



August 22, 2018

Peter Parisot, Deputy Executive Director
Cascade AIDS Project
520 NW Davis Street, Suite 215
Portland, OR 97212

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Prism Health
Requested by: Cascade AIDS Project

Dear Mr. Parisot:

On July 16, 2018, we received the request you submitted on behalf of Cascade AIDS Project, asking if the Prevailing Wage Rate laws would apply to the Prism Health project. Sufficient information to make a determination was received on August 22, 2018, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. In March 2016, Cascade AIDS Project (“CAP”), a private non-profit entity, purchased a building located at 2236 SE Belmont Street in Portland, Oregon. CAP planned to renovate the building to provide space for Prism Health, a primary care clinic focused on serving the LGBTQ+ community. Prism Health is owned and operated by CAP.
2. The purchase price of the property was \$1,610,000. CAP paid \$403,000 of this amount from CAP’s reserve funds, and the remaining \$1,207,000 was paid with a mortgage through Wells Fargo Bank.
3. The renovation of the building (the “Project”) has been divided into phases: Phase One of the Project was to renovate space to build the medical office and clinic space; Phase Two of the Project will be to renovate space to build a pharmacy.
4. The Phase One work included seismically upgrading the building, and renovating the main area for use as a medical office and clinic. CAP contracted with Veridis Construction, Inc., dba B&G Builders, for this work. The work began in October 2016 and principal construction was completed in April 2017. Prism Health opened to the

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public on May 2, 2017. Minor renovation work was done to the front and rear doors in August 2017, and the doors were repainted after the final renovation work was completed. The final Certificate of Occupancy was issued on October 11, 2017. The total cost for Phase One, including acquisition, was \$2,998,468. CAP received a grant of \$100,000 from the City of Portland on January 18, 2017 to “support the renovation” of the building. The remaining costs were paid with CAP’s reserve funds, the Wells Fargo Mortgage noted above, and other bank loans.

5. Phase Two of the Project will be to renovate approximately 1,200 square feet of the building, currently in a “core and shell” condition, to be used as an on-site pharmacy. Work on Phase Two is expected to begin in the spring of 2019, and is estimated to cost \$200,000 - \$250,000.
6. The original construction plans for the Project note that 1,179 square feet of the building will be for the “Future Pharmacy,” and note the pharmacy build-out is under a separate permit. CAP considers the clinic space and the pharmacy space two self-standing components, and knew from the beginning they could run the clinic space with or without the accompanying pharmacy, as they are currently doing. CAP stated that putting the focus on completing the clinic space first allowed them to open it for business sooner and cheaper. They are theoretically capable of deferring the pharmacy indefinitely and the clinic space will continue to function. CAP also stated they don’t have enough data to determine how big the pharmacy needs to be to meet community demand. By opening the clinic space first, they can get a better idea for demand and adjust their plans for the pharmacy accordingly.
7. On February 2, 2017, CAP requested \$2,308,597 in lottery bond funds from the Oregon Legislature to aid in “Capital Construction Costs” for the Project. Through the 2017 Legislature’s Senate Bill 5530, effective July 1, 2017, \$1,000,000 in lottery bond funds was approved “for distribution to the Cascade AIDS Project for acquisition and renovation of a primary care and mental health center for the lesbian, gay, bisexual, transgender, queer, and other minority gender identities and sexual orientation community.” The funds will be deposited in the Oregon Department of Administrative Services (“DAS”) Economic Development Distributions Fund and then distributed to CAP in the form of grant funds.
8. The DAS grant agreement (the “Grant Agreement”), which has not yet been finalized or signed, states CAP shall use the grant funds to “acquire and renovate a primary care and mental health center for the lesbian, gay, bisexual, transgender, queer, and other minority gender identities and sexual orientation community as provided in Oregon Laws Chapter 478, Section 12(2).” The Grant Agreement requires CAP to use disbursements of the grant to pay only “Project Costs in compliance with Grantee’s certifications in its Disbursement Request.” Because CAP has already paid for acquisition of the building and Phase One of the Project, the grant will be used to reimburse CAP for those costs. According to CAP, CAP will reimburse itself in the following order:
 - a. \$403,000 to CAP reserve funds to reimburse for the down payment for acquisition of the building.

- b. \$327,358 for “non-construction” costs that were paid from bank loans. These costs include branding, signage, equipment, architectural, insurance, permitting, security, repairs, environmental, legal, mortgage and closing, networking, and OCHIN.
 - c. The remaining \$269,642 will reimburse CAP for construction costs, unless “BOLI determines this *would* subject [CAP] to the prevailing wage laws.” In that case, CAP would allocate that amount to one of the following:
 - i. Paying down the mortgages on the property, or
 - ii. Holding the remaining \$269,642 in trust, to be spent on the Pharmacy once CAP has the budget to start Phase Two.
9. The Grant Agreement states the bonds are expected to be issued April 10, 2019. CAP should receive the grant funds shortly thereafter.

CONCLUSIONS OF LAW

1. The Project will not be carried on or contracted for by a public agency. Therefore, the Project does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
2. 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 constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure or improvement of any type. The Project has already received \$100,000 in funds of a public agency through the grant from the City of Portland. The purpose of this grant was to “support the renovation of” the building CAP purchased for Prism Health. The Project will receive \$1,000,000 in funds of a public agency through the lottery grant funds approved by 2017’s Senate Bill 5530. The purpose of this grant was for “acquisition and renovation” of Prism Health. Therefore, the project meets the definition of “public works” under ORS 279C.800(6)(a)(B).
3. Under OAR 839-025-0310(5), when a private project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that is already underway becomes a public works project by virtue of the provisions of ORS 279C.800(6)(a)(B), the provisions of 279C.800 to 279C.870 apply prospectively to the project once any public agency commits to the provision of funds for the project. Under Section 35 of Senate Bill 5530, this 2017 Act takes effect July 1, 2017. This is the date a public agency committed funds of a public agency to the Project such that the total amount of funds of a public agency being used on the Project will be \$750,000 or more. The Prevailing Wage Rate laws will therefore apply to any construction, reconstruction, major renovation or painting work done on the Project on or after July 1, 2017.

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 any construction, reconstruction, major renovation or painting performed on the Project on or after July 1, 2017.

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

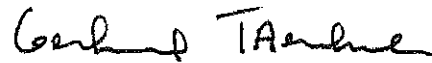
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: August 22, 2018

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On August 22, 2018, I mailed the Prevailing Wage Rate Determination for the Prism

Health project to the requestor, as follows:

Peter Parisot, Deputy Executive Director
Cascade AIDS Project
520 NW Davis Street, Suite 215
Portland, OR 97212



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