

EQUAL

JUSTICE

CENTER

February 12, 2020

Austin Independent School District  
Attn: Sara Hildebrandt Gaspar  
Contract and Procurement Services  
1111 W. Sixth St., Austin, TX 78703

Sent via mail and email to: [sara.hildebrandtgaspar@austinisd.org](mailto:sara.hildebrandtgaspar@austinisd.org)

RE: Prevailing Wage Claim – Tex. Gov. Code § 2258.001, et seq.

Employer: Texas Star Fire Systems

Employees: Louis Contreras, Ryan Dunman, and Zachary Harold (on behalf of themselves and other affected workers employed by Texas Star Fire Systems on AISD projects)

Dear Ms. Hildebrandt Gaspar:

I am writing to address our clients' pending Chapter 2258 prevailing wage claims against Texas Star Fire Systems for work they performed on the Govalle Elementary School project.

We would like to offer clarification of our clients' proper classification based on the work they performed, and therefore the appropriate prevailing wage rate they should have been paid. To evaluate our clients' claims under the proper legal framework, as we elaborate below, one must look to the collective bargaining agreements identified in the prevailing wage schedule or the practices of the local signatory unions covered by those agreements. Based on that scale and the work performed by our client, they should have been paid at the associated sprinkler fitter wages.

Pursuant to Tex. Gov. Code § 2258.022, Austin Independent School District has adopted the prevailing wage rates as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act as the prevailing wage rates on its projects. Therefore, to determine the proper classification for the work performed by our clients, one must look at the prevailing wage rate schedule in place for the project, General Decision Number TX170323. The union rate prevailed as the wage rate for sprinkler fitters (SFTX0669-002, Road Sprinkler Fitters Local Union No. 669). To determine the proper classification within the sprinkler fitter category, one must look at the classification used by firms whose wage rates were found to be prevailing in the area incorporated in the applicable wage determination. *See Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1058-59 (D.C. Cir. 2007). "Where collective bargaining agreements form the basis of wage determinations, the practice of the local signatory unions is conclusive under Department precedent." *Id.* (citing *Fry Brothers Corp.*, WAB Case No. 76-6 (June 14, 1977)). Additionally, "[t]he Davis-Bacon 'prevailing wage' is the combination of the basic hourly rate and any fringe benefits listed in a

## Attachment 2

Davis-Bacon wage determination.” U.S. Dep’t of Labor, Fact Sheet #66 – The Davis-Bacon and Related Acts (DBRA). Fringe benefits can be paid through a bona fide benefit plan or a cash equivalent. *See* 29 C.F.R. § 5.31. The wage rate for sprinkler fitters that prevailed in the wage scale required both the basic hourly rate and an additional fringe benefit.

We have reviewed the work performed by our clients on these projects and have been in contact with representatives from Road Sprinkler Fitters Local Union No. 669, the union whose rates prevailed in the Davis-Bacon Act prevailing wage scale for building construction in Travis County, which was the scale incorporated into the construction contract for this project. The union describes the work of a sprinkler fitter as the “installation, testing, inspecting and certifying of automatic fire suppression systems in any and all types of structures.” This includes specialization in installing the piping associated with fire sprinkler systems, which may include but are “not limited to all underground supply, standpipes, fire pumps as well as overhead piping systems.”

Though Texas Star Fire Systems made the decision to classify the workers as pipelayers and laborers, the work that they did installing pipe was directly related to the fire sprinkler systems and thus consistent with the sprinkler fitter classification. In addition, even when Texas Star Fire Systems properly classified our clients as sprinkler fitters on the certified payroll records, Texas Star Fire Systems did not pay the required prevailing wage rate of \$29.03 per hour with an additional \$15.84 in fringe benefits, totaling \$44.87 per hour. We also note that even though Texas Star Fire Systems appears to have reimbursed Zachary Harold for not having paid him the required base wage rate of \$29.03 per hour when classified as a sprinkler fitter, Texas Star Fire Systems did not pay any fringe benefits.

Our calculation of our clients’ unpaid prevailing wages, based on our present understanding of the facts is \$20,810.04 for Dunman, Contreras, and Harold. If a violation is found, the contractor or subcontractor found in violation is also required to pay a \$60/day penalty per worker. *See* Tex. Gov. Code § 2258.023(b); Atty. Gen. Op. DM-469. Based on the available information, the additional penalty would total approximately \$7,980 for all three of our clients (based on 38 days worked by Ryan Dunman, 27 worked by Louis Contreras, and 68 by Zachary Harold). However, based on the wage scales, other workers have also been affected by the misclassification as a laborers or pipelayers and the failure to fully pay the required fringe benefits.

Our clients remain available to provide information to facilitate AISD’s investigation. Additionally, for further information on the work that is properly classified in the sprinkler fitters category under the prevailing wage scale at issue, Tony Leal, the Southern Region Organizer for the union whose rates prevailed, can be contacted at (281)689-9695 or at [tony.leal.669@gmail.com](mailto:tony.leal.669@gmail.com). We hope this information will assist in producing a determination within a reasonable time frame. Thank you again for your attention to this matter.

## Attachment 2

Respectfully,

A handwritten signature in black ink, appearing to read "C. Willett".

Christopher J. Willett, Attorney

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Enclosures