June 22, 2019

Michael J. Swanson
City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws
Project: The Balsiger Property
Requested by: City of Klamath Falls

Dear Mr. Swanson:

On September 4, 2019, the Bureau of Labor and Industries ("BOLI") received the request you submitted asking if the Prevailing Wage Rate laws would apply to the proposed The Balsiger Property project. Sufficient information to make a determination was received on October 17, 2019, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The Balsiger Block (the "Property") is an 88,052 square foot city block (taxlots R-3809-028CC-10700, 10800, 10900, 11000, 11100, 11200, 11300, and 11400) located at the intersection of Main Street and Esplanade Avenue in downtown Klamath Falls, Oregon.

2. On October 8, 2015, the City of Klamath Falls (the "City"), a public agency under ORS 279C.800(5), acquired the Property from Klamath Limited Partnership, LLC for a sale price of $250,000 with an additional $5,600 in transaction costs.

3. In November 2015, the City entered into an Exclusive Negotiating Agreement (ENA) with Tokola Properties, Inc., dba Tokola Properties, a domestic business corporation, ("Tokola") for the redevelopment ("Tokola Redevelopment") of the Property.

4. In December 2015, the City paid Superior Fence $3,594 to secure the Property and prevent public entry. On April 4, 2016, the City contracted Anderson Environmental Contracting LLC to demolish a partially collapsed and structurally unsound building on the Property at the cost of $102,663.
5. In May 2016, the City contracted Foundation Engineering to prepare a geotechnical report at the cost of $21,221 in anticipation of the Tokola Redevelopment.

6. The proposed Tokola Redevelopment of the Property used the following funds of a public agency, totaling $187,721:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/2015</td>
<td>Site Fencing</td>
<td>$3,594</td>
</tr>
<tr>
<td>4/2016</td>
<td>Demolition and Site Preparation</td>
<td>$102,663</td>
</tr>
<tr>
<td>5/2016</td>
<td>Site Geotechnical Report</td>
<td>$21,221</td>
</tr>
<tr>
<td>5/2016</td>
<td>Development Plans and Schematics</td>
<td>$35,750</td>
</tr>
<tr>
<td>10/2016</td>
<td>Hazardous Material Assessment</td>
<td>$3,068</td>
</tr>
<tr>
<td>5/2017</td>
<td>Hazardous Material Removal</td>
<td>$6,075</td>
</tr>
<tr>
<td>10/2017</td>
<td>Economic Consulting</td>
<td>$15,350</td>
</tr>
</tbody>
</table>

7. On January 5, 2017, the ENA between the City and Tokola ended without further extension or the proposed Tokola Redevelopment.

8. In 2017, the City and the Klamath Falls Urban Renewal Agency ("the URA"), a public agency under ORS 279C.800(5), created the Spring Street Urban Renewal District ("District") to encourage private real estate development of a mix of moderate to high intensity urban land uses and design features incorporating housing, office, retail gatherings spaces, and other commercial, civic, or cultural uses. The City, URA, and District collectively are hereinafter referred to as “the Public Agencies.”

9. On December 5, 2018, Adkins Engineering & Surveying, LLP issued to the City at its request an estimate of cost for site preparations necessary to make the Property “shovel-ready” for a developer that included, but was not limited to, aggregate base and the removal of structures and obstructions. Adkins Engineering & Surveying, LLP estimated that the site preparations would cost the City $1,002,795 in 2019.

10. On February 21, 2019, the City and Cody Development Corp., dba project^, a domestic business corporation, (the “Developer”) entered into an ENA with the intent of negotiating a Disposition and Development Agreement (DDA). The City declared its intention to prepare the Property for development regardless of the outcome of the ENA. As an inducement to the Developer for the Property’s redevelopment (the “Project”), the ENA stated that the City would convey the Property to the Developer at a cost of $1 “free and clear of any above ground structures and the reasonable remove [sic] of subservice structures necessary for redevelopment of the site, […] level with structural fill […].”
11. The ENA specified the City’s Base Development Criteria for Negotiations for the Project as follows:

   a. Development of a multi-floor mixed-use development consisting of market rate apartments and commercial space.

   b. Development is to incorporate a mix of residential floor plans, styles and price points to help meet the diverse needs of those seeking an urban living experience in downtown Klamath Falls. Floor plans are to include a combination of townhouses and flats to vary in size from studio units up to two and three-bedroom units with two baths.

   c. Development is to complement and enhance the Historic Main Street environment through appropriate scope and scale of architecture and finishes.

   d. New building facades are to have a strong pedestrian orientation along Main Street and Esplanade Avenue and create a vibrant street presence suitable for this important gateway to the Central Business District.

   e. Parking for residences shall be at a ratio of at least 1:1. Inclusion within the parking district is desired for further flexibility.

   f. Development is to incorporate low-impact development features and site improvements that enhance the building exterior and improve ecological performance. Sustainable building elements and development approaches to be incorporated as feasible including but not limited to construction waste recycling, energy and water efficiency, material selection and ecologically sound site design features.

   g. Site design is to establish a pattern to improve public pedestrian connectivity through the site, particularly between Main Street and Esplanade Avenue.

12. On August 29, 2019, Allison York, Principal Broker/Owner of Windermere Real Estate – Klamath Falls, issued to the City at its request a market value evaluation of the Property. York’s methodology involved comparing the Property to seventeen similar properties sold in Klamath County since 2015 with particular emphasis on the TimberMill Shores development. Based on this comparison, York determined that the Property could sell for between $6.00 to $7.00 per square foot only after demolition of the site structures and clean up. York concluded:

   […] the property has a “negative value” due to the higher costs of demolition and clean-up than a clean site sale price because the clean-up costs are $1,000,000 and the highest sale price of the ground is $600,000. Therefore, it can be argued that the negative value is approximately -$400,000.
13. A draft Agreement for Disposition and Development of Real Property ("Agreement") between the City, the URA, and the Developer includes a change to the ENA's terms regarding the condition of the Property at time of conveyance. The draft Agreement states that the City and the URA will convey the Property in its existing condition to the Developer for the purchase price of $1.

14. The Public Agencies will pay system development charges, connection fees, and some building permits for the Project totaling $275,147.

15. The Project has used the following funds of a public agency, totaling $31,390:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/2018</td>
<td>Market Demand Study Update</td>
<td>$4,000</td>
</tr>
<tr>
<td>8/2018</td>
<td>Site Survey</td>
<td>$6,390</td>
</tr>
<tr>
<td>11/2018</td>
<td>Consulting Firm (preparation of bid for site demolition)</td>
<td>$20,000</td>
</tr>
<tr>
<td>7/2019</td>
<td>Broker's Opinion of Value</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

16. At closing, the City and the URA expect to contribute additional funds of a public agency to the Developer or its designee to be applied to the initial costs of the Project, including demolition and site preparation. The City and the URA plan to make this financial contribution for an amount such that all funds of the Public Agencies do not equal or exceed $750,000.

CONCLUSIONS OF LAW

1. The Project is not being carried on or contracted for by a public agency and, as such, does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).

2. Under ORS 279C.810(1)(a)(B), "funds of a public agency" does not include building and development permit fees paid or waived by the public agency. Therefore, the amounts Public Agencies will pay for system development charges is not considered funds of a public agency used on the Project.

3. Under ORS 279C.810(1)(a)(D), "funds of a public agency" does not include land that a public agency sells to a private entity at fair market value. Under ORS 279C.810(1)(a)(E), "funds of a public agency" does not include the difference between the value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land and the fair market value of the land if the land is not subject to those limitations. According to the Public Agencies, the fair-market value of the land, unencumbered, is $600,000. The fair-market value of the land, as encumbered is ($400,000). While the City and the URA will convey the Property to the Developer at less than fair market value because of the negative value of the land, after taking into consideration the requirement to perform demolition and site preparations, the
difference between the fair market value of the land and the sale price of the land is not considered “funds of a public agency.”

4. Under ORS 279C.800(6)(a)(B), “public works” includes a project that uses $750,000 or more of funds of a public agency for the construction, reconstruction, major renovation, or painting on a road, highway, building, structure, or improvements of any type. The funds of a public agency used on the Tokola Redevelopment are not associated with the Project because the developer and agreements pertaining to the Tokola Redevelopment are not related to the Project. The records of funds of a public agency spent on the Tokola Redevelopment demonstrate that these amounts are not associated with the Project because the Tokola Redevelopment project ended in January 2017. According to the information provided to BOLI, the Project will use at most $749,999 in funds of a public agency. Therefore, the Project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B).

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 The Balsiger Property project.

In the event the value of the land, after taking into account restrictions or limitations the public agency has imposed on the development or use of the land, becomes a positive amount, the Project might use $750,000 or more in funds of a public agency. If the Project receives more than $718,609 in additional funds of a public agency, the Project will use $750,000 or more in funds of a public agency. If the Project uses $750,000 or more in funds of a public agency, the Project will be subject to the Prevailing Wage Rate laws.

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 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: October 22, 2019

Val Hoyle, Commissioner
Bureau of Labor and Industries

Sonia Ramirez, Administrator
Wage and Hour Division
Bureau of Labor and Industries
Certificate of Service

On October 22, 2019, I mailed the Prevailing Wage Rate Determination for the Balsiger Property project to the requestor and interested parties, as follows:

Michael J. Swanson
City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

City Council
500 Klamath Avenue
Klamath Falls, OR 97601

Spring Street URA
500 Klamath Avenue
Klamath Falls, OR 97601

Cody Development Corp.
1116 NW 17th Avenue
Portland, OR 97209

Andy Davis
Stoll Berne
209 SW Oak Street, Suite 500
Portland, OR 97204

Ryan Wisnor
PWR Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries