a replacement athletic facility for the District.
3. The proposed new location for the athletic facility, known as the “Field Site,” is owned by the City of Astoria (“the City”) and was formerly used as the city dump. The Hospital proposes to develop the Field Site as a new all-weather,

¹ John Warren Field property is owned by the District, subject to a reversionary interest held by the City of Astoria.

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

www.oregon.gov/boli
AN EQUAL OPPORTUNITY EMPLOYER

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



multi-use athletic facility in exchange for clear title to the John Warren Field property.

4. The City and the Hospital will work cooperatively to ensure that the former city dump is closed pursuant to Oregon Department of Environmental Quality regulations prior to construction of the athletic facility. The City will likely have to pay for some of the costs associated with the closure of the former city dump, including possibly capping the site and installing a barrier impervious to gases below the proposed location for the locker room facility.
5. The District will plan and design the new athletic facility, and has contracted with Wilkins Consulting to oversee the project for the District.
6. The Hospital will contract for all construction work associated with the new athletic facility at the Field Site.
7. Once the proposed athletic facility project is complete, the City and the District will transfer to the Hospital “fee simple title free and clear of all liens and encumbrances to the John Warren Field property by statutory warranty deed.” The District will transfer its bus barn facility adjacent to John Warren Field “as is” to the Hospital by Bargain and Sales Deed. The City will transfer the Field Site to the District subject to a reversion in the event that the property is no longer used for athletic purposes. The City will retain a portion of its property as a future site for the possible relocation of the City Shops.
8. The total project cost is unknown, as is the value of John Warren Field and the adjacent bus barn facility property. The Hospital has budgeted approximately \$5,000,000 to build the replacement athletic facility at the Field Site, and it is estimated that this is the value of the public land to be transferred to the Hospital.

CONCLUSIONS OF LAW

1. The proposed project to build a replacement athletic facility for Astoria School District is a construction project that is carried on by a public agency to serve the public interest. Therefore, the project is a “public works” under ORS 279C.800(6)(a)(A).
2. OAR 839-025-0004(9)(a) states “funds of a public agency” includes any funds of a public agency that are directly or indirectly used . OAR 839-025-0004(9)(a)(A) defines “directly used funds of a public agency” as “revenue, money or that which can be valued in money collected for a public agency or derived from a public agency’s immediate custody and control” The John Warren Field property and the bus barn facility can be valued in money, and both are in the District’s custody and control; therefore the transfer of these properties to the Hospital meets the definition of “directly used funds of a public agency” on this project. Additionally,

the City will likely pay for a portion of the costs associated with the closure of the former city dump, which will also be directly used funds of a public agency on this project.

3. The total project cost will exceed \$50,000, and funds of public agencies will be used on the project. Therefore, the exemptions allowed for in ORS 279C.810(2) will not apply to this 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 apply to the proposed project to build a replacement athletic facility for Astoria School District.

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

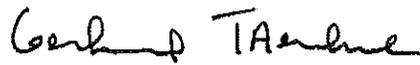
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: January 7, 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 January 7, 2013, I mailed the Prevailing Wage Rate Determination for the proposed project to build a replacement athletic facility for Astoria School District to the requestor, as follows:

Blair J. Henningsgaard
Attorney at Law
PO Box 1030
Astoria, OR 97103



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