

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING AND  
RESTATING A WAGE THEFT PROCUREMENT POLICY**

**WHEREAS**, City Council of the City of Milpitas adopted an anti-wage theft procurement policy through Resolution No. 8768 on May 1, 2018; and

**WHEREAS**, the Recitals set forth in Resolution No. 8768 remain true and correct; and

**WHEREAS**, it remains the policy of the City of Milpitas that all parties contracting with the City must comply with all applicable federal, State and local wage and hour laws, including but not limited to the Federal Fair Standards Act, California Labor Code and City of Milpitas Minimum Wage Ordinance; and

**WHEREAS**, due to the nature of certain industries, it can be impracticable for some parties contracting with the City of Milpitas to ensure that the contractor and all its subsidiaries, contractors and subcontractors comply with all wage and hour laws; and

**WHEREAS**, the City desires to amend the Wage Theft Procurement Policy to create additional exceptions in order to provide greater flexibility to the City and ensure that the City obtains needed goods and services; and

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The policy described in the recitals above, and as more particularly set forth in the attached Exhibit "A," is hereby adopted by the City Council as the official procurement policy of the City of Milpitas to address wage theft violations. Resolution No. 8768 is hereby superseded.
3. This policy shall remain in effect until repealed or modified by the City Council.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Wendy Wood, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

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Christopher J. Diaz, City Attorney

## EXHIBIT A

### CITY OF MILPITAS

#### WAGE THEFT PROCUREMENT POLICY



#### **BACKGROUND:**

Wage theft occurs when an employer fails to pay its workers the wages to which they are legally entitled. It is the crime of stealing earned wages from workers. There are numerous forms of wage theft involving violations of employment laws but all resulting in workers earning less than they are entitled to earn.

Local and national studies on wage theft report that wage theft is a pervasive and chronic problem. Wage theft is not incidental, aberrant, rare or committed only by a few rogue employers at the periphery of the labor market. Instead it takes place in industries that span the economy — from retail, restaurants and grocery stores; caregiver industries; manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes and beauty and nail salons.

#### **PURPOSE:**

To establish a Council Policy and procedure to prevent wage theft on City contracts.

#### **POLICY:**

It is the policy of the City of Milpitas that all parties contracting with the City must comply with all applicable federal, state and local wage and hour laws including but not limited to the Federal Fair Labor Standards Act ("FSLA"), the California Labor Code and the Milpitas Minimum Wage Ordinance.

#### **Bid or Proposal Disqualification Circumstances**

A potential contractor that has submitted a formal or informal bid/proposal to provide supplies, materials, goods and/or services to the City shall be disqualified if: (i) the potential contractor, or any subcontractor it proposes to employ as part of the bid/proposal, has been found, by a final court order or administrative action of an investigatory government agency, to have violated applicable federal, state or local wage and hour laws, including but not limited to the FSLA, the California Labor Code and the Milpitas Minimum Wage Ordinance; and (ii) that at least one such judgment, decision or order remains unsatisfied by the potential contractor or any of its subcontractors as of the date of submission of a bid/proposal to provide supplies, materials, goods and/or services to the City. For purposes of this paragraph, a final court order or administrative action is one as to which there is either no pending appeal or the time for filing an appeal has passed and no appeal was filed.

(Effective: \_\_/\_\_/2022)



## Grounds for Contract Termination

A current contractor who has been found by a final court order or administrative action of an investigatory government agency to have violated applicable federal, state or local wage and hour laws, including but not limited to the FLSA, the California Labor Code and the Milpitas Minimum Wage Ordinance, or who employs a subcontractor who has been similarly found to be in such violation, may be in material breach of its contract with the City if the violation is not fully disclosed and/or satisfied per City contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law.

## Exemptions

This Policy shall not apply to the following:

- A. Individual City solicitations, contracts or purchases for supplies, materials, goods and/or services of Ten Thousand Dollars (\$10,000) or less; or
- B. City solicitations, contracts or purchases for supplies, materials, goods and/or services secured either through "piggyback procurement," where the pricing and terms have been previously established by another public agency, pursuant to Milpitas Municipal Code Section I-2-3.07 or "cooperative procurement," a cooperative purchasing program entered into by a public agency, regardless of whether the City is named a party to the agreement, pursuant to Milpitas Municipal Code Section I-2-3.08; or
- C. City solicitations, contracts or purchases for supplies, materials, goods and/or services where application of this Policy would conflict with the California Public Contract Code, or other applicable State or Federal law.
- D. City solicitations, contracts or purchases of insurance and related services.
- E. City solicitations, contracts or purchases of software licenses, Software as a Service (SaaS) licenses or subscriptions, and information technology hardware or equipment.
- F. City solicitations, contracts or purchases of utilities for the City entity, including but not limited to, telephone service, gas, electricity or water.
- G. City solicitations, contracts, or purchases of legal services.
- H. When determined by the City Manager to be in the best interests of the City and where the solicitation, contract, or purchase is \$50,000 or less.

## PROCEDURE:

### I. MANDATORY DISCLOSURE REQUIREMENT

Unless otherwise exempted by this Policy, as a part of a City solicitation for supplies, materials, goods and/or services, a potential contractor shall fully complete a "Bid Certification" ("Certification"). The Certification requires each potential contractor to disclose whether the contractor or any of its subcontractors has been

found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws, including but not limited to the FLSA, the California Labor Code and the Milpitas Minimum Wage Ordinance, within the past five (5) years from the date of the submitted bid/proposal.

For each disclosed violation, the potential contractor shall provide a copy of (i) the final court order and/or final administrative decision/action; and (ii) documents demonstrating either that the order/decision/action has been fully satisfied, or if the order/decision/action has not been fully satisfied, documents evidencing a payment or other alternative plan approved by the court/government agency to satisfy the order/decision/action and proof that the potential contractor or its subcontractor is in compliance with that plan as of the date of bid/proposal submittal. The completed Certification shall be submitted by the potential contractor to the City as a part of its bid/ proposal.

The City shall disqualify a potential contractor based upon a disclosed violation if the order/decision/action for that violation remains unsatisfied as specified above.

Inaccurate or incomplete disclosures constitute a violation of the City's Wage Theft Procurement Policy and shall result in immediate disqualification from the City solicitation and contracting process or immediate termination of any contract with the City.

## **II. CONTRACT LANGUAGE AFTER SUCCESSFUL BID OR PROPOSAL**

All City contracts subject to this Policy shall include the following provisions:

### **Wage Theft Prevention**

**Compliance with Wage and Hour Laws:** Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

**Final Judgments, Decisions, and Orders:** For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City of Milpitas, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

**Prior Judgments against Contractor and/or its Subcontractors:** BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

**Judgments or Decisions During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order.

Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the Term of the Contract demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

**Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

**Notice to City Related to Wage Theft Prevention:** Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.