



November 4, 2011

Dolly Bullington, OPBC
Contracts Officer
Oregon Parks & Recreation Dept.
725 Summer Street NE, Suite C
Salem, OR 97301-1266

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Silver Falls State Park-Ycamp Pool Replacement
Requested by: Oregon Parks & Recreation Department

Dear Ms. Bullington:

On October 10, 2011, you submitted a request on behalf of the Oregon Parks & Recreation Department asking if the Prevailing Wage Rate law would apply to the Silver Falls State Park-Ycamp Pool Replacement project ("project"). Sufficient information to make a determination was received on November 1, 2011, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Oregon Parks & Recreation Department plans to replace the pool at Silver Falls State Park. Silver Falls State Park is located in Silverton, Oregon. Silver Falls State Park is owned by the Oregon Parks and Recreation Department (OPRD). The existing pool is owned by OPRD and the new pool will also be owned by OPRD.
2. The Oregon Parks and Recreation Department is a public agency.

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800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

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3. The project will be contracted for by the Salem Family YMCA (“YMCA”). The Salem Family YMCA is a part of the Family YMCA of Marion and Polk Counties. The Family YMCA of Marion and Polk Counties is an assumed business name for the Family Young Men’s Christian Association of Marion and Polk Counties, a domestic nonprofit located in Salem, Oregon.
4. OPRD and the YMCA anticipate that the total project cost will be \$350,000. Funding for the project will be raised by the YMCA’s Alumni Association. The YMCA will contract directly with a contractor for the work to be performed on this project.
5. OPRD’s involvement in the project will be obtaining necessary permits and supervising the work. OPRD also anticipates that it will/may provide approximately \$4,000 in timber that it has acquired from hazard trees on the Silver Falls State Park property to be used for the support beams in the restroom building.
6. The project will consist of installing a new swimming pool 100 feet west of the current pool’s location and constructing a restroom and shower building. Once the new pool is installed, the current pool will be filled in.

CONCLUSIONS OF LAW:

1. The definition of “public works” under ORS 279C.800(6)(a)(A) includes “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 any public agency to serve the public interest.” The Silver Falls State Park-Ycamp Pool Replacement project could meet this definition of public works because it is a project for the construction, reconstruction, major renovation and/or painting of a building, structure or improvement that is being carried on by the Oregon Parks & Recreation Department, a public agency.
2. Only projects that directly or indirectly use funds of a public agency are subject to ORS 279C.800 to 279C.870. ORS 279C.810(2)(b). The YMCA is a private entity and funds raised by the YMCA would not be considered funds of a public agency.
3. The definition of “directly used funds of a public agency” includes “that which can be valued in money collected for a public agency or derived from a public agency’s immediate custody and control.” OAR 839-025-0004(9)(a)(A). The \$4,000 worth of timber that OPRD will/may provide for use in the restroom building falls within this definition because the timber can be valued in money and was derived from Silver Falls State Park which is in OPRD’s immediate

custody and control. Therefore, any timber provided by OPRD will be considered funds of a public agency.

DETERMINATION:

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the proposed construction, reconstruction, major renovation and/or painting of the Silver Falls State Park-Ycamp Pool Replacement if the project uses timber provided by OPRD.

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

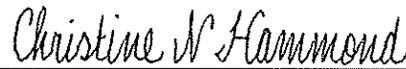
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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 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. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: November 4, 2011

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



CHRISTINE N. HAMMOND,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On November 4, 2011, I mailed the Prevailing Wage Rate Determination for the Silver Falls State Park-Ycamp Pool Replacement to the requestor, as follows:

Dolly Bullington
Sr. Contracts Officer
Oregon Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, OR 97301-1266

Certified Mail – Return Receipt Requested
Article #: 7009 2820 0001 4829 2305



Cristin Casey
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries