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## STATE OF NEVADA



REPLY TO:

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### Department of Business & Industry OFFICE OF THE LABOR COMMISSIONER

November 10, 2015

Mr. Graig A. Madole  
Assistant Executive Director, Nevada Chapter  
Associated General Contractors of America  
5400 Mill Street  
Reno, NV 89510

#### **Re: Request for Advisory Opinion – Certified Payroll for Owner-Operators**

Dear Mr. Madole:

Pursuant to Nevada Administrative Code (NAC) section 607.650, an Advisory Opinion has been requested concerning the requirement of Owner-Operators to submit Certified Payroll Reports on themselves on Public Works Projects. The United States Department of Labor has taken an enforcement position that Owner-Operators do not need to report the hours worked or rates paid on Federal Davis-Bacon Projects, but instead just need to report themselves as "Owner(s)-Operator(s)." This has led to some confusion on Public Works Projects that are both federally and state funded.

Nevada Revised Statutes (NRS) section 338.020 requires the payment of Prevailing Wages on Public Works Projects based on the classification of work being performed by workers on the project. Nevada Administrative Code section 338.094 requires that Certified Payroll Reports be submitted by contractors and subcontractors certifying that the workers on the project are being paid the correct Prevailing Wage based on the following: (1) type of work actually performed; (2) the number of hours worked; and (3) in accordance with the recognized class of workers. Failure to submit the required Certified Payroll Reports and/or the failure to pay the correct Prevailing Wage can result in forfeitures or penalties pursuant to NRS sections 338.060, 338.070, and 338.090.

As you have indicated in your Request for an Advisory Opinion, Owner(s)-Operator(s) maintain a direct ownership and management role in their own company, and function similar to an Independent Contractor during the construction of the Public Works Project. These Owner-Operators control their own wage, which includes, but is not limited to, an hourly package amount that includes the vehicle and is more than the required Prevailing Wage Rate for the type of work being performed by the Owner-Operator.

In order to maintain consistency with the United States Department of Labor and to eliminate the submission of fictional or incorrect rates for Owner(s)-Operator(s), the Nevada Office of the Labor Commissioner will take a similar enforcement position, and will not require Owner-Operators to submit Certified Payroll Reports on themselves on Public Works Projects. However, there will still need to be some indication of "Owner-Operator," similar to the federal requirement.

To the extent that this Advisory Opinion clarifies the Certified Payroll reporting requirements for Owner-Operators on state projects, it will continue to be enforced as such. However, nothing in this Advisory Opinion should be construed to avoid the Prevailing Wage and Certified Payroll reporting requirements set forth in NRS section 338.020 and NAC 338.094 for those workers employed on Public Works Projects that are not Owner-Operators.

Should you need additional clarification on this matter, please feel free to contact me at your earliest opportunity.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shannon M. Chambers".

Shannon M. Chambers  
Labor Commissioner