



April 27, 2015

Loni Debban  
Malheur Council on Aging & Community Services  
842 SE 1<sup>st</sup> Avenue  
PO Box 937  
Ontario, OR 97914

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Ontario Multi-Modal Facility Remodel Project  
Requested by: Malheur Council on Aging & Community Services

Dear Ms. Debban:

On March 20, 2015, you submitted a request on behalf of Malheur Council on Aging & Community Services ("MCOA&CS") requesting a determination of whether Ontario Multi-Modal Facility Remodel Project (the "Project") is subject to the Prevailing Wage Rate laws.

Sufficient information to make a determination was received on April 13, 2015, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. MCOA&CS filed Articles of Incorporation in 1975 establishing it as a public non-profit corporation.
2. At a meeting of MCOA&CS' Executive Board on October 14, 2008, the Board reviewed MCOA&CS' Articles of Incorporation at your request. This review was prompted by your attendance at a training for non-profit organizations held by the Ford Family Foundation. In the minutes of that meeting, it states, "the Board requested an action to revise the Articles of Incorporation to accurately reflect that the agency entity specifically state that Malheur Council on Aging and Community Services is a private non-profit organization." There is no further discussion of this decision in the minutes.

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3. In November 2008, MCOA&CS filed an amendment to its Articles of Incorporation. This amendment changed this first sentence of Article II to read, "this is a private, non-profit corporation."
4. MCOA&CS is funded from several sources, including transit purchase service contracts from Malheur County awarded by Oregon Department of Transportation ("ODOT"), direct grants from ODOT, contracts from the Oregon State Unit on Aging (of which some are Older Americans Act funds through the Department of Human Services ("DHS")), as well as funding from the sale of property, funds from the sale of a general partnership, leasing part of its building, and rents on housing units. MCOA&CS also contracts transit services for a fee to local agencies and contracts with DHS to deliver meals to home-bound seniors.
5. MCOA&CS is governed by a board of directors. Nomination and approval of new directors occurs annually at the June board meeting. The board of directors has a recruitment subcommittee. Applicants complete an information sheet and submit it to the board for review. If a vacancy occurs, the remaining directors may fill a vacancy by majority vote.
6. MCOA&CS is not owned by anyone.
7. The Project involves remodeling a privately-owned transportation hub in Ontario, Oregon. MCOA&CS applied for, and has been awarded, funds from the ConnectOregon initiative for the Project. MCOA&CS was awarded up to \$140,000 in state grant funds. Additionally, the project will use \$35,000 in funds from a private source.
8. The total project cost is estimated to be \$175,000.
  - i. Funds of a Public Agency: \$140,000
  - ii. Other funds: \$35,000

#### **CONCLUSIONS OF LAW:**

1. "Public works" includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by a public agency to serve the public interest. ORS 279C.800(6)(a)(A). The question posed by this Project is whether or not MCOA&CS is a "public agency."
2. "Public agency" means the State of Oregon or a political subdivision of the State of Oregon, or a county, city, district, authority, public corporation of public entity organized and existing under law or charter or an instrumentality of the county, city, district, authority, public corporation or public entity. ORS 279C.800(5),

OAR 839-025-0004(19). MCOA&CS is not a public agency. Because MCOA&CS is not a public agency as defined in ORS 279C.800(5) and OAR 839-025-0004(19), the project does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).

3. "Public works" also includes projects for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency. ORS 279C.800(6)(a)(B). Because this project will use only \$140,000 in funds of a public agency, the Project does not fall under this definition of a "public works," either.

#### **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 Ontario Multi-Modal Facility Remodel 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 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

Malheur Council on Aging & Community Services  
Ontario Multi-Modal Facility Remodel Project  
Coverage Determination

800 NE Oregon St., Suite 1045  
Portland, Oregon 97232

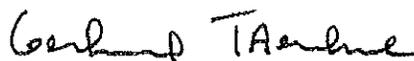
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: April 27, 2015.

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



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GERHARD TAEUBEL,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On April 27, 2015, I mailed the Prevailing Wage Rate Determination for the Ontario Multi-Modal Facility Remodel Project to the requestor as follows:

Loni Debban  
Malheur Council on Aging & Community  
Services  
842 SE 1<sup>st</sup> Ave.  
PO Box 937  
Ontario, OR 97914

Certified Mail – Return Receipt Requested  
Article #: 7014 0510 0001 9849 7167

Mike Berry  
Oregon Department of Transportation  
3012 Island Ave.  
La Grande, OR 97850



Rachel Diamond  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries