

ORDINANCE NO. 3744-C.S.

ORDINANCE ADDING ARTICLE 7, “LOCAL HIRING PREFERENCES IN PUBLIC WORKS CONTRACTS,” AND ARTICLE 8, “UTILIZING SKILLED AND TRAINED WORKFORCE IN PUBLIC WORKS CONTRACTS,” TO TITLE 8, CHAPTER 3 OF THE MODESTO MUNICIPAL CODE

WHEREAS, the unemployment rate in the City of Modesto (“City”) has generally been higher than in the State of California as a whole. The average unemployment rate in the City between 2018 and 2021 was 7.66%. During the same time period, the average annual unemployment rate for the State of California as a whole was 6.69%; and

WHEREAS, the City has determined that expanding the employment base by implementing a local hiring preference in Public Works Contracts within the City and Stanislaus County will benefit the region as a whole; and

WHEREAS, the City has determined that it is in the public interest and welfare to add Article 7 to Chapter 3 of Title 8 of the Modesto Municipal Code; and

WHEREAS, the City has determined that Public Works Contracts utilizing a skilled and trained workforce will result in a higher quality work product; and

WHEREAS, the City has determined that it is in the public interest and welfare to add Article 8 to Chapter 3 of Title 8 of the Modesto Municipal Code.

NOW, THEREFORE, the City Council of the City of Modesto does ordain as

follows: **SECTION 1. FINDINGS**

The City Council of the City of Modesto finds that all of the above Recitals and within this Ordinance are true and correct and incorporated herein by reference.

SECTION 2. ADDITIONS

1. The City of Modesto Municipal Code Title 8 Chapter 3 is hereby amended by adding ARTICLE 7 entitled “Local Hiring Preferences in Public Works Contracts” in its entirety to read as follows:

Article 7 – Local Hiring Preferences in Public Works Contracts

8-3.701 – Findings and Purpose

- (a) The City Council finds and declares as follows:
 - (1) The unemployment rate in the City has generally been higher than in the State of California as a whole. The average annual unemployment rate in the City between 2018 and 2021 was 7.66%. During the same time period, the average annual unemployment rate for the State of California as a whole was 6.69%.
 - (2) Statistics indicate that the City’s higher unemployment rate correlates to a higher number of families living in poverty and to a higher crime rate.
 - (3) Expanding the employment base by implementing a local hiring preference in Public Works Contracts within the City and Stanislaus County will benefit the region as a whole.
 - (4) The City spends significant amounts in contracting for services and in constructing improvements to real property or to existing facilities. The funds used in contracting for those services are derived, in part, from taxes, fees, and other revenues of local businesses in the City. To the extent possible, such funds should be placed back into the local economy.

- (5) The construction industry is a potential path to stable employment and is, therefore, a critical opportunity to connect residents with economic opportunities.
 - (6) A local hiring preference in Public Works Contracts will aim to provide job opportunities to City and Stanislaus County residents, expand the region’s employment base, lessen the drain on public assistance resources, and reduce the City workforce’s pattern of commuting outside the region for employment.
- (b) The purpose of this Article is to improve the local economy by:
- (1) Increasing the local workforce base by decreasing unemployment and thereby enhancing and retaining job skills; and
 - (2) Increasing local spending power, which will result in a stronger, more self-reliant economy.

8-3.702 – Exclusions and Exceptions

The provisions of this Article shall not apply under any of the following circumstances:

- (a) When a state or federal law or regulation applicable to a particular Public Works Contract prohibits a local hiring requirement;
- (b) When a particular Public Works Contract utilizes grant funding, where the conditions of the grant prohibit a local hiring requirement;
- (c) When the City, in its sole discretion, determines that a contract is necessary to respond to any emergency which endangers the public health, safety, or welfare;

- (d) When the City, in its sole discretion, determines that a suitable pool of Qualified Individuals who are Local Residents does not exist for a specific Public Works Contract; and/or
- (e) When the estimated cost of the construction of the Public Works Contract is less than \$500,000.

8-3.703 – Definitions

Except as otherwise expressly set forth herein, the following words and terms as used in this Article shall have the following meanings:

- (a) “Construction Work Hours” means the total hours worked on a Public Works Contract by qualified individuals, whether those individuals are employed by a Contractor or Subcontractor.
- (b) “Contractor” means any of the following:
 - (1) Any person or entity who submits a bid as the prime entity to the City for a Public Works Contract.
 - (2) Any person or entity who provides labor and/or materials for the City pursuant to a Public Works Contract.
- (c) “City” means the City of Modesto, California.
- (d) “Days” means calendar days unless otherwise specified.
- (e) “Local Resident” means an individual who is legally domiciled, as defined by Elections Code section 349(b), in Stanislaus County immediately preceding the date of the notice of solicitation or bid advertisement by the City. An individual’s domicile is his or her one and only true, fixed, and permanent home and principal establishment. An individual shall verify his or her domicile upon request of the

Contractor or City by producing satisfactory documentation such as a rent/lease agreement, utility bills, a valid state-issued driver's license or identification card, or any other similar and reliable evidence.

- (f) "Public Works Contract" has the same meaning as set forth in Section 1307 of the City Charter, as amended or supplanted.
- (g) "Qualified Individuals" means any and all skilled and unskilled workers, including but not limited to, work site foremen, journeymen, technical engineers, apprentices, construction trainees, and construction helpers. Qualified Individuals also include any and all other workers appropriate for construction activities regardless of level of skill.
- (h) "Subcontractor(s)" means any person or entity that assumes, by secondary contract, some or all of the obligations of a Contractor.

8-3.704 – Requirements for Contractors

- (a) Every Contractor submitting a bid to the City for a Public Works Contract shall agree to make a good faith effort to hire Qualified Individuals who are Local Residents in sufficient numbers so that, with respect to such Public Works Contract, no less than 25% of the total construction workforce, including the Subcontractor workforce, measured in Construction Work Hours, is comprised of Local Residents.
- (b) A "good faith effort" means a Contractor will take all of the following or similar actions to recruit and maintain Local Residents as part of the construction workforce:

- (1) Contact local recruitment sources to identify Qualified Individuals who are Local Residents;
 - (2) Advertise for Qualified Individuals who are Local Residents in trade papers and newspapers of general circulation within the City and the County of Stanislaus, or by equivalent electronic means, unless time limits imposed under the applicable Public Works Contract relative to the commencement and/or completion of work do not permit such advertising; and
 - (3) With respect to any portion of a Public Works Contract to be performed by a Subcontractor, identify Subcontractors whose workforce includes Qualified Individuals who are Local Residents.
- (c) Every Contractor shall complete and sign, under penalty of perjury, a certification of good faith effort to hire Local Residents, on the form provided in the City's bid package, and shall submit the same with its sealed bid no later than the date and time of the bid opening.
- (d) A Contractor shall include in each and every subcontract relating to a Public Works Contract, a provision whereby the Subcontractor agrees to make a good faith effort to hire Qualified Individuals who are Local Residents. A Contractor shall be responsible for a Subcontractor's compliance with the provisions of this Article.
- (e) The City Purchasing Manager, or his or her designee, shall prescribe rules, regulations, and procedures relating to the application, administration, and interpretation of the provisions of this Section. Such rules, regulations, and

procedures shall be consistent with the provisions of this Section and may specify details and forms to be used.

- (f) If in the sole discretion of the City, the City finds that a Contractor has failed to make a good faith effort to use Local Residents in the course of performance of any applicable Public Works Contract pursuant to the requirements of this Article, the City may deem the Contractor in breach of contract. In the alternative of any other available legal remedies, the City may require that Contractor to develop a written plan to recruit Qualified Individuals who are Local Residents as a method of complying with the requirements of this Article. If the Contractor fails to comply with a written plan described by this Section, the City may, at its sole discretion, deem the Contractor non-responsible in the evaluation of future Public Works Contract bid opportunities.

8-3.705 – Hiring Discretion

This Article does not limit the Contractor’s or the Subcontractor’s ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Article shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for a position in question, or to employ any particular worker.

8-3.706 – Nonresponsive Bids

- (a) Nothing in this Article alters the City’s obligation to award a contract to the lowest bidder. The City may declare a bid to be nonresponsive under the provisions of this Article for good cause including, but not limited to, the following circumstances:

- (1) If a Contractor fails to complete and sign, under penalty of perjury, the certificate of good faith effort to hire Local Residents and/or fails to submit the same with its sealed bid no later than the date and time of bid opening; or
- (2) If a Contractor, or a Subcontractor listed by a Contractor, fails to comply with the good faith effort requirements set forth in 8-3.703.

8-3.707 – Required Documentation

During its performance of a Public Works Contract, a Contractor shall keep an accurate record on a standardized form showing the name, place, of residence, trade classification, hours employed, proof of a Qualified Individual status, per diem wages and benefits, or each person employed by the Contractor on the specific public works project, including full-time, part-time, permanent and temporary employees. A Contractor shall require each Subcontractor performing work pursuant to a Public Works Contract awarded by the City to the Contractor to maintain records of the same information for the Subcontractor's workforce and shall require each Subcontractor to provide a copy of such records to the Contractor upon the Contractor's request. A Contractor shall make the records and documents set forth in this Section available to the City, upon request, within five (5) business days.

8-3.708 – Forms Submitted Under Penalty of Perjury

All forms required under this Article shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

8-3.709 – Monitoring

From time to time, and at its sole discretion, the City may monitor and investigate the compliance of any Contractor and/or Subcontractor with respect to the requirements of this Article. The City shall have the right to engage in random inspections of job sites, subject to the construction schedule and safety concerns. Each Contractor and Subcontractor shall allow representatives of the City, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the Contractor and Subcontractor and the records required to document compliance with this Article. The City shall establish a procedure for City monitoring of compliance with this Article and to address allegations of noncompliance. The City shall have sole authority over the administration of this Article.

2. The City of Modesto Municipal Code Title 8 Chapter 3 is hereby amended by adding ARTICLE 8 entitled “Utilizing Skilled and Trained Workforce in Public Works Contracts” in its entirety to read as follows:

Article 8 – Utilizing Skilled and Trained Workforce in Public Works Contracts

8-3.801 – Findings and Purpose

(a) The City Council finds and declares as follows: The purpose of this Article is to improve the quality of public works projects undertaken in the City by:

- (1) Increasing the percentage of individuals utilized in Public Works Contracts meeting the definition of a skilled and trained workforce.
- (2) Utilizing a greater percentage of skilled and trained workforce will increase the quality of public works projects completed in the City because the workforce is more experienced and qualified to perform such work.

8-3.802 – Exclusions and Exceptions

The provisions of this Article shall not apply under any of the following circumstances:

- (a) When a state or federal law or regulation applicable to a particular Public Works Contract prohibits a skilled and trained workforce requirement;
- (b) When a particular Public Works Contract utilizes grant funding, where the conditions of the grant prohibit a skilled and trained workforce requirement;
- (c) When the City determines that a contract is necessary to respond to any emergency which endangers the public health, safety, or welfare;
- (d) When the City, in its sole discretion, determines that a suitable pool of Qualified Individuals who meet skilled and trained workforce requirements does not exist for a specific Public Works Contract.
- (e) When the estimated cost of the construction of the Public Works Contract is less than \$500,000; and/or
- (f) When a Public Works Project is governed by a particular State law or regulation prescribing skilled and trained workforce requirements inconsistent with this Article.

8-3.803 – Definitions

Except as otherwise expressly set forth herein, the following words and terms as used in this Article shall have the following meanings:

- (a) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor code before January 1, 2014.

- (b) “Construction Work Hours” means the total hours worked on a public works contract by qualified individuals, whether those individuals are employed by a Contractor or Subcontractor.
- (c) “Contractor” means any of the following:
 - (1) Any person or entity who submits a bid as the prime entity to the City for a Public Works Contract.
 - (2) Any person or entity who provides labor and/or materials for the City pursuant to a Public Works Contract.
- (d) “City” means the City of Modesto, California.
- (e) “Days” means calendar days unless otherwise specified.
- (f) “Public Works Contract” has the same meaning as set forth in Section 1307 of the City Charter, as amended or supplanted.
- (g) “Qualified Individuals” means any and all skilled and trained workers, including but not limited to, work site foremen, journeymen, technical engineers, apprentices, construction trainees, and construction helpers. Qualified Individuals also include any and all other workers appropriate for construction activities regardless of level of skill.
- (h) “Skilled and trained workforce” means a workforce that meets all of the following conditions:
 - (1) All the workers performing work in an apprenticable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief

of the Division of Apprenticeship Standards of the Department of Industrial Relations.

- (2) At least 60% of the skilled journeypersons employed to perform work on the contract or project by every Contractor and each of its Subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
- (3) For the occupations exempted from the requirements of Paragraph 2 of this Section (definition of “skilled and trained workforce”), at least 30% of the skilled journeypersons employed to perform work on the contract or project by every Contractor and each of its Subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation.
 - (i) “Skilled journeyperson” means a worker who either:
 - (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

- (2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (j) “Subcontractor(s)” means any person or entity that assumes, by secondary contract, some or all of the obligations of a Contractor.

8-3.804 – Requirements for Contractors

- (a) Each Contractor and Subcontractor that performs work on a Public Works Contract shall make a good faith effort to employ a skilled and trained workforce, pursuant to California Public Contract Code § 2601, to perform all work on the project that falls within an Apprenticable Occupation in the building and construction trades, as defined by California Public Contract Code § 2601.
- (b) Each Contractor and Subcontractor that performs work on a Public Works Contract shall make a good faith effort to use graduates of an apprenticeship program as defined by Public Contract Code § 2601(c), in the percentages required by Section 8-3.803(i) of this Article.
- (c) A “good faith effort” means a Contractor will take all of the following or similar actions to recruit and maintain skilled and trained workforce in the performance of any Public Works Contract meeting the requirements of this Article:
 - (1) Contact recruitment sources to identify Qualified Individuals;
 - (2) Advertise for Qualified Individuals in trade papers and newspapers of general circulation within the City and the County of Stanislaus, or by

equivalent electronic means, unless time limits imposed under the applicable Public Works Contract relative to the commencement and/or completion of work do not permit such advertising; and

- (3) With respect to any portion of a Public Works Contract to be performed by a Subcontractor, identify Subcontractors whose workforce includes Qualified Individuals.
- (d) Each Contractor shall certify that it made a good faith effort to use a skilled and trained workforce, on the form provided in the City's bid package, and shall submit the same with its sealed bid no later than the date and time of the bid opening.
- (e) Each Contractor shall include in each and every subcontract relating to a Public Works Contract, a provision requiring the Subcontractor to certify that it made a good faith effort to use a skilled and trained workforce in that contract. Each Contractor shall be responsible for a Subcontractor's compliance with the requirements of this Article.
- (f) Failure of any Contractor or Subcontractor to comply with any requirement of this Article may be deemed, in the sole discretion of the City, a material breach of the Public Works Contract.

8-3.805 – Hiring Discretion

This Article does not limit the Contractor's or the Subcontractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions.

No provision of this Article shall be interpreted so as to require a Contractor or

Subcontractor to employ a worker not qualified for a position in question, or to employ any particular worker.

8-3.806 – Nonresponsive Bids

(a) Nothing in this Article alters the City’s obligation to award a contract to the lowest bidder. The City may declare a bid to be nonresponsive under the provisions of this Article for good cause including, but not limited to, the following circumstances:

- (1) If a Contractor fails to complete and sign, under penalty of perjury, the certification that the Contractor made a good faith effort to use a skilled and trained workforce and/or fails to submit the same with its sealed bid no later than the date and time of bid opening; or
- (2) If a Contractor, or a Subcontractor listed by a Contractor, fails to comply with the requirements set forth in 8-3.804.

8-3.807 – Required Documentation

For three (3) years following substantial completion of any Public Works Contract, each Contractor and Subcontractor shall keep accurate payroll records, showing the name, address, and work classification for each worker who worked on the project; the straight time and overtime hours worked each day and week; whether the worker qualifies as a skilled journeyman under California Public Contract Code § 2601; and whether the worker is a graduate of an apprenticeship program in the applicable occupation. These records shall be made available upon request by officers and agents of the City. Records shall be made available no later than ten (10) days subsequent to the request.

8-3.808 – Forms Submitted Under Penalty of Perjury

All forms required under this Article shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

8-3.809 – Monitoring

From time to time, and at its sole discretion, the City may monitor and investigate compliance of any Contractor and/or Subcontractor with respect to the requirements of this Article. The City shall have the right to engage in random inspections of job sites, subject to the construction schedule and safety concerns. Each Contractor and Subcontractor shall allow representatives of the City, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the Contractor and Subcontractor and the records required to document compliance with this Article. The City shall establish a procedure for City monitoring of compliance with this Article and to address allegations of noncompliance. Within sixty (60) days of Contractor completing all substantial work associated with a Public Works Contract pursuant to this Article, Contractor shall submit documentation as set forth in Section 8-3.807 in a form acceptable to the City. The City shall have sole authority over the administration of this Article.

8-3.810 – City’s Remedies

If in the sole discretion of the City, the City finds that a Contractor has failed to make a good faith effort to use a skilled and trained workforce in the course of performance of any applicable Public Works Contract pursuant to the requirements of this Article, the City may deem the Contractor in breach of contract. In the alternative of any other available legal remedies, the City may require that Contractor to develop a written plan to recruit qualified individuals as a method of complying with the requirements of this

Article. If the Contractor fails to comply with a written plan described by this Section, the City may, at its sole discretion, deem the Contractor non-responsible in the evaluation of future Public Works Contract bid opportunities.

SECTION 3. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application any other person or circumstance. The City Council or the City of Modesto hereby declares that it would have adopted each section, sentence, clause, or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of this Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

The City Council hereby finds that the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines.

Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 6. PUBLICATION.

At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in the Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of March, 2022, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Council Members: Madrigal, Ricci, Zoslocki, Mayor Zwahlen

NOES: Council Members: Kenoyer, Wright,

ABSENT: Council Members: Escutia-Braaton

APPROVED: _____
SUE ZWAHLEN, Mayor

ATTEST:

BY: _____
DANA SANCHEZ, Interim City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: _____
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8th day of March, 2022, Councilmember Madrigal moved its final adoption, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Council Members: Escutia-Braaton, Madrigal, Ricci, Zoslocki,
Mayor Zwahlen

NOES: Council Members: Kenoyer, Wright,

ABSENT: Council Members: None

APPROVED: _____
SUE ZWAHLEN, MAYOR

ATTEST: _____
DANA SANCHEZ, Interim City Clerk

Effective Date: April 7, 2022