

CITY OF TORONTO GOVERNMENT MANAGEMENT COMMITTEE

RUFFOLO CONTRACTING LTD. FAIR WAGE POLICY NON-COMPLIANCE

1. BACKGROUND

1 Ruffolo Contracting Ltd. ("**Ruffolo**") is a small, family run business that provides backhoe services and operators for Toronto Water's District Operations ("**Toronto Water**").

2 Sometime in May 2016, Ruffolo received its first demand to produce payroll records for inspection by the Fair Wage Office. In June 2016, the Fair Wage Office determined that Ruffolo was non-compliant with the City of Toronto Fair Wage Policy.

3 On June 5, 2017 Ruffolo received a demand to produce its 2017 payroll records to date for inspection by the Fair Wage Office. Ruffolo satisfied that request and the records were returned in September 2017 without further issues or concerns being raised by the Fair Wage Office.

4 On January 2, 2018 Ruffolo received a second demand to produce its 2017 payroll records which it again satisfied. Despite maintaining its same practices and providing the same documents that were provided for the June inspection, Ruffolo received a notice from the Fair Wage Office on March 29, 2018 that it was found to be non-compliant for all of 2017.

2. RUFFOLO OBJECTS TO THE EXTENT OF THE NON-COMPLIANCE

5 Without prejudice to Ruffolo's position that it has complied with the Fair Wage Policy, there is an issue with respect to the extent of the non-compliance finding by the Fair Wage Office.

6 Given that the Fair Wage Office took the opportunity to inspect Ruffolo's payroll documents in June 2017 and did not raise any issues regarding compliance to the Fair Wage Policy, it is not appropriate to now state that Ruffolo failed to comply with the Fair Wage Policy for all of 2017. If Ruffolo's practices were non-compliant, that fact should have been revealed during the investigation.

7 Based on the fact its documents were returned without further complaint or explanation from the City Fair Wage Office, it is not unreasonable for Ruffolo to have concluded that its practices at that time were compliant with the Fair Wage Policy's requirements.

3. RUFFOLO HAS COMPLIED WITH THE FAIR WAGE POLICY

8 Ruffolo has advised that its workers generally sign and receive a copy of the Toronto Water Contractor Work Card (the "**Toronto Water Card**") each day they perform work. Ruffolo further advises that the number of hours specified on each card does not reflect the actual hours of work provided by each worker, but is the number of hours Ruffolo is to bill for its services.

9 Ruffolo has also advised that following its first finding of non-compliance with the Fair Wage Policy, it received advice from the Fair Wage Office with respect to its payroll documentation and practices. As a result, Ruffolo subsequently required workers to provide self-reporting time reports (the "**Worker Reports**") that were then relied on to determine how much wages were owed to each worker.

10 Ruffolo provided the Worker Reports during the June 2017 investigation, where it was not found to have breached the Fair Wage Policy.

11 During the January 2018 inspection, these Worker Reports appear to have been disregarded for the purposes of determining compliance with the Fair Wage Policy. Specifically,

the hours each worker had self-reported in each Worker Report were not considered by the Fair Wage Office to be the number of hours actually worked.

12 Despite the discrepancy between the Worker Reports and the Toronto Water Cards, the Fair Wage Office did not undertake an investigation to explain this difference. Particularly, the Fair Wage Office did not attempt to contact workers to determine the accurate number of hours worked for the purposes of the Fair Wage Policy.

13 Ruffolo, therefore, argues that the Fair Wage Office must rely on accurate information before it can determine whether a contractor has complied with the Fair Wage Policy. Further, Ruffolo states that the Fair Wage Office ought to rely on the information contained in the Worker Reports.

4. UNCLEAR APPLICATION OF THE FAIR WAGE POLICY

14 Finally, and as a legal point, it is unclear that the Fair Wage Policy is intended to apply to small businesses such as Ruffolo.

15 Under section A5. “Application”, the Fair Wage Policy states:

The fair wage rates do not apply to small businesses, typically those with owner-operators, or partnerships, or principals of companies as long as they undertake the work themselves.

16 Based on the drafting of this language and the fact that Ruffolo’s principal—Tony Ruffolo—undertakes part of the work himself, it is not clear that the Fair Wage Policy is intended to apply to Ruffolo’s operations.

5. REQUEST

17 Given the foregoing, Ruffolo requests that the Government Management Committee not apply the Fair Wage Policy against its operations. However, should the policy apply, Ruffolo

further requests that the Government Management Committee find that it has complied with its obligations under same.

18 In the alternative, should the Government Management Committee determine that Ruffolo has not complied with its obligations under the Fair Wage Policy, that the June 2017 investigation be properly considered and taken into account with respect to any determination on the extent of the non-compliance.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Ryan Freeman