STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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January 4, 2008

Richard H. Robblee
Robblee Brennan & Detwiler
2101 Fourth Avenue, Suite 200
Seattle, WA 98121-2392

Re: Monroe YMCA – CTED grant (your file #3249-044)

Dear Mr. Robblee:

This letter will address only a few of the many issues the department has examined related to the Monroe YMCA project and prevailing wage requirements. This determination is based on the known fact set. If the facts change, the answer could be different.

The Monroe YMCA applied for a grant from the Washington State Department of Community, Trade and Economic Development (CTED). The YMCA specified the grant funds were requested for construction of their Monroe facility. In that grant application, the YMCA made a commitment that the prevailing rate of wage would be paid to workers building the project. The legislature included the grant in the capital budget as passed in the 2007 session. The Governor signed the capital budget. Substantial completion of the Monroe YMCA project had not occurred at the time when the capital budget was signed. As of today, CTED has not yet negotiated a contract for the payment of the grant funds for the construction of the Monroe YMCA.

First, where the grant application is specific to funding for construction, and the grant applicant, in the application, commits to the payment of the prevailing rate of wage to the construction workers on the project, the receipt of the grant money would activate a requirement to pay the prevailing rate of wage to the laborers, workers, and mechanics employed in the construction of the project.

Second, the payment of state funds for construction of a project, with the timeline described above, will require the payment of the prevailing rate of pay to the laborers, workers, and mechanics performing work on that project under Chapter 39.12 RCW and RCW 39.04.010.

In the fact set as known, receipt of the CTED grant money will require payment of prevailing wages for the construction of the Monroe YMCA project.

Please let me know if you have any questions.

Sincerely,

David J. Soma
Industrial Statistician
Prevailing Wage Program Manager

cc: Anne Senter, Robblee, Brennan & Detwiler
Daniel Aarthun, CTED
Cass Prindle, Pacific Northwest Regional Council of Carpenters

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April 20, 2007

David Soma
Industrial Statistician
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Re: Monroe YMCA/City of Monroe/CTED/Kirtley-Cole Associates LLC
Our File No. 3249-044

Dear Mr. Soma:

Please find enclosed a prevailing wage complaint form for interested parties, signed and filed by me as attorney for the interested party, the Pacific Northwest Regional Council of Carpenters.

The form lists the necessary background information. I am providing the detail because the form is not well suited to explain this particular situation.

The City of Monroe, for many years, has wanted to construct a community pool for its citizens. The City Council in 2001 passed Ordinance 1240 (unsigned copy attached as Exhibit A) for a resolution to the voters to approve up to $5.1 million for that purpose. That amount would be combined with YMCA contributions of at least $2 million. We are unsure at this time of the precise result of the election, assuming one occurred, or of the disposition of the funds.

In 2002, the Monroe City Council enacted Ordinance No. 1270, which created an irrevocable trust fund "to receive and hold contributions for construction, maintenance, or operation of a community swimming pool" (Exhibit B). We have not yet traced whether any of these funds have passed to the YMCA. Presumably, they will be commingled with City payments due to the YMCA upon completion of the project.

By 2005, plans had changed and the City of Monroe determined to accomplish its public purposes through different means. On October 2005, the City Council passed Resolution 2005/017, authorizing the purchase of "services" from the Snohomish YMCA of up to $140,000 per year for fifteen years (Exhibit C). The justifications for the resolution were (a) the City's finding of "critical needs within the City of Monroe" that could be met through cooperation with the YMCA, (b) the City's acknowledgement that

"both the City of Monroe and YMCA of Snohomish County desire to construct a Monroe YMCA Community Center to meet the needs of Monroe residents and the surrounding region," and (c) the City's recognition that cooperation with the YMCA was consistent with the City's "dedication to optimum efficiency in our service to the community valuing our stewardship of public resources."

Accordingly, the City and the Snohomish YMCA entered into a contract on October 19, 2005 for the "purchase of specific services" (Exhibit D). The City agreed to pay just under $2 million ($1,976,000) for access for its citizens to the new YMCA facility. The agreement recognized the City's public interest in "recreation functions" and that the YMCA could best supply that need.

Next, the YMCA looked to other public funding sources for its construction expenses. On June 16, 2006, the YMCA filed a grant application for $1,000,000 with the Department of Community, Trade and Economic Development (Exhibit E). The project title, listed on the first line of the application, was "**Construction** of Monroe/Sky Valley Family YMCA" (emphasis added). The YMCA, answering questions 2.9 and 3.8B, represented that state prevailing wages would be paid for all construction labor costs. The construction budget was identified as $6.1 million. The application listed a "government pledge" from the City of Monroe of $1,976,000. The application was signed by the Snohomish YMCA CEO, who certified that "all of the information contained in this application and supporting materials is accurate as of the above-listed date." The application was approved by CTED and the $1 million grant appears on both the House and Senate capital project lists, according to a CTED official I contacted today. Apparently the approval of the budget is imminent so we anticipate that the funding will be approved very shortly with funds to follow thereafter.

The YMCA also solicited funds from the general public. Its mailing to members of the community (Exhibit F) states that "as a result of wonderful gifts from individuals, foundations . . . and public funds from the City of Monroe and State of Washington," the "long awaited dream of an indoor swimming pool and YMCA is coming true."

Kirtley-Cole Associates was selected as the general contractor. No statements of intent are on the public website. The Carpenters assigned an employee, Pedro Espinoza, to apply for work on the project. Espinoza was hired, was assigned to carpentry work, and was paid $24.14 per hour for two pay periods in January and February, 2007 (Exhibit G). The prevailing rate (Sep't 2006 rate) was $41.33 per hour. Espinoza observed other workers performing work on the job and can provide information to your staff. For example, a lead carpenter received $29.20 per hour, another journeyman carpenter

received $28.80 per hour, and a laborer received $12.25 per hour. We are unaware of the precise amount of fringe benefits paid to all workers, but do know that workers do not qualify for medical coverage for their first three months of employment.

Representatives of the Carpenters Regional Council met with Mr. Beavers, the Snohomish YMCA CEO, on December 5, 2006. The union agents told Mr. Beavers that their general contractor was not paying area standards wages and benefits; Mr. Beavers responded that it was his understanding that they paid above union scale. Mr. Beavers asserted that he was told by an employee of CTED that if state funding was authorized, prevailing wages would not be required.

Two days later, union agent Miguel Perry spoke with Dan Aarthun, who heads the Capital Programs Competitive Grants portion of CTED. (Parenthetically, Mr. Aarthun was personally involved in the Wenatchee Arts Center prevailing wage situation.) Mr. Aarthun expressed surprise that prevailing wages were not being paid, as the YMCA's grant application indicated otherwise. Mr. Aarthun expressed the view that there were sufficient public funds in the project to require payment of prevailing wages, and referenced the Wenatchee Arts Center job. He expressed disbelief that any member of his staff would state that prevailing wages would not have to be paid, particularly given the contents of the grant application.

Mr. Soma, I will provide a comprehensive legal analysis at a later date if desired. Suffice it that we view this situation as a repeat of the Wenatchee Arts Center case, successfully prosecuted by your office, the Carpenters, and Rebound. There, a private arts group was the sponsor of the project, and raised substantial private funds. The City of Wenatchee made an advance purchase of theater rental dates as its contribution to the construction, and there was a substantial CTED contribution. The total public funding comprised roughly half of the construction cost, approximately $3.7 million of a $6+ million project (the construction total varied depending on the document reviewed). The Department, affirmed by the state Court of Appeals, held that RCW 39.12 required the payment of prevailing wages to the workers.

Here, another private entity is the sponsor of the project. The project's history shows a public-private partnership to build the facility. The City's resolution authorizing the "services" contract frankly recognizes the City's interest in the construction of the facility: it is transparent as can be that the money is intended to assist the construction of the facility. Indeed, the YMCA in its CTED application and in fund-raising appeals cites to the City's funding as support for raising construction funds. The public money in the

project is just as substantial as in the Wenatchee Arts Center situation. The difference between the two is negligible; here the City money plus CTED money equals almost exactly half of the projected construction cost.

As you know, prevailing wage coverage hinges on whether the project is built in whole or in part with state funds. As the Wenatchee Arts Center case shows, the fact that the sponsor is not a public agency is irrelevant to the analysis. Nor does the statute distinguish on the basis of when the public money is contributed. The public funding plainly is essential to the completion of the project. Moreover, the sponsor made a certified promise to the state that prevailing wages would be paid on the project.

We view the culpable parties as the City of Monroe (which should have insisted on prevailing wage compliance), the YMCA, and Kirtley-Cole. CTED should condition payment of its grant on complete satisfaction of prevailing wage requirements. If it does not, it too would be culpable in our view – but I hasten to add that we do not anticipate disagreement from CTED on this point. We are forwarding a copy of these materials to CTED for their information and review.

We look forward to your timely response and stand ready to assist in your investigation.

Sincerely,

Richard H. Robblee

RHR:km

Enc.

cc: Doug Tweedy (w/encl.)
Cass Prindle (w/encl.)
Daniel Aarthun, CTED (w/encl.)