June 13, 2019

Nicole Utz, Housing Services Supervisor
Salem Housing Authority
360 Church Street SE
Salem, OR 97301

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws
Project: Salem Housing Preservation 4 Percent
Requested by: Salem Housing Authority

Dear Ms. Utz:

On June 11, 2019, the Bureau of Labor and Industries received the request you submitted asking if the Prevailing Wage Rate laws would apply to a proposed project referred to as Salem Housing Preservation 4 Percent. Sufficient information to make a determination was received on June 12, 2019, and therefore, the commissioner issues the following determination:

FINDING OF FACT

1. The Salem Housing Authority (the “Housing Authority”), a public agency under ORS 279C.800(5), currently owns two public housing properties in Salem, Oregon: Livingston Park Village and Northgate Park Village. The Housing Authority proposes to renovate both properties, and refers to the project to do so as Salem Housing Preservation 4 Percent (the “Project”).

2. At the time of financial closing and at the start of construction, ownership of both properties will be transferred to Salem Housing Preservation 4 Percent Limited Partnership (the “Partnership”). The General Partner of the Partnership is the Housing Authority, with a 0.1 percent ownership interest. The Limited Partner in the Partnership is U.S. Bancorp Community Development Corporation, with a 99.9 percent ownership interest.

3. The properties consist of multiple buildings not more than two stories in height, with a total of 50 three-, four-, and five-bedroom units. The properties include on-site amenities such as playgrounds, courtyards, basketball courts, and a community building. The properties do not include any commercial space.
4. The work to be done on the Project includes the rehabilitation of the buildings' exterior envelope and some interior improvements.

5. It is expected that 100 percent of the units will be restricted to occupants with incomes no greater than 60 percent of the area median.

6. The Project will use the following funds of a public agency:
   $ 5,560,314 Seller Take-back Loan
   $ 1,725,000 Housing Preservation Funds
   $  750,000 Public Housing Operating Reserves
   $  626,000 Sponsor Loan
   $  400,100 General Partner Capital Contribution
   $  291,029 Deferred Developer Fee

Other funds to be used for the Project include:
   $  5,136,341 4% Low Income Housing Tax Credit Equity
   $  3,333,123 Permanent Loan (U.S. Bank)
   $  150,000 Cash Flow During Rehab
   $   23,000 Energy Trust of Oregon

CONCLUSIONS OF LAW

1. The Project meets the definition of "residential construction" in ORS 279C.810(2)(d)(D), as the Project includes the reconstruction and renovation of apartment buildings not more than four stories in height, and does not include any commercial space.

2. The Project will be owned by a limited partnership in which Salem Housing Authority, a public agency, is a minority member. The public agency will not be a majority owner in the limited partnership, and therefore, the Project meets the definition of "privately owned" in ORS 279C.810(2)(d)(C)(ii).

3. The Project meets the definition of "affordable housing" in ORS 279C.810(2)(d)(A), as the Project will serve occupants whose incomes are not greater than 60 percent of the area median income. The Project will "predominately" provide affordable housing, as 60 percent or more of the units will be for affordable housing. ORS 279C.810(2)(d)(B).

4. Pursuant to ORS 279C.810(2)(d), the Prevailing Wage Rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. Even if the Project meets the definition of "public works" under ORS 279C.80C(6)(a), it will be exempt from the Prevailing Wage Rate laws.
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 proposed project referred to as Salem Housing Preservation 4 Percent.

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 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 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 waivered 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 13, 2019

Val Hoyle, Commissioner
Bureau of Labor and Industries

Lois Johnson, Interim Administrator
Wage and Hour Division
Bureau of Labor and Industries
Certificate of Service

On June 13, 2019, I mailed the Prevailing Wage Rate Determination for the project referred to as Salem Housing Preservation 4 Percent to the requestor and interested party, as follows:

Nicole Utz, Housing Services Supervisor
Salem Housing Authority
360 Church Street SE
Salem, OR 97301

Debbie Page, Construction Project Manager
Housing Development Center
847 NE 19th Avenue, Suite 150
Portland, OR 97232

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