January 31, 2017

Linda Silacci-Smith  
Senior Department Analyst  
County of El Dorado  
360 Fair Lane  
Placerville, CA 95667

RE: Public Works Case No. 2016-015  
Snow Removal and Snow Staking Services  
County of El Dorado

Dear Ms. Silacci-Smith:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California’s prevailing wage laws and is made pursuant to California Labor Code section 1773.51 and California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the snow removal work for the County of El Dorado (County) is a public work subject to the prevailing wage requirements of the California Labor Code.

**Facts**

The County currently has a contract with Mapes Enterprises to perform snow removal and snow staking work. The work is performed at various County-owned parking lots, handicap spaces, driveways, sidewalks and walkways in order to maintain access to the police station, jail, court, library, vector control, sheriff station and animal services. The snow removal will be done by all-wheel loaders, sand trucks, plow trucks, or walk behind blowers. The snow stakes will be installed and maintained for the purpose of delineating and identifying the areas of the parking lots, driveways, sidewalks and walkways from which snow will be removed.

The scope of services requires the contractor to furnish personnel, equipment, materials, supplies and services necessary to assist the Facilities Division of the Chief Administrative Office by providing snow removal and snow staking services for various County facilities. Billing rates for snow removal and snow staking services are based on an hourly rate. For the months of November through April, the County pays the contractor a minimum of $3,000 per month as a stand-by fee.

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1 All further statutory references are to the Labor Code unless otherwise indicated.
讨论

劳动法第1771条一般要求向在公共工程上工作的工人支付占比较高的工资，并且明确要求对于“维护”工作支付占比较高的工资。实施加州占比较高的工资法的条例将“维护”定义为：“[r]outine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.” (Cal. Code Regs., tit. 8, § 16000.) “Janitorial or custodial services of a routine, recurring or usual nature” are excluded from the definition of “maintenance.” (Ibid.)

A. 工作构成维护，因为它是一类常规的、周期性的工作，用于保护和维持公共设施的维护和安全。

县级合同要求在雪层达到或超过两英寸时即需清除，并描述了清除的具体顺序和时间。因此，该工作是常规的、周期性的，尽管具有季节性。停车场、残疾人停车位、车道、人行道和走道都是公共所有的或运营的。公众使用这些公共通道来进入县级设施。雪如果任其积累，将切断公众对这些通道的使用，进而妨碍公众对县级设施（如警察局、法院和图书馆）的使用。清除雪可使公众安全地驾驶、行走，并且能够安全使用这些公共通道。因此，除去雪是必要的，以便保持公共所有或运营的设施为“安全和连续可用的条件”中的设计目的服务。除非有例外情况，雪的清除是公共工作，因为它构成“维护”。

B. 工作不属于清洁或看护的性质。

作为其请求的附件，县级提供了公共工程案号95-020，内华达县——雪清除服务合同（1995年11月7日）（以下简称“内华达县”），声明雪清除不构成公共工程，基于清洁服务的例外。内华达县认为雪清除承包商是一个看守或保管者，因此是“看守人”，并认为“看守人”为“常规、周期性或通常的看守或保管服务。”（第16000节。）“清洁或看守服务的例行、周期性或通常性质”被排除在定义之外，因此不构成“公共工程”在劳动法中的定义。

“清洁”一词实际上被定义为“与基本需求有关的保护或服务”，而“看守人”则被定义为“保管或维持；尤其是受托保管或保护财物或文件的、或看管或看守囚犯或囚犯的人。”（美利坚-韦布斯特该词典。第11版2003年）第308页。范围内的服务在县级合同中，然而，描述了超出保护性或基本需求服务的范围。雪清除承包商在这里并不保护或看管雪清除的。

2 作为雪清除工作的一个关键组件，雪杆标识出需清除的区域，以防止清除设备受到损害。
parking lots; it is using all-wheel loaders, sand trucks, plow trucks, and walk behind blowers to remove snow from publicly-owned parking lots by a specific time in order to facilitate safe access to County buildings. The heavy machinery and manual labor involved in snow removal cannot be described as merely “protective care” or “custodial,” because the contractor is performing work without which the publicly-operated parking lots and passageways could not safely function.

To the extent custodial services are distinct from janitorial services, the snow removal work also does not constitute janitorial services. A janitor is defined as “one who keeps the premises of a building (as an apartment or office) clean, tends to the heating system, and makes minor repairs.” (Merriam-Webster’s Collegiate Dict. (11th ed. 2003) p. 669.) The snow removal does not take place in a building, nor will the snow removal contractor be keeping the premises of a building clean. Instead, the contractor will be clearing snow from the public passageways to allow public access. Accordingly, because none of the relevant exceptions apply, the snow removal work constitutes “maintenance” for purposes of the prevailing wage law.

**Conclusion**

For the foregoing reasons, the snow removal work for the County of El Dorado is a public work subject to the prevailing wage requirements of the California Labor Code.

I hope this letter satisfactorily answers your inquiry.

Sincerely,

Christine Baker
Director