Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

May 19, 2016

Mai Huynh-Carnes, Senior Project Manager
Housing Development Center
847 NE 19th Ave, Suite 150
Portland, OR 97232

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Revised Rondel Court Apartments
Requested by: Housing Development Center

Dear Ms. Huynh-Carnes:

On March 1, 2016, the Bureau of Labor and Industries received a request from Caritas Community Housing Corporation asking if the Prevailing Wage Rate laws would apply to the proposed construction and renovation of Rondel Court Apartments. On March 2, 2016, the Bureau of Labor and Industries issued a determination that the Prevailing Wage Rate laws would not apply to the project.

On May 12, 2016, you submitted a request asking for an updated determination for the Rondel Court Apartments, based on a change in the fact situation for this project. Sufficient information to make a determination was received on May 19, 2016, and therefore, the commissioner issues the following determination:

**FINDING OF FACT**

1. Fenton Rondel Court Limited Partnership currently owns the Rondel Court Apartments located in Molalla, Oregon. The General Partner in this Limited Partnership is Caritas Community Housing Corporation ("CCHC"), a private non-profit entity. A to-be-named Limited Partner will enter the Limited Partnership at construction closing, which is estimated to be mid-May 2016. The Limited Partner will be a private entity, and no public agency currently is or will be a partner in Fenton Rondel Court Limited Partnership.

2. CCHC proposes to renovate two of the existing buildings at the Rondel Court Apartments, demolish one existing building, and construct four new buildings on the property. Housing Development Center, a private non-profit entity, is the development consultant for the project.

3. The renovation to be done on the existing buildings includes replacing the building envelope, upgrading the unit interiors, and modifying the site plan for accessibility and usability.

4. All of the apartment buildings will be two or three stories high. One of the new buildings will be a one-story community building, which will include an on-site property management office. The project will not include any commercial space.

5. Of the 47 apartment units in Rondel Court Apartments, 17 will be restricted to occupants with incomes no greater than 60 percent of the area median; 30 units will be restricted to occupants with incomes no greater than 40 percent of the area median.

6. The total project cost, including acquisition, is estimated to be $11,083,908. Funds of a public agency that will be used on the project include:

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| $61,257 | OHCS Low Income Weatherization Funds |
| $500,000 | OHCS Trust Funds |
| $925,000 | HOME Funds through Clackamas County |

   Other funds that will be used on the project include:

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|---|---|
| $475,000 | Permanent Loan |
| $8,347,651 | Low Income Housing Tax Credit Equity (US Bank) |
| $315,000 | Deferred Developer Fee |
| $460,000 | Existing Soft Funds |

7. The City of Molalla is requiring the replacement of an existing water line as a permit review condition for this proposed project. The main waterline fronting the Rondel Court Apartments property, as well as service laterals to properties impacted by the waterline replacement, will be replaced. Caritas Community Housing Corporation will contract for and pay for this work. The City of Molalla will provide a System Development Charge credit in an amount matching the construction costs and engineering costs for the waterline replacement.

## CONCLUSIONS OF LAW

1. The proposed project meets the definition of "public works" under ORS 279C.800(6)(a)(B), as the project will use $750,000 or more of funds of a public agency for constructing a new building and performing major renovation on several existing buildings.

2. The proposed project may also meet the definition of "public works" under ORS 279C.800(6)(a)(A), as the City of Molalla is requiring waterline replacement work to be done as part of the project. However, because the project is a "public works" under ORS 279C.800(6)(a)(B), it is not necessary to analyze this issue.

3. The proposed project meets the definition of "residential construction" under ORS 279C.810(2)(d)(D), as the project will include construction and major renovation of

apartment buildings not more than four stories in height, and all incidental items such as site work, parking areas, utilities, streets and sidewalks. The replacement of the waterline and service laterals is incidental to the residential construction.

4. The proposed project meets the definition of residential construction that is "privately owned" and that "predominantly" provides "affordable housing" under ORS 279C.810(2)(d), as the project is and will be owned by a private entity, and 60 percent or more of the units will serve occupants whose incomes are no greater than 60 percent of the area median income.

5. Pursuant to ORS 279C.810(2)(d), the Prevailing Wage Rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. Even though this project meets the definition of "public works" under ORS 279C.800(6)(a)(B), it will be exempt from the Prevailing Wage Rate laws.

## 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 Revised Rondel Court Apartments 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, 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: May 19, 2016

Brad Avakian, Commissioner
Bureau of Labor and Industries

Gerhard Taeubel

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

**Certificate of Service**

On May 19, 2016, I mailed the Prevailing Wage Rate Determination for the Revised Rondel Court Apartments project to the requestor and interested parties, as follows:

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