

Robert Briscoe, Asset Manager  
AG-Meriwether Salem, Corp.  
c/o Meriwether Partners LLC  
1191 Second Street, Suite 1570  
Seattle, WA 98101

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*  
Proposed Project: Capital City Business Center Lease  
Requested by: AG-Meriwether Salem, Corp.

Dear Mr. Briscoe:

On February 26, 2009, you submitted a request on behalf of AG-Meriwether Salem, Corp. (“AG-MS”) asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by March 18, 2009, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. AG-MS, a private entity and owner of the Capital City Business Center building in Salem, Oregon, proposes to enter into a 10-year lease with the Department of Human Services (“DHS”) for approximately 78,000 square feet of this building.
2. The lease between AG-MS and DHS requires DHS to reimburse AG-MS \$2,686,555.20 for part of the cost of tenant improvements. DHS will pay AG-MS \$22,387.96 per month for the life of the lease (120 months) for these costs.
3. The lease between AG-MS and DHS requires AG-MS to construct an outdoor visiting area which will be 759 square feet in size and will be outside the footprint of the existing building. The outdoor visiting area will be made of a concrete pad covered with weather-resistant interlocking playground tiles, and will be surrounded by six-foot high cyclone fencing with privacy slats.

#### **CONCLUSIONS OF LAW**

1. ORS 279C.800(6)(b)(A) excludes from the definition of public works “(t)he reconstruction or renovation of privately owned property that is leased by a public agency.” However, OAR 839-025-0004(23) clarifies that such renovation work “includes improvements of all types within the

framework or footprint of an existing building or structure.” The Capital City Business Center project includes improvements outside the framework or footprint of the existing building. Therefore, the Capital City Business Center project does not meet the definition of “reconstruction or renovation.”

2. OAR 839-025-0004(9)(a)(B) defines “indirectly used funds of a public agency” to mean, “a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter.” An example of indirectly used funds of a public agency in OAR 839-025-0004(9)(a)(B)(i) is “(a)mortising the cost of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease.” This is the scenario required in the lease agreement between AG-MSD and DHS. Therefore, the Capital City Business Center project will indirectly use funds of a public agency.
3. The Capital City Business Center project is intended to be privately owned. \$750,000 or more in funds of a public agency will support the project. Therefore, the definition of a “public works” under ORS 279C.800(6)(a)(B) will apply to this project.
4. None of the exemptions provided for in ORS 279C.810(2) and OAR 839-025-0100 will 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 Capital City Business Center project if improvements are made outside the framework or footprint of the building as part of the 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 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: March 26, 2009

Brad Avakian, Commissioner  
Bureau of Labor and Industries



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Christine N. Hammond, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

### **Certificate of Service**

On March 26, 2009, I mailed, by certified mail, the Prevailing Wage Rate Determination for the proposed Capital City Business Center project to the requestor associated with this project, as follows:

Robert Briscoe, Asset Manager  
AG-Meriwether Salem, Corp.  
c/o Meriwether Partners LLC  
1191 Second Street, Suite 1570  
Seattle, WA 98101

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