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The City Council of Framingham

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ORDER NO. 2021-066-001
REQUEST OF THE ECONOMIC DEVELOPMENT SUBCOMMITTEE

UPON THE REQUEST OF THE ECONOMIC DEVELOPMENT SUBCOMMITTEE, THE CITY OF FRAMINGHAM, THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

That the City Council adopt the Wage Theft Ordinance as recommended by the Economic Development Subcommittee and attached.

FIRST READING:

YEAS: Bryant, Cannon, Case, King, Leombruno, Long, Ottaviani, Shepard, Stefanini, Steiner, Stewart-Morales
NAYS: None
ABSTAIN: None
ABSENT: All members were present via teleconferencing
PASSED IN COUNCIL: MAY 4, 2021

SECOND READING:

YEAS: Bryant, Cannon, Case, King, Leombruno, Long, Ottaviani, Shepard, Stefanini, Steiner, Stewart-Morales
NAYS: None
ABSTAIN: None
ABSENT: All members were present via teleconferencing
PASSED IN COUNCIL: JUNE 1, 2021

A True Record, Attest:

6/2/2021

Date Approved

Lisa A. Ferguson
Lisa A. Ferguson, City Clerk

6/10/2021

Date Approved

Yvonne M. Spicer
Yvonne M. Spicer, Mayor

Be it ordained by the Framingham Council, as follows:

Protect taxpayers and workers in the awarding of public contracts and financial incentives in Framingham

SECTION 1.

Taxpayer and Worker Protections

Section 1. DEFINITIONS.

- A. "City" means the City of Framingham.
- B. "Resident" means any person for whom the principal place of residence is within the City of Framingham during the entirety of time the person works on a Public Construction Project. Proof of such residence may include, but is not limited to, the following: a valid Massachusetts Driver's License or Massachusetts Identification Card, utility bills, proof of voter registration, or such other proof acceptable to the City.
- C. "Tax Relief" means any issuance of tax relief provided under a Tax Increment Financing Agreement, a Housing Development Exemption Agreement or any other provision of law or regulation authorizing the issuance of tax relief, or any form of taxpayer-funded grant provided under the Community Preservation Act or any other provision of law or regulation authorizing the issuance of taxpayer-funded grants.
- D. "Tax Relief Agreement" means any Agreement or other form of document governing the terms and conditions of the issuance of Tax Relief by the City.
- E. "Veteran" means a person who has served in any branch of the United States Armed Forces, and was not dishonorably discharged.

Section 2. POLICY.

It is the policy of Framingham in considering the utilization of tax incentive to support existing businesses and pursue new private investment and the award of public contracts to strive to:

- 1) Create permanent, full-time, livable-wage jobs for Framingham residents;
- 2) Protect workers from unsafe conditions and contractor exploitations;
- 3) Promote economic diversity;
- 4) Increase Framingham's commercial and industrial base;
- 5) Increase property values and tax revenue;
- 6) Eliminate blight and/or redevelop an underutilized property;
- 7) Directly or indirectly spur additional, unsubsidized private development in Framingham; and,
- 8) Benefit the long-term economic development and community goals of Framingham.

Section 3. TAX RELIEF AGREEMENTS.

All applications for tax relief and all tax relief agreement shall comply with the following:

- A. Any request for tax relief must be submitted to the City prior to the commencement of the project, and the application must:

1. create permanent, full-time livable wage jobs for Framingham residents;
2. certify that, its contractors, subcontractors and lessees, if applicable, will insure non-discrimination, without regard to race, color, religious creed, national origin, age, sex, gender identity & expression, sexual orientation, genetic information, ancestry, military service, source of information, or disability in the areas, in hiring, promotion, demotion, transfer, recruitment, layoff, termination, rate of compensation, in-service or apprenticeship training programs, and all other terms and conditions of employment as it pertains to the applicant, its contractors, subcontractors and lessees, if applicable;
3. improve a "Blighted Open Area", "Decadent Area", or a "Substandard Area" as defined in 402 CMR 2.03;
4. demonstrate additional economic benefits to the Framingham community, such as the employment of youth interns or support for local initiatives;
5. meet all local, state and federal permitting, licensing and regulatory requirements;
6. generate an increase in property tax revenue;
7. demonstrate that the Tax Relief is necessary to either off-set the cost of the project, retain and expand its operations in Framingham, or locate its operations to Framingham;
8. provide a project pro forma which demonstrates the financial need for tax increment financing and/or a written statement from the lender or principal funding provider noting the importance and basis therein of tax increment financing to the overall financial package assembled to finance the project;
9. demonstrate evidence of the required financing to complete the proposed project;
10. include a plan to use its best efforts to purchase supplies, materials, and services from suppliers and vendors located in Framingham, including requesting proposals from Framingham suppliers and vendors, giving preference to Framingham suppliers and vendors that are both qualified and competitive; and,
11. include a plan to use its best efforts to hire a minimum of 50% of its contractors and sub-contractors from qualified local (within thirty miles of the project address) companies, contractors and sub-contractors.

B. Each Tax Relief Agreement shall incorporate the following provisions A through D directly into the Agreement:

"A. It shall be a special and material condition of this Tax Relief Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement on the property that is the subject of this Agreement (hereinafter, collectively and individually, the "contractor") shall comply with the following qualifications and conditions:

1. The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;
2. The contractor has not been found within the past five years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent

contractors, payment of employer payroll taxes, employee income tax withholding, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws;

3. The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c. 152 and provide documentary proof of such coverage as part of the application process, or prior to commencing any work to the Chief Procurement Officer to be maintained as a public record;
4. The contractor must properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. c. 149, §1488 on employee classification);
5. The contractor must comply with M.G.L. c. 151, §1A and M.G.L. c. 149, § 148 with respect to the payment of wages;
6. The contractor must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;
7. The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of the City;
8. The applicant shall submit monthly a list to the City of all the expected contractors to work on the project as part of the applicant's request for Tax Relief, including the name of the primary contact, the Contractor's address and either a phone number or email address;
9. The applicant and/or the contractor must submit monthly to Chief Procurement Officer certified payrolls for all contractors in certified payroll format provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of the City, and a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears;
10. The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign-in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls and shall be a public record.

B. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of them with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Tax Relief Agreement (and any certification or other form of approval that may have been granted by the state) was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice to the property owner, and the property owner shall pay to the City an amount equal to the value of any tax relief or grant that was received prior to the termination of this Agreement. Where required, the City shall petition the appropriate state agency or body for revocation of the certification or approval and, upon such revocation, the tax relief provided by this Agreement shall be terminated and the property owner shall pay to the City an amount equal to the value of the tax relief or grant that was received prior to the termination of this Agreement.

- C. C. The applicant certifies as part of the application process that any contractor or subcontractor previously determined by the City or by any court or agency to have violated any of the obligations set forth in Paragraphs B above for the previous five years shall not be hired to perform work on the project.
- D. D. In the event the owner of the property or any other person challenges the termination of the tax relief provided by this Agreement and/or the revocation by the state of any certification or approval, the owner shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under this Agreement while any such challenge remains pending. The owner of the property shall have a continuing obligation to contribute to the escrow account amounts equal to any additional tax savings that accrue under this Agreement while its challenge remains pending. The owner shall promptly provide to the City with documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the owner such other person is unsuccessful in its challenge, the funds in the account shall be paid to the City. The owner's obligations under this subsection shall be judicially enforceable. It is the intent of the parties that the residents of this municipality are third party beneficiaries of this Agreement. and that it may be enforced in a civil proceeding brought by not less than ten (10) taxable inhabitants."

Section 4. MUNICIPAL CONSTRUCTION CONTRACTS.

Whenever the City of Framingham is procuring construction services with an estimated construction cost in excess of \$250,000 subject to the provisions of M.G.L. chapter 149, chapter 149A or chapter 30, §39M, the following shall be incorporated into the procurement documents and made part of the specifications and contract. Any person, company or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal.

- A. All bidders or proposers, contractors, and subcontractors and trade contractors, including subcontractors that are not subject to M.G.L. chapter 149, §44F, (the "contractor") under the bidder, shall as a condition for bidding, contracting, or subcontracting verify under oath and in writing at the time of bidding or submittal in response to an Request for Proposals (RFP) or in any event prior to entering into a contract or subcontract at any tier, that they comply with the following conditions for bidding, contracting or subcontracting and, for the duration of the project, shall comply with the following requirements and obligations:
1. The contractor shall not have been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;
 2. The contractor shall not have been found within the past five years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws;
 3. The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. chapter 152 and provide documentary proof of

such coverage included with the contractor's submitted bid to the Chief Procurement Officer to be maintained as a public record;

4. The contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. chapter 149, §1488 on employee classification).
5. The contractor shall comply with M.G.L. chapter 151, §1A and M.G.L. chapter 149, § 148 with respect to the payment of wages;
6. The contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of Framingham. The City shall provide the contractor with local instructions on the preferred means to publicize employment opportunities to City residents;
7. The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls and shall be a public record
8. The contractor, prior to bidding or, if not subject to bidding requirements, prior to performing any work on the project, shall sign under oath and provide to the City a certification that they are not debarred or otherwise prevented from bidding for or performing work on a public project in the Commonwealth of Massachusetts or in the City;
9. The contractor must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;
10. The contractor must submit weekly to Chief Procurement Officer certified payrolls for all employees. A certified payroll format will be provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of the City. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears;

11. The applicant and contractor agree to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments in section 4.A.6.
- B. A proposal or bid submitted by any general bidder or by any trade contractor or subcontractor under the general bidder or proposer that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of M.G.L. chapter 149, §44F shall be awarded to a subcontractor of any tier that does not comply with the foregoing conditions.
 - C. All bidders or proposers and all trade contractors and subcontractors under the bidder or proposer who are awarded or who otherwise obtain contracts on projects subject to M.G.L. c. 149, §44A(2), M.G.L. c. 149A, or c. 30, §39M shall comply with each of the obligations set forth in paragraph A above for the entire duration of their work on the project. An officer of each contractor or subcontractor shall certify under oath and in writing in connection with each requisition or request for payment that it is in compliance with such obligations.
 - D. Any proposer, bidder, trade contractor or subcontractor under the bidder or proposer that fails to comply with any one of obligations set forth in Paragraph A above or any other requirements in bid or contract documents for any period of time shall be, at the sole discretion of the City, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City in the amount of 5% of the dollar value of the contract.
 - E. In addition to the sanctions outlined in Paragraph D above, a proposer, general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c.149, §44F. Any contractor or subcontractor that has been determined by the City or by any court or agency to have violated any of the obligations set forth in Paragraph A above shall be barred from performing any work on any future projects for six months for a first violation, three years for a second violation and permanently for a third violation.

Section 5. WORKER PROTECTION ADVISORY COMMITTEE.

- A. Worker Protection Advisory Committee. The Worker Protection Advisory Committee shall be comprised of seven (7) members selected as follows: the Building Inspector, and six (6) Framingham residents selected by the Council from a list of names nominated, two nominees from each, from the following organizations: Metro West Chamber of Commerce, Worcester Framingham Labor Council, New England Regional Council of Carpenters, Metro Building Trades Council, and Metro West Worker Center.

- B. Terms of Appointment. Members shall be appointed for a term of three years, notwithstanding initial appointments, which shall be staggered into one, two, and three year terms.
- C. Duties. The Committee will meet at least once every month to review complaints and provide advice to the City Council on the implementation and effectiveness of this Ordinance.
- D. Officers. The Committee shall elect a chair, vice-chair, and clerk from its membership. The chair shall preside over all meetings. The clerk shall receive Wage Theft complaints from the Attorney General's office, the City Solicitor's office, or any member of the Committee. The Clerk shall coordinate any response to such complaint. In addition, members may offer education, guidance, and referrals to workers affected by Wage Theft in Framingham.
- E. Reporting Requirements. The Committee shall publish an annual report detailing all wage theft or other complaints received and action taken in response to such complaints, including specifically the status or final disposition of each complaint, where available. The report shall also include civil and criminal judgments issued by the state and federal courts, administrative citations, and final administrative orders, including but not limited to debarments, against employers pursuant to M.G.L. c. 149 and M.G.L. c. 151, if known.
- F. (Intentionally left blank)
- G. Complaints. Any City department upon notification of a wage theft or other complaint shall forward said complaint immediately to the Committee. The Committee shall notify the Chief Procurement Officer, the Licensing Commission, the Framingham Council, the Massachusetts Committee on the Underground Economy (CUE), and the Attorney General's Office, of the complaint. If the complaint pertains to work performed at any property subject to any tax relief agreement, including but not limited to TIF Agreement or HDIP Agreement, the Committee shall also send a copy to the EACC.
- H. Communication with Attorney General's Office and Secretary of Labor and Workforce Development. On an annual basis, a representative from the Committee will meet separately with the Office of the Attorney General and the Secretary of Labor and Workforce Development to discuss complaints involving workers in the City and to better coordinate on issues of Wage Theft in the City.

SECTION 2.

Miscellaneous

Section 1. SUCCESSORS IN INTEREST.

The requirements of this Ordinance, including any sanctions or limitations imposed, that are applicable to any employer shall also be applicable to, and effective against, any successor employer that (1) has at least one of the same principals or officers as the predecessor employer and (2) is engaged in the same or equivalent trade or activity as the predecessor employer.

Section 2. Severability.

The intent of this Ordinance is to comply with applicable state and federal law, and to enforce the provisions of this Ordinance to extent permitted by law. If any provision of this Ordinance, or the application of such provision to any person or circumstances, shall be enjoined, held to be invalid, or held to be preempted by state or federal law, the remaining provisions of this Ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined, held invalid or preempted shall be not affected thereby and shall remain in force to the fullest extent permitted by law.

Section 3. Effective Date.

The provisions of this Ordinance shall become effective on September 1, 2021.