



January 8, 2014

Sarah J. Ryan
Mark Crabtree
Jackson Lewis PC
1001 SW 5th Ave, Suite 1205
Portland OR 97204

Re: *Determination of Whether Project is Subject to Prevailing Wage Rate Law*
Project: Robert Lindsey Tower and Parkway Village Apartments
Requested by: Housing Authority of the City of Salem

Dear Ms. Ryan and Mr. Crabtree:

On December 27, 2013, you submitted a request on behalf of the Housing Authority of the City of Salem ("SHA") asking if the Oregon Prevailing Wage Rate Law would apply to the proposed renovations of the Robert Lindsey Tower ("RLT") and Parkway Village Apartments in Salem, Oregon. Sufficient information to make a determination was received on December 30, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. SHA, a division of the City of Salem's Urban Development Department, provides affordable rental housing to lower-income Salem residents, seniors, persons with disabilities, and others with unique housing needs. SHA intends to renovate two affordable housing facilities in Salem, Oregon: Robert Lindsey Tower ("RLT") and Parkway Village Apartments.
2. RLT is located at 370 Church Street SE, Salem, Oregon. RLT is an 11-story structure that contains 62 one-bedroom units for low-income seniors. SHA plans renovation work on RLT to begin on April 14, 2014 and to continue through December 2014. SHA contracted with LMC Construction to carry out the renovation of RLT, and LMC Construction will act as the general contractor. Anticipated renovation work includes replacing windows, window coverings, appliances, cabinets, countertops and floor coverings within living units; anticipated external improvements include parking lot and sidewalk repair.
3. Parkway Village Apartments is located at 3103-3167 NE 7th Place, Salem, Oregon. Parkway Village Apartments includes 124 units in ten two- and three-

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3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
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1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
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story buildings. Prior to commencing renovation of Parkway Village Apartments, SHA will partition the property into two separate legal parcels that will be known as Parkway West and Parkway East. SHA plans renovation work on Parkway West and Parkway East to begin on April 14, 2014 and to continue through December 2014. SHA contracted with LMC Construction to renovate Parkway West and Parkway East, and LMC Construction will act as the general contractor. Anticipated renovation work includes replacing windows, window coverings, appliances, cabinets, countertops and floor coverings within living units; anticipated external improvements include parking lot and sidewalk repair, ground re-grading, and the installation of new storm drains.

4. RLT is currently owned by SHA. In March 2014, prior to the commencement of renovation, SHA will transfer ownership of RLT to Robert Lindsey Tower Housing LLC, of which SHA is a managing member. The total cost of the renovation work for RLT is \$10,771,762; the funding for the RLT renovation includes HUD funds. Funding sources are as follows:
 - a. Funds from a public agency: \$1,800,034
 - i. HUD Public Housing Operating Reserves: \$1,000,000
 - ii. HUD Capital Fund Financing: \$634,500
 - iii. Federal Replacement Housing Funding: \$165,534
 - b. Other funds: \$8,971,728
 - i. Low Income Housing Tax Credit (LIHTC): \$3,528,110
 - ii. Owner Equity: \$3,998,250
 - iii. Permanent Mortgage: \$1,445,368
5. Parkway Village Apartments is currently owned by Parkway Village Housing LLC, of which SHA is a managing partner. Prior to the renovation of Parkway West, Enterprise Community Investment will acquire a 99.99% interest in the property (although Parkway Village Housing LLC will retain ownership); Parkway Village Housing LLC will transfer ownership of Parkway East to Robert Lindsey Tower Housing LLC, of which SHA is a managing member, prior to commencement of that property's renovation. The total cost to renovate Parkway West and Parkway East is \$11,792,913 and \$6,452,678, respectively. Funding sources are as follows:

PARKWAY WEST

- a. Funds from a public agency: \$250,000
 - i. Community Development Block Grant (City of Salem): \$250,000
- b. Other funds: \$11,542,913
 - i. Low Income Housing Tax Credit (LIHTC): \$7,584,997
 - ii. Owner Equity: \$531,891

- iii. Permanent Mortgage: \$2,541,904
- iv. Deferred Developer Fee Loan: \$299,594
- v. Operation Cash Flow During Construction: \$165,085
- vi. Property Tax Exemption: \$58,509
- vii. Waived Chase Prepayment Fee: \$117,986
- viii. Project Reserves: 242,947

PARKWAY EAST

- a. Funds from a public agency: \$636,450
 - i. Community Development Block Grant (City of Salem): \$636,450
- b. Other funds: \$5,816,228
 - i. Low Income Housing Tax Credit (LIHTC): \$2,573,314
 - ii. Owner Equity: \$958,780
 - iii. Permanent Mortgage: \$1,586,074
 - iv. Deferred Developer Fee Loan: \$461,898
 - v. Operation Cash Flow During Construction: \$88,293
 - vi. Property Tax Exemption: \$39,466
 - vii. Waived Chase Prepayment Fee: \$72,089
 - viii. Project Reserves: \$36,314

CONCLUSIONS OF LAW:

1. The renovation work to be performed at RLT, Parkway West, and Parkway East constitutes one project and BOLI will treat these renovations as one project pursuant to ORS 279C.827. The renovation work at RLT, Parkway West, and Parkway East is slated to begin on the same day – April 14, 2014. The renovation work is expected to continue through the same end date at all sites – sometime in December 2014. SHA selected the same contractor, LMC Construction, as the general contractor for the RLT site and the Parkway West/East sites. The RLT and Parkway renovations are also administered similarly by SHA. For example, prior to beginning renovation, SHA will transfer ownership of RLT to Robert Lindsey Tower Housing LLC, of which SHA will serve as a managing member. Similarly, prior to beginning renovation of the Parkway East site, Parkway Village Housing LLC will transfer ownership of Parkway East to Robert Lindsey Tower Housing LLC, of which SHA will serve as managing member. LMC Construction will perform much of the same renovation work at both the RLT and Parkway West/East sites, including replacing windows, window coverings, appliances, cabinets, countertops, floor coverings, and improving sprinkler systems. Additionally, the renovations of RLT and the Parkway West/East sites serve the same function for SHA: the improvement of existing housing options for the populations SHA serves. In sum, a thorough application of the factors outlined in ORS 279C.827(c)(A-F) to the facts of this case weighs against

dividing the RLT, Parkway West, and Parkway East renovations into separate projects.

2. The RLT/Parkway West/Parkway East Project is a “public work” as defined in Oregon law. ORS 279C.800(6)(a)(A) defines “public works” as roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest. The RLT/Parkway West/Parkway East Project is carried on and contracted for by the Salem Housing Authority, which is a public agency, and the project’s aim is to serve the public interest by providing affordable housing to populations in need.
3. Oregon prevailing wage law will apply to the RLT/Parkway West/Parkway East Project. Since the RLT/Parkway West/Parkway East Project is a public work, only an exemption would remove the Project from being covered by Oregon prevailing wage law. The exemption in ORS 279C.810(2)(d)(D) for residential construction of affordable housing does not apply to the project as a whole because RLT is more than four stories tall. No other exemption under ORS 279C.810(2) applies to the 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 RLT/Parkway West/Parkway East 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

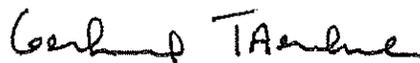
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: January 8, 2014

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 8, 2014, I mailed the Prevailing Wage Rate Determination for the
RLT/Parkway West/Parkway East project to the requestor and affected agencies below:

Sarah J. Ryan
Mark Crabtree
Jackson Lewis PC
1001 SW 5th Ave., Suite 1205
Portland OR 97204

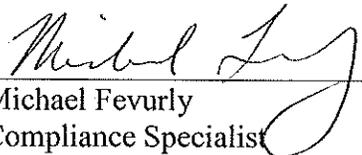
Certified Mail – Return Receipt Requested
Article #: 7012-3460-0001-3059-8999

Rena Peck
City of Salem
350 Commercial Street NE
Salem OR 97301

Certified Mail – Return Receipt Requested
Article #: 7012-3460-0001-3059-8982

Philip Dochow
HDC Community Fund LLC
847 NE 19th Ave., Suite 150
Portland OR 97232

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Michael Fevurly
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries