DATE: February 10, 2015

TO: Board of Supervisors

FROM: James R. Williams, Deputy County Executive

SUBJECT: Report on Wage Theft Prevention Policy Implementation

RECOMMENDED ACTION

Under advisement from November 4, 2014 (Item No. 26): Receive report relating to Phase 2 implementation of the County Wage Theft Prevention Policy.

FISCAL IMPLICATIONS

There are no fiscal implications associated with this Phase 2 report. Costs related to the incorporation of revised mandatory contract language will be absorbed by departments.

REASONS FOR RECOMMENDATION

At its November 4, 2014 meeting, the Board approved adding a Wage Theft Prevention Policy to Section 5.5.5.4 of the Board Policy Manual, which expanded on an existing Board Policy that implicitly prohibits wage theft. At that time, the Board also directed Administration to report back on implementation activities.

Administration has broken implementation of the Wage Theft Prevention Policy into three phases:

- **Phase 1**: The first phase includes the development and incorporation of mandatory language into all competitive solicitations (e.g., RFPs, RFSQs, ITBs) issued by the County, regardless of whether they are issued by Procurement or individual departments. Phase 1 implementation was reported to the Board on December 16, 2014. This phase is currently being implemented, with Procurement updating guidelines for departments to use during the solicitation process.

- **Phase 2**: The second phase is the development of mandatory contract language. This report addresses Phase 2.

- **Phase 3**: The third phase will assess any required compliance-related activities and work in conjunction with the broader review of Countywide Contracting initiatives. Phase 3 will focus on any appropriate staffing or other needs as a part of that broader
analysis and scoping work, and as part of the Ariba implementation, which may provide more automation regarding compliance activities.

This report provides information regarding the Phase 2 implementation, which is the development and incorporation of mandatory language into all applicable County contracts as they come up for execution, renewal, or amendment. Attached is a template document outlining the language for incorporation into contracts, which will be adapted as appropriate depending on the specifics of the agreement. Administration will be rolling out this language into new and substantially amended contracts on a going forward basis. At this time, we hope that new contracts after March 1st will include this provision, allowing an opportunity for training and information to be shared across departments.

The language incorporates suggestions from the Wage Theft Coalition, includes mandatory disclosure provisions, allows the County to withhold payments until wage theft judgments have been satisfied, and includes subcontractors providing work under the applicable agreement. Notably, the contract provision provides for all notices to be handled centrally by the Office of the County Executive, which will provide consistency in the County’s approach to dealing with any violations that are reported.

**CHILD IMPACT**

The recommended action will have a positive impact on children and youth by deterring wage theft, which has a particular adverse impact on vulnerable families.

**SENIOR IMPACT**

The recommended action will have a positive impact on seniors by deterring wage theft by creating greater economic stability for families within the County.

**SUSTAINABILITY IMPLICATIONS**

The recommended action enhances the Board’s sustainability objective to promote a vibrant economy by deterring wage theft.

**BACKGROUND**

Wage theft occurs when an employer fails to pay its workers the full wages or benefits they are owed. This includes: (1) paying workers less than the minimum wage or agreed-upon wage, (2) requiring employees to record fewer hours on their timesheets than they actually worked, (3) failing to pay overtime, (4) misclassifying employees to evade overtime requirements, (5) denying workers required meal and rest breaks, (6) stealing tips, (7) deducting “fees” from wages owed, or (8) not paying workers at all. These practices are illegal under state and federal law, but they persist nonetheless.

At its November 4, 2014 meeting, the Board adopted the following addition to Board Policy Manual Chapter 5 regarding a Wage Theft Prevention Policy:

**Wage Theft Prevention**

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the
California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

This report provides a description of the second phase of implementation of the Wage Theft Prevention Policy.

**CONSEQUENCES OF NEGATIVE ACTION**

The Board will not have a report of Administration’s activities regarding implementation of the Wage Theft Prevention Policy.

**ATTACHMENTS:**

- Wage Theft Contract Provision (DOC)