

Model Responsible Contractor Ordinance And Resolution

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AN ORDINANCE OF **[Insert name of Jurisdiction]**, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN **[Jurisdiction]**; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS ON PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCEDURES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, [jurisdiction] is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major capital investments it makes in public works contracts, and to protect the public health, safety and welfare of its residents;

WHEREAS, [jurisdiction] has significant concerns regarding the challenges it faces in planning and executing public works construction and maintenance projects, especially those relating to its ability to ensure the use of qualified contractors and subcontractors and adequate numbers of skilled craft personnel who have industry-recognized training in the respective trades needed for public works projects;

WHEREAS, [jurisdiction] hereby adopts Resolution ____ (*see* Exhibit A attached hereto), which identifies in detail the formidable challenges summarized above and resolves to address these challenges through appropriate procurement and contracting reforms set forth in this ordinance, and wishes to incorporate the terms of this Resolution in their entirety as material terms of this ordinance; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that **[jurisdiction]**, hereby adopts the following contractor qualification standards, procedures and related requirements for public works contracts as specified herein:

SECTION 1

§1. Purpose

[Jurisdiction] recognizes that there is a need to ensure that all work on public construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform such contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for these public contracts and to protect the **[jurisdiction's]** investments in such contracts, prospective contractors and subcontractors should be required to meet pre-established, clearly defined, minimum qualification standards regarding past project performance in terms of competency, safety and law compliance, technical abilities, experience, and adequacy of resources.

Further, due to the critical impact that skilled craft labor has on the execution of public works projects, and the increasingly limited availability of such labor, it is necessary to require contractors and subcontractors to participate in proven apprenticeship training programs as a condition of bidding to promote successful project delivery and help ensure future workforce development.

Therefore, the **[jurisdiction]** shall require compliance with the provisions of this ordinance by business entities seeking to provide services as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification standards or other criteria currently required by the **[jurisdiction]**. However, in the event that this ordinance conflicts with any law, public policy or contracting documents of the **[jurisdiction]**, the requirements of this ordinance shall prevail.

§2. Responsible Contractor Requirements

- (a) All contractors and subcontractors of any tier that perform work on a public facility or public works project undertaken by **[jurisdiction]** for construction, demolition, alteration, renovation or facility service and maintenance, for which the value of the project is valued at or above \$ _____ (e.g., \$50, 000), shall meet the requirements of this ordinance.
- (b) All firms engaged in public works contracts subject to this ordinance, including general contractors, construction managers, other lead or prime contractors, and subcontractors at any level, shall be qualified, responsible contracting firms that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills and qualifications and organizational, financial and personnel resources. Firms bidding or otherwise participating in public works contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

§3. Contractor Responsibility Certifications

- (a) As a condition of performing work on a public works contract subject to this ordinance, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification as specified herein.
- (b) The Contractor Responsibility Certification shall be completed on a form provided by the **[jurisdiction]** and reference the project for which a bid is being submitted by name and contract or project number.
- (c) In the Contractor Responsibility Certification the construction manager, general contractor or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:
 - (1) The firm and its employees have all licenses, registrations, certificates or other credentials required by federal and state law and the laws of the **[jurisdiction]** with respect to the contract work it seeks to self-perform.
 - (2) The firm meets the bonding requirements for the contract required by law or contract specifications, as well as applicable insurance requirements for the contract, including general liability, workers compensation and unemployment insurance.
 - (3) The firm has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.
 - (4) The firm has not defaulted on any project in the past three years.

- (5) The firm has not had any type of business, contracting or trade license, registration or certification revoked or suspended in the past three years.
- (6) The firm and its principals/owners have not been convicted of any crime relating to its contracting business in the past ten years.
- (7) The firm does not currently owe any outstanding taxes, penalties, interest or other financial obligation to the **[jurisdiction]**.
- (8) Within the past three years, the firm has not been found in violation of any law applicable to its contracting business, including, but not limited, to licensing laws, tax laws, wage and hour laws, prevailing wage laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$_____ (e.g., 5,000) or more.
- (9) The firm will pay all craft employees on the project, at a minimum, the applicable wage and fringe benefit rates for the classification in which the worker is employed in accordance with applicable rates established by federal, state or local wage law.
- (10) The firm will employ a sufficient number of craft personnel required to successfully perform any project work it self-performs, and shall assign workers to perform only work for which they have sufficient skills, training and knowledge.
- (11) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.
- (12) The firm participates in a Class A Apprenticeship Training Program, as defined below, for each separate trade or classification in which it employs craft employees. This apprenticeship requirement helps assure that workers employed on the project are participants in or graduates of bona fide apprenticeship training programs in each trade or craft in which their services are utilized, as evidenced by the fact that the program is registered with federal or state government and has been in continuous existence for no fewer than five (5) years prior to the project relating to the certification.
 - A. For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years. This may be an apprenticeship program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”), or a non-ERISA program.
 - B. To demonstrate compliance with this section, the firm shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed.
- (13) If the firm is identified as the lowest apparent bidder and prospective awardee for the contract, it shall, pursuant to Section 5 of this ordinance, submit to the **[jurisdiction]** a Subcontractor List, Subcontractor Responsibility Certifications and applicable supporting materials, including proof that the subcontractor participates in a Class A

Apprenticeship, and for any subcontractor that operates as a sole proprietorship, applicable business records that verify that any such firm is a legitimate business entity, not an employee improperly misclassified as a contractor.

- (14) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to successfully perform the referenced contract and shall maintain such capabilities throughout the duration of the project, or will obtain same through the use of qualified, responsible subcontractors or vendors.
 - (15) The firm shall notify the [jurisdiction] within seven days of any material change to any matter attested to in this certification.
 - (16) The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that the information submitted is true, complete and accurate.
- (d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility, and the [jurisdiction] may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including information regarding the firm's technical qualifications, financial capacity or other resources and performance capabilities. The [jurisdiction] may require that such information be included in a separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.
 - (e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in Section 5 of this ordinance.
 - (f) If the submitting firm has ever operated under another name or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach an appendix to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.
 - (g) If a firm fails to provide a Contractor Responsibility Certification required by this section, it shall be disqualified from bidding. No action of any nature shall lie against the [jurisdiction] because of its refusal to accept a bid for this reason.

§4. Notice of Intent to Award Contract

- (a) After it has received bids for a project, the [jurisdiction] shall issue a Notice of Intent to Award Contract to the firm that has submitted the lowest responsive bid.
- (b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination for the firm as required by Section 6 of this ordinance,

compliance with Subcontractor Certifications required by Section 5 of this ordinance, and any other qualification standards required by the [jurisdiction].

§5. Subcontractor Responsibility Requirements

- (a) Within fourteen (14) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit a Subcontractor List, which provides the name and address of the subcontractors it will use on the project, the scope of work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this section.
- (b) The prospective awardee shall not be permitted to use a subcontractor on any work performed for the [jurisdiction] unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5.
- (c) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications and applicable supporting information for all listed subcontractors to the [jurisdiction].
- (d) A prospective awardee shall determine whether any subcontractor on its Subcontractor List is organized as a sole proprietorship owned and operated by a single person. It shall ensure that any such subcontractor is a legitimate business entity and not a misclassified employee by requiring the subcontractor to supplement its Subcontractor Certification with applicable business records verifying that it is a actual business entity. These records may include but are not be limited to articles of incorporation, certificates of insurance, contractor licenses and other typical business records used in the course of the subcontractor's business.
- (e) Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the [jurisdiction] and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by Section 3(c)(11) for each trade or classification of craft workers it will employ on the project.
- (f) Subcontractor Responsibility Certifications shall be executed by a person having sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.
- (g) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from [jurisdiction] and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (h) In the event that the [jurisdiction] determines that a subcontractor fails to meet the requirements of this ordinance or is otherwise determined to be non-responsible, it may, after informing the prospective awardee, exercise one of the following options:

- (1) Permit the awardee to substitute a qualified, responsible subcontractor in accordance with the requirements of this section, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by the **[jurisdiction]**.
- (2) Require the awardee to self-perform the work in question if the firm has the required experience, licenses and other qualifications to perform the work in question; or
- (3) Disqualify the prospective awardee.
- (i) In the event a subcontractor is disqualified under this ordinance, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of claim against the **[jurisdiction]** the basis of a subcontractor disqualification.

§6. Contractor Responsibility Review and Determination

- (a) After the **[jurisdiction]** has issued a Notice of Intent to Award Contract to the lowest responsive bidder, it shall undertake a contractor responsibility review process to determine whether the firm is a qualified, responsible firm in accordance with the requirements of this ordinance and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the **[jurisdiction]**.
- (b) As part of the review process, the **[jurisdiction]** shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this ordinance.
- (c) The **[jurisdiction]** may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, the **[jurisdiction]** may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.
- (d) After the **[jurisdiction]** determines that all responsibility certifications have been properly executed and has verified that all other relevant information requested for reviews indicates that the prospective awardee and its subcontractors are qualified, responsible firms, it shall issue a written Contractor Responsibility Determination for the prospective awardee.
- (e) In the event a firm is determined to be non-responsible, the **[jurisdiction]** shall notify the firm and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project. A Responsibility Determination may be revoked at any time if the **[jurisdiction]** obtains relevant information warranting any such revocations.

§7. Execution of Final Contract

- (a) A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until a Contractor Responsibility Determination has been issued by the **[jurisdiction]** pursuant to Section 6.
- (b) Prior to the execution of a final contract under this Section, the **[jurisdiction]** shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists and Contractor Responsibility Determination on the

[jurisdiction] website for public inspection for a period of five (5) calendar days after the issuance of the Contractor Responsibility Determination.

§8. False, Incomplete or Misleading Responsibility Certifications

If the **[jurisdiction]** determines that a Contractor Certification, Subcontractor List or Subcontractor Responsibility Certification contains false or misleading information that was provided knowingly or with reckless disregard for the truth or omits material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be disqualified from the project and shall be prohibited from performing work for the **[jurisdiction]** for a period of three years. The **[jurisdiction]** may withhold payment of any monies due to the firm as damages and impose other applicable penalties and sanctions, including contract termination, as permitted by law or contract.

SECTION 2

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION 3

The terms, conditions and provisions of this ordinance are hereby declared to be severable, and should any portion, part or provision of this ordinance be found by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, **[jurisdiction]** Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part or provision of this ordinance.

SECTION 4

This ordinance shall become effective thirty (30) days after enactment.

EXHIBIT A

[Insert Name of Jurisdiction]

RESOLUTION NO. _____

WHEREAS, pursuant to [insert citation to applicable state statute, e.g., 16 PA. CONS. STAT. § 1802], state competitive bidding law requires that most public works contracts be awarded to the lowest “*responsible*” bidder; and

WHEREAS, notwithstanding the importance of the “*responsible*” bidder requirement, there is very limited guidance for defining the term “*responsible*” in relevant statutes, regulations or case law, and, therefore, prudent procurement and contracting policy dictates that this term should be more specifically defined; and in doing so, available guidance regarding the general meaning of the “*responsible*” contractor term should be followed, which typically relates to the technical qualifications and other capabilities relating to a contractor’s ability to successful delivery public works projects [insert citations to applicable statutes, regulations and/or case law]; and

WHEREAS, many states and local jurisdictions in the U.S. face critical contracting needs now and in the future, including those for public works and infrastructure projects, that will require significant efforts to plan, manage and oversee major capital investments in both the short and long term; *see* PRESIDENT’S COUNCIL OF ECON. ADVISORS, ECONOMIC BENEFITS AND IMPACTS OF EXPANDED INFRASTRUCTURE INVESTMENT 3 (2018) (estimating \$4.6 trillion in infrastructure investment is needed between 2016 and 2025); and

WHEREAS, in undertaking its infrastructure and other public works projects, [insert name of jurisdiction] seeks to utilize reliable and efficient procurement procedures that will help ensure that its such projects are delivered with reasonable certainty, in a safe, timely manner, and in accordance with contract specifications and applicable industry codes at the lowest overall cost and best value; and

WHEREAS, securing successful delivery of projects in the construction industry is particularly difficult due to the unique, complex, unpredictable and inherently dangerous nature of the industry, wherein errors in project planning or execution can result in serious health and safety risks to project workers and/or the general public, significant and avoidable cost overruns, flawed or inferior projects, and disruptions in performance schedules that delay the availability and use of critical government facilities; MAUREEN CONWAY & ALLISON GERBER, ASPEN INST., WORKFORCE STRATEGIES INITIATIVE, CONSTRUCTION PRE-APPRENTICESHIP PROGRAMS: RESULTS FROM A NATIONAL SURVEY 6-7 (2009)(discussing complicating factors in successful delivery of construction projects and the risks of using poorly trained workers); and

WHEREAS, to protect its financial and proprietary interests in these projects, and to offset performance risks inherent to public works contracting, [jurisdiction] must utilize efficient procurement procedures that adequately protect and promote these interests, including clearly defined, pre-established evaluation criteria to address the unique challenges of capital construction and to result in the selection of qualified, reputable contractors and subcontractors that are committed to [jurisdiction name]’s goals of safe, timely, cost-effective project delivery; and

WHEREAS, to establish efficient procurement procedures, [jurisdiction] specifically seeks to require that its public works contracts are to be performed by qualified “responsible” contractors and subcontractors that meet essential performance criteria, including: (a) satisfactory records of past performance, including compliance with applicable laws and industry regulations; and (b) adequate present performance capabilities, including contractor and subcontractor competency and availability of skilled craft personnel; and

WHEREAS, effective contracting procedure must recognize and address unique challenges relating to procurement in the construction industry, including the following:

(a) construction is a transient industry, which requires a careful review of a firm’s past performance, as well as its current capabilities;

(b) construction is an inherently dangerous industry that requires craft personnel to receive proper safety training; Geetha M. Waehrer et al., *Costs of Occupational Injuries in Construction in the United States*, 39 ACCIDENT ANALYSIS & PREVENTION 1258 (2007)(construction is a high risk industry and accounts for disproportionate share of work-related injuries); Bureau of Labor Statistics, *Fatalities in the Construction Industry*, MONTHLY LAB. REV., July 2014 (industry accounts for 40% of all fatal work-related falls);

(c) under virtually any market conditions, construction projects require assurances of a reliable supply of well-trained craft personnel because it is a highly skilled, labor intensive industry; and

(d) the construction industry is currently facing acute, worsening skill shortages, and such conditions pose major risks to the planning and execution of capital construction projects; CONSTRUCTION LABOR MARKET ANALYZER, CONSTRUCTION USERS ROUNDTABLE (CURT), THE LONG-TERM OUTLOOK FOR CONSTRUCTION 6 (2017)(estimating impending deficit of 1.5 million skilled workers through 2022 in the construction industry); *see also*, Gabriela Rico, *Labor Shortage, steel-cost uncertainties halt work on highly anticipated Oro Valley senior community*, ARIZONA DAILY STAR (June 9, 2018), https://tucson.com/business/labor-shortage-steel-cost-worries-halt-anticipated-oro-valley-senior/article_9c48ee4f-7a90-5c89-90e2-aedd902738ec.html (discussing how labor shortage caused cancellation of \$100 million senior living center); Chirs Ramirez, *Labor shortage causes Exxon to shift construction plans*, CORPUS CHRISTI CALLER-TIMES (Aug. 9, 2017), <https://www.caller.com/story/news/2017/08/09/labor-shortage-causes-exxon-shift-construction-plans/525241001/> (discussing how shortage of welders in the Gulf Coast delayed construction of world’s largest ethylene plant); Ben DuBose, *ECF ’16: Energy Contractors Need Newcomers to Ease Labor Shortage*, HYDROCARBON PROCESSING (Mar. 1, 2016), <http://www.hydrocarbonprocessing.com/Article/3533820/Conference-news/ECF-16-Energy-contractors-need-newcomers-to-ease-labor-shortage.html> (discussing how labor shortage contributes to a 65% failure rate among mega-projects in Gulf Coast Region); Gavin Aronsen, *Labor Shortage Delays DuPont Plant Completion*, AMES TRIBUNE (Jan. 9, 2015), <http://amestrib.com/news/labor-shortage-delays-dupont-plant-completion> (discussing how the shortage of qualified workers delayed the completion of a \$200 million DuPont ethanol plant in Iowa); Press Release, *Unfilled Construction Jobs at Post-Recession High*, Nat’l Ass’n of Home Builders (June 13, 2019), <http://nahbnow.com/2019/06/unfilled-construction-jobs-at-post-recession-high/> (finding 404,000 job openings were unfilled in the construction industry, the most since the Great Recession); and

WHEREAS, due to acute labor shortages in construction craft personnel, leading construction industry groups, including trade associations representing project owners, such as the Construction Users Roundtable (CURT), have repeatedly issued strong recommendations to parties purchasing construction services for large capital projects that they should adopt a pre-qualification standard that requires contractors and subcontractors to prove their participation in craft labor training programs in order to bid or perform work on projects; and

WHEREAS, the above-referenced recommendations are specifically designed to protect the project owner's financial and proprietary interests in capital projects by ensuring that such firms provide skill training to construction craft personnel and have an adequate supply of trained, skilled construction workers to perform their projects; CURT, WP-1101, SKILLED LABOR SHORTAGE RISK MITIGATION (January 2015)(recommending that, to address skill challenges, project owners require contractors to provide skills training as a condition of bidding projects); MATT HELMER & DAVE ALTSTADT, ASPEN INST., WORKFORCE STRATEGIES INITIATIVE, APPRENTICESHIP: COMPLETION AND CANCELLATION IN THE BUILDING TRADES 8-9 (2013)(proposing a requirement that all contractors participating in publicly funded projects participate in registered apprenticeship programs); ROBERT LERMAN ET AL., BENEFITS AND CHALLENGES OF REGISTERED APPRENTICESHIP: SPONSORS' PERSPECTIVE ii (2009)(finding that 97% of employer-sponsors of registered apprenticeship programs would recommend the program to others and that over 80% of sponsors cited filling the demand for skilled workers as a "very important" benefit of apprenticeship); CURT, CONFRONTING THE SKILLED WORKFORCE SHORTAGE (June 2004)(recommending all owners prequalify contractors on the basis of craft training); DAVID H. BRADLEY & STEPHEN A. HERZENBERG, CONSTRUCTION APPRENTICESHIP AND TRAINING IN PENNSYLVANIA 3 (2002)(describing "free rider" market failure that incentivizes employers to under-train construction workers in the absence of apprenticeship programs); *Restoring the Dignity of Work: Transforming the U.S. Workforce Development System Into a World Leader* (RT-335), NCCER (July 2018), https://www.nccer.org/docs/default-source/pdfs/cii-rt335-longver-final_web.pdf?sfvrsn=80e91f4f14 ("Owners should only do business with contractors who invest in training and maintain the skills of their workforce."); and

WHEREAS, in seeking to ensure the adequate development of trained, skilled personnel for the construction industry, as well as other industries, the United States Congress passed the Fitzgerald Act, Pub. L. No. 75-308, 50 Stat. 664, which created a system in which workers could be properly trained in construction skills and safety procedures through organized, formally registered apprenticeship training programs that meet established quality, safety and performance standards, and such programs are approved and monitored by the U.S. Department of Labor and state labor agencies, including the Pennsylvania State Apprenticeship Council; and

WHEREAS, numerous construction industry organizations, as well as notable public policy groups, support apprenticeship an effective means for providing craft labor personnel with essential training and skills, while providing them with valuable employment opportunities. Examples include: Associated Builders and Contractors ("ABC")("ABC has become the world leader in apprenticeship and craft training in the merit shop construction industry."), <https://www.abc.org/Education-Training/Craft-Training-Apprenticeship>; *see also*, ABC Eastern PA Chapter ("ABC Apprenticeship program has played a critical role in developing our apprentices into Journeyworkers. They've gained the knowledge and hands on skills needed to be successful in the field and have played an integral part in growing our organization and allowing us the opportunity to expand into different locations and markets."); North America's Building Trade Unions ("apprenticeship programs train workers to become, highly-skilled . . . construction workers through

a debt-free, technologically-advanced education . . . earn-as-you-learn programs with family-sustaining wages and provide health care coverage and retirement benefits”), <https://nabtu.org/apprenticeship-and-training>; Center for American Progress (“Apprenticeship is a proven worker training strategy that combines on-the-job training with classroom instruction . . . [f]or workers, apprenticeship means a real job that leads to a credential that is valued in the labor market. Apprentices are paid for their time spent on the job, accumulate little to no student debt, and are generally retained once they have successfully completed their programs; Aspen Institute (“Efforts to increase the number of apprenticeships have broad bipartisan support with advocates at the federal, state, and local levels. At the federal level, both the Trump administration and Obama administration prioritized expanding apprenticeship programs as a way to align the needs of workers and employers. In Congress, the Apprenticeship and Jobs Training Act of 2017—seeks to expand the use of apprenticeships through an employer tax credit—has earned bipartisan support” in both the House and Senate), <https://www.aspeninstitute.org/blog-posts/apprenticeships-as-model-of-skills-based-training>; and

WHEREAS, research from both government and industry underscores the need to expand the use of apprenticeship training across the economy, especially in construction, as a means for promoting skills training to address current and future workforce development needs; such reports include a joint report issued by various agencies of the federal government—U.S. DEP’T OF LABOR, COMMERCE, EDUC., & HEALTH & HUMAN SERVS., WHAT WORKS IN JOB TRAINING: A SYNTHESIS OF THE EVIDENCE 8 (2014); WORKFORCE TRAINING & EDUC. COORDINATING BD., WORKFORCE TRAINING RESULTS 2015 5, 47-49 (2015)(showing that, compared to other worker training programs in Washington state, apprenticeship training was “very successful” and ranked first in: increased annualized earnings for workers, net participant benefits, net public benefits, and present value of net returns to taxpayers); U.S. DEP’T OF COMMERCE, ECON. & STATISTICS ADMIN. & CASE WESTERN RESERVE UNIV., THE BENEFITS AND COSTS OF APPRENTICESHIP: A BUSINESS PERSPECTIVE (showing apprenticeship programs are unanimously supported by participating employers and highly cost-effective due to numerous factors, including higher productivity of trained workers, improved safety, improved project quality, more reliable project staffing, and reduction in employee turnover); COUNCIL OF ECON. ADVISORS, ADDRESSING AMERICA’S RESKILLING CHALLENGE 7-8 (2018)(showing that Federal, state, and local governments in the U.S. spend “far less” on retraining and reskilling than other advanced economies); Federal Executive Order promoting expanded use of apprenticeship to train U.S. workforce: Exec. Order No. 13,801, 82 Fed. Reg. 28,229 (June 20, 2017); and

WHEREAS, in recognizing the value created by apprenticeship training and the significant return-on-investment apprenticeship programs produce for employers, the Executive Branch has taken steps through Executive Orders and the creation of a task force devoted to apprenticeships to support and encourage the expansion of apprenticeship training programs nationwide in conjunction with private and public entities; Exec. Order No. 13,845, 83 Fed. Reg. 35,099 (July 24, 2018) (creating a National Council for the American Worker to promote apprenticeship and training programs as a means of addressing the skills crisis facing the nation); TASK FORCE ON APPRENTICESHIP EXPANSION, FINAL REPORT TO THE PRESIDENT OF THE UNITED STATES 15 (2018) (estimating that every dollar spent by employers on apprenticeship yields a return of \$1.47); and

WHEREAS, the courts have consistently recognized that states and local jurisdictions seeking to protect substantial financial and proprietary interests have the right to enact contracting and procurement legislation and/or to impose contract bid specifications designed to ensure the

performance capabilities of prospective contractors and subcontractors and their employees, including apprenticeship training requirements and other craft labor qualifications; *see Bldg. & Const. Trades Council of the Metro. Dist. v. Assoc. Builders & Contractors of Mass. & R.I., Inc.*, 507 U.S. 218 (1993); *Assoc. Builders & Contractors v. Mich. Dep't of Labor & Econ. Growth*, 543 F.3d 275 (6th Cir. 2008); *Hotel Emps. & Restaurant Emps. Union, Local 57 v. Sage Hospitality Res., LLC*, 390 F.3d 206 (3d Cir. 2004); *Assoc. Builders & Contractors, Inc. v. New Castle*, 144 F. Supp. 3d 633 (D. Del. 2015); and *Allied Constr. Indus. v. City of Cincinnati*, No. 16-4248, 2018 WL 283775 (6th Cir. 2018); and

WHEREAS, [jurisdiction name] finds that apprenticeship training programs which are registered with and approved by federal or state agencies, and maintained in accordance with regulations issued pursuant to the Fitzgerald Act, provide the most reliable means for securing a reliable supply of qualified craft labor for capital projects, and further recognizes that essential levels of work quality, safety and cost-efficiency on its public works projects will be better achieved by requiring the use of contractors and subcontractors that participate in bona fide apprenticeship programs with a proven record of graduating apprentices and providing effective skill training in the construction industry; U.S. DEP'T OF LABOR EMP'T & TRAINING ADMIN., REGISTERED APPRENTICESHIP FACT-SHEET 1 (2000) (workers that complete apprenticeships are more motivated, more productive, and have lower workers' compensation costs because of training programs' emphasis on safety); PAUL M. GOODRUM, CONSTRUCTION INDUSTRY CRAFT TRAINING IN THE UNITED STATES AND CANADA (2000) (finding that for a single capital construction project, each dollar invested in craft training yields a return of \$1.30 to \$3.00); DEBBIE REED ET AL, AN EFFECTIVENESS ASSESSMENT AND COST-BENEFIT ANALYSIS OF REGISTERED APPRENTICESHIP IN 10 STATES xiv (2012) (finding that the social benefit of an individual completing an apprenticeship training program exceeds the social costs by \$49,000); and

WHEREAS, [jurisdiction name] wishes to revise its procurement standards for public works construction to address these findings and considerations, limit project delivery risks and protect its financial and proprietary interests, and better ensure efficient procurement and successful delivery of these projects; and

NOW, THEREFORE, BE IT RESOLVED that [jurisdiction name] is committed to addressing the challenges it faces relating to public works projects by enacting necessary and appropriate procurement legislation to protect its proprietary and financials interests and create adequate safeguards to ensure the successful delivery of such projects to the fullest extent possible.

ATTEST:
