

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AMENDING RESOLUTION NO. 5981, AS AMENDED, TO ELIMINATE THE  
REQUIREMENT OF THE PAYMENT OF PREVAILING WAGE FOR JANITORIAL AND  
CUSTODIAL SERVICE CONTRACTS, REJECT ALL BIDS FOR REQUEST FOR  
PROPOSAL NO. 2048 FOR CITYWIDE JANITORIAL SERVICE, AND APPROVE  
AMENDMENT NO. 6 TO THE CONTRACT WITH UNIVERSAL BUILDING SERVICE TO  
EXTEND THE CONTRACT FROM OCTOBER 1, 2013 TO DECEMBER 31, 2013 IN THE  
NOT-TO-EXCEED AMOUNT OF \$120,008 FOR JANITORIAL AND  
CUSTODIAL SERVICES**

**WHEREAS**, on August 27, 2013, the City of Milpitas issued Request for Proposal (“RFP”) No. 2048 for Citywide janitorial services and received only one proposal from Universal Building Services, the current service provider; and

**WHEREAS**, the proposed one year contract from Universal Building Services is for \$683,412 per year, which is 42% more than the current annualized contract price of \$480,035.04 and is much more than the amount budgeted in the Public Works Department for this service; and

**WHEREAS**, on July 16, 1991, the City Council adopted Resolution No. 5981, which was later amended by Resolution No. 8177/HA6 on May 8, 2012, regarding payment of prevailing wage under contracts for designated City projects and services; and

**WHEREAS**, Resolution No. 5981, as amended, contains a provision requiring the payment of prevailing wage for contracted maintenance of City owned buildings, structures, and ground facilities where the contract amount exceeds \$1,000, which provision specifically includes contracts for janitorial and custodial services; and

**WHEREAS**, California State law explicitly exempts janitorial and custodial services from the requirement of payment of prevailing wage; and

**WHEREAS**, the inclusion of janitorial and custodial services in the subject prevailing wage provision of City Council Resolution No. 5981, as amended, creates an increased and unnecessary monetary expense to the City of Milpitas when contracting with janitorial and/or custodial service companies; 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. Resolution No. 5981, as amended, is hereby further amended by revision of the last sentence of Section I, 1.C, to now read: “Janitorial and custodial service is specifically excluded in accordance with State law.” A copy of Resolution No. 5981, as amended by Resolution No. 8177/HA 6 and with the current revision to the last sentence of Section I, 1.C, is attached hereto as Exhibit A.

3. Staff is authorize to reject all bids for Request For Proposal No. 2048 for Citywide Janitorial Service and to re-bid without the requirement to pay prevailing wage.
4. Amendment No. 6 to the contract with Universal Building Service to extend the contract from October 1, 2013 to December 31, 2013 in the not-to-exceed amount of \$120,008 for janitorial and custodial services is hereby approved, a copy of which is attached hereto as Exhibit B.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MILPITAS PROVIDING FOR PAYMENT OF PREVAILING WAGES  
UNDER CONTRACTS FOR DESIGNATED CITY PROJECTS AND SERVICES

WHEREAS, the City of Milpitas, pursuant to California Labor Code §1771, requires that all workers on contracts for public works projects in excess of \$1,000 shall receive not less than prevailing wage; and

WHEREAS, in the interest of equity, the City Council of the City of Milpitas proposes that its contracts for designated City projects and services also contain a provision that the prevailing wage be paid for such services;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas:

Section I. Prevailing Wage Policy of the City of Milpitas

1. It is the Policy of the City of Milpitas that in any contract hereinafter entered into under the circumstances set forth below shall provide that not less than the general prevailing wage of per diem wages (wages and benefits) as defined in the California Labor Code shall be required to be paid:
  - A. City public works construction projects in excess of \$1,000.00 funded in whole or in part by City funds, where work is performed pursuant to any public works construction contract to which the City is a party.
  - B. Direct services which are provided under contract to the City covering routine and recurring or usual functions necessary for city operation.
  - C. City maintenance projects of a routine, recurring or usual nature for the preservation, protection and keeping of City owned buildings, structures and ground facilities, where work is performed pursuant to contracts to which the City is a party and which exceed the contractual amount of \$1,000.00. Janitorial and custodial service is specifically ~~included~~ excluded in accordance with State law.
  - D. The requirements of this Policy shall not apply to the sale of goods or the following contracts to which the City is a party: Contracts for professional services, including but not limited to, consultant services, construction inspection services, engineering services,

architectural services, land surveying services, legal services, financial services, accounting or auditing services, data processing services, administrative services, instructional services, personnel services, and services provided by other public entities.

**Section II. Application of Policy**

- A. This requirement shall apply to the employees of an employer including the general contractor, subcontractor or other contractor engaged by the general contractor in construction, alteration, demolition or repair work for construction projects designated in Section I above.
- B. The City Council reserves its right to require the payment of prevailing wages on any city project or service provided to the City not expressly designated in this Policy.
- C. This Policy is not intended to create any power or duty in conflict with state or federal law or to diminish any rights or obligations established by state or federal law.
- D. This Policy shall not confer upon the City any power not otherwise provided by law, to determine the legality of any collective bargaining agreement.
- E. This Policy is not intended to impose upon the City or its officers and employees, an obligation for breach of which the City or its officers and employees is liable in money damages to any person or entity who claims that such breach proximately caused injury.

**Section III. Implementation of Policy**

- A. This policy shall be implemented through the City's authority to contract with parties affected by adoption of this Resolution.
- B. Prevailing rates for employees covered by this policy shall be those of the existing labor agreement covering the affected employees of the current contractor providing services to the City. In the event no labor agreement is currently in effect, the authorization source of this Policy shall be those rates as established or published by the State Department of Industrial Relations, Division of Labor Statistics and Research.
- C. Contracts or agreements entered into by the City for the projects or services specified in Section I above shall include provisions relating to records, apprentices, notices and enforcement in accordance with the requirements of the California Labor Code.

- D. The requirements of this Policy shall be included in any requests for proposals, requests for qualifications or specifications for a project or service specified in Section I above. Where no request for proposal, request for qualifications or specifications are issued, potential contracting parties shall be notified of the prevailing wage rate at the first appropriate time but under no circumstances later than execution of a contract of agreement.

**Section IV. Enforcement**

- A. Nothing in this Resolution and Policy shall preclude enforcement by the State Department of Industrial Relations in the projects or services specified in Section I above.
- B. Every City contract or agreement to which this Policy applies shall contain provisions whereby the contracting party with the City may be deemed to be in breach of contract for failure to comply with the contractual requirements to pay prevailing wages in accordance with this Resolution. Such provisions shall also authorize the City to take all appropriate action including rescission of the contract or agreement, or to seek judicial relief for damages.
- C. In imposing on its contracting parties this Policy's requirements to pay prevailing rates, the City is not assuming, nor imposing on its officers and employees, an obligation for breach of which the City or its officers and employees is liable in money damages to any person who claims that such breach proximately caused injury.
- D. ~~In instances where a contracting out proposal is being considered for work currently performed by City employees, the rate of pay for contracted services must be greater or equal to the current rate of pay and benefits. Advance notice of 120 days must be given to the collective bargaining agent with a call for public hearings on the issue. This advance notice is subject to a meet and confer process with the City's represented employees.~~

**Section V. Applicability**

- A. This Policy shall be applicable for all contracts and agreements for which requests for proposals, requests for qualifications or specifications contain the requirements of this Policy.
- B. All requests for proposals, requests for qualifications or specifications issued after the adoption of this ordinance shall contain the requirements of this Policy.

- C. This Policy is immediately effective for all contracts, and agreements executed by a party after adoption of this Resolution and for which no request for proposal, request for qualifications or specifications are issued.

Section VI. Changes to Policy

~~The City Council shall hold a public hearing on any amendment to this Resolution. Notice of said hearing shall be given at least ten days prior to the hearing in accordance with Section 6061 of the Government Code.~~

PASSED AND ADOPTED this 16th day of July, 1991 by the following vote:

Ayes:	(5)	Mayor McHugh and Councilmembers Lawson, Lee, Hamer and Skyrud
Noes:	(0)	None
Absent:	(0)	None
Abstain:	(0)	None

Approved:

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk



Universal Building Services, Inc.  
Amendment #6

**AMENDMENT NO. 6 TO THE AGREEMENT**  
**WITH**  
**UNIVERSAL BUILDING SERVICES AND SUPPLY COMPANY**  
**FOR**  
**CITY BUILDING JANITORIAL SERVICES**

This Amendment is entered into this 18<sup>th</sup> day of September, 2013, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Universal Building Services and Supply Company**, a California corporation, (hereafter referred to as "CONTRACTOR").

**RECITALS**

- A. WHEREAS, the parties entered into an agreement entitled "Janitorial Service on September 22, 2010" ("Agreement"). This is a three (3) year agreement with two (2) one (1) year options. The total first year contract amount was One Hundred Seventy-Three Thousand Eight Hundred and Eight dollars (\$173,808.00); and
- B. WHEREAS, the parties entered into Amendment No. 1 to the Agreement on October 11, 2012 to provide a one time increase of Ten Thousand (\$10,000.00) as a contingency for unscheduled janitorial services for a total year one contract amount of One Hundred Eighty-Three Thousand Eight Hundred and Eight dollars (\$183,808); and
- C. WHEREAS, the parties entered into Amendment No. 2 to the Agreement on June 22, 2011 to align the contract dates with the City's fiscal year, change the contract to an annual contract with City's option for renewal, and prorate the first year to nine months for a reduced total of One Hundred Thirty-Seven Thousand Eight Hundred Fifty-Five dollars and Ninety-Nine cents (\$137,855.99); and
- D. WHEREAS, Amendment No. 2 also added Five Thousand dollars (\$5,000.00) per year for each of the remaining four years to cover incidental services and unscheduled events, and added Five Thousand Five Hundred Thirty-Two dollars (\$5,532.00) for each of the remaining four years to cover additional cleaning services at the Great Mall Police Substation II, and allowed a rate increase of Six Thousand Nine Hundred Sixty dollars (\$6,960.00) for each of the remaining four years for a new year two total of One Hundred Ninety-One Thousand Three Hundred dollars (\$191,300.00); and
- E. WHEREAS, the parties entered into Amendment No. 3 to the Agreement on July 1, 2012 for a second rate increase of Five Thousand Five Hundred Eighty-Nine dollars (\$5,589.00) for a new year three total of One Hundred Ninety-Six Thousand Eight Hundred Eighty-Nine dollars (\$196,889.00); and

- F. WHEREAS, the parties entered into Amendment No. 4 to the Agreement on February 5, 2013 to add six more City buildings in the amount of Ninety-Seven Thousand Nine Hundred Forty-Eight dollars (\$97,948.00) for the period March 1, 2013 to June 30, 2013 for a new year three total contract amount of Two Hundred Ninety-Four Thousand Eight Hundred Thirty-Seven dollars (\$294,837.00); and
- G. WHEREAS, the parties entered into Amendment No. 5 to the Agreement on April 16, 2013 to extend the cleaning services for the same six buildings in the amount of Seventy-Three Thousand Four Hundred Sixty-One dollars (\$73,461.00) for the period July 1, 2013 to September 21, 2013; and
- H. WHEREAS, the parties now desire to further amend the Agreement to extend the contract for the six additional buildings for approximately ninety (90) days from September 22, 2013 to December 31, 2013 for the amount of Seventy-Three Thousand Four Hundred Sixty-One dollars (\$73,461.00) and the five original buildings for six (6) months to December 31, 2013 for the amount of Ninety-Three Thousand Ninety-Five dollars and Fifty-Two cents (\$93,095.52), and contingency in the amount of Five Thousand Dollars, for a total contract amount of Two Hundred Forty Thousand Seventeen dollars and Fifty-Two cents (\$245,017.52) during the six month period from July 1, 2013 to December 31, 2013.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to further amend the Agreement as follows:

- 1. Notwithstanding any other provision of the amended Agreement, City agrees to pay Contractor for all services performed in accordance to the amended Agreement for the period of July 1, 2013 to December 31, 2013 in the amounts not-to-exceed as follows:

City Hall Complex	\$5,051.38
Sports & Teen Center	\$6,318.02
Main Fire Station	\$509.85
Police Substation	\$476.89
Library Garage	\$1,159.78
Community Center	\$5,823.00
Police Department	\$6,828.00
Public Works Department	\$3,645.00
Fire department Trailer	\$313.00
Jose Higuera Adobe	\$394.00
Senior Center	\$7,484.00
Sub Total	\$40,002.92 per month
Contingency	\$5,000.00
6 Month Total	\$245,017.52

- 2. CONTRACTOR agrees to continue to maintain and pay for all insurance policies as stated in "Exhibit C – Insurance Requirements General" throughout the term of the Agreement and shall provide the City with renewal certificate and endorsements of the insurance policy.

3. All other provisions of the amended Agreement not amended by this Amendment No. 6 shall remain in full force and effect.

This Amendment is executed as of the date written on Page 1.

APPROVED BY:

CITY OF MILPITAS

UNIVERSAL BUILDING SERVICES AND  
SUPPLY, COMPANY

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

Approved As To Content:

Approved As To Form:

\_\_\_\_\_  
Steve Erickson, Project Manager

\_\_\_\_\_  
Michael J. Ogaz, City Attorney