



**West Norriton Township
Work Session Agenda
January 2, 2024 @ 7:00 PM**

1. Call To Order And Pledge Of Allegiance

2. REORGANIZATION MEETING

A. Manager's Items

1. Presentation Of Certificates Of Election And Administration Of Oath Of Office

- a. Anne Pavone - Commissioner; and
- b. Peter D. Smock - Commissioner

2. Request Nomination For The Office Of President Of The Board Of Commissioners

B. President's Items:

1. Request Nomination For The Office Of Vice President Of The Board Of Commissioners

2. Public Comment

- a. Recognize individuals that are taxpayers or residents of West Norriton Township wishing to offer comment.
- b. Require the name and address of such persons wishing to comment.
- c. Permit each individual at minimum one (1) opportunity to speak. The President may require an individual who has already spoken to wait until all others wishing to speak have had the opportunity before permitting an additional opportunity to speak. Once all others have had the opportunity to speak, the President shall determine whether time would allow for additional comment from the individual wishing to speak. Such a determination shall be based solely on the factor of time and shall not be based on the content or viewpoint of the particular individual(s) seeking additional opportunity to speak.
- d. Provide for a five (5) minute maximum for each individual to offer public comment. There shall be no ceding or assigning of time. In no case shall a time limit of fewer than two (2) minutes be designated. It may be requested that a spokesperson from a group address the Board of Commissioners.
- e. Preserve order by prohibiting disruptive conduct including, but not limited to, speaking by any person who is not, at that time, taking part in public comment.

To submit written Public Comment to the Board, please [CLICK HERE](#)

3. Consider Appointments Of Township Personnel

Documents:

[APPT LIST TWP PERSONNEL - BLANK.PDF](#)

4. Consider Appointment Of The Township Solicitor

5. Consider Appointments To Boards And Commissions

Documents:

[APPT LIST BOARDS AND COMMISS.PDF](#)

3. WORK SESSION

A. Discussion/Update On Status

1. Construction Of New Forensic Hospital At Norristown State Hospital (West Norriton Portion)

B. Manager's Items

**1. Consider Authorizing Staff To Advertise Ordinance No. 2024-767
Re: Revised Responsible Contractors Ordinance (RCO)**

Documents:

[ORDINANCE - REVISED RCO.PDF](#)

C. Commissioner Liaison Committee Reports

D. Public Comment

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- e. Preserve order by prohibiting disruptive conduct including, but not limited to, speaking by any person who is not, at that time, taking part in public comment.

To submit written Public Comment to the Board, please [CLICK HERE](#)

E. Meeting Dates

- A. Environmental Advisory Council (EAC) - February 7th @ 7:00 PM;
- B. Recreation Committee - January 10th @ 7:00 PM;
- C. Planning Commission (PC) - January 22nd @ 7:00 PM;
- D. Arts & Culture Commission - January 17th @ 7:00 PM
- E. Zoning Hearing Board (ZHB) - None
- F. Human Relations Commission (HRC) - January 25th @ 7:00 PM

F. Adjournment

www.westnorritontwp.org

West Norriton Township Appointments of Township Personnel

<u>CURRENT</u>	<u>APPOINTMENT</u>	<u>OFFICE</u>	<u>NEW TERM TO EXPIRE</u>
Jason Bobst	_____	Secretary	1 st Monday 2024 (2 year term)
Kathy Frederick	_____	Assistant Secretary	1 st Monday 2024 (2 year term)
Allan Booz	_____	Code Enforcement	1 st Monday 2024 (2 year term)
Michael Valyo	_____	Fire Marshal	1 st Monday 2024 (2 year term)
Johnathan Kennedy	_____	Deputy Fire Marshal	1 st Monday 2024 (2 year term)
Kilkenny Law Sean Kilkenny	_____	Solicitor	1 st Monday 2024 (2 year term)
Kimmel, Lorah - Robert Stevenson	_____	Auditor	1 st Monday 2024 (2 year term)
Gilmore & Associates Erik Garton	_____	Engineer	1 st Monday 2024 (2 year term)
Gilmore & Associates T.J. Figaniak	_____	Sanitary Engineer	1 st Monday 2024 (2 year term)
Remington Vernick Chris Fazio	_____	Traffic Engineer	1 st Monday 2024 (2 year term)
Allan Booz	_____	Zoning Officer	1 st Monday 2024 (2 year term)
Michael Valyo	_____	Assistant Zoning Officer	1 st Monday 2024 (2 year term)
Montgomery County Planning Commiss.	_____	Land Planner	1 st Monday 2024 (2 year term)
Donna Horn	_____	Treasurer	1 st Monday 2024 (2 year term)

**West Norriton Township
Appointments to Boards and Commissions**

<u>CURRENT</u>	<u>APPOINTMENT</u>	<u>OFFICE</u>	<u>NEW TERM TO EXPIRE</u>
<i>Kathy Hart</i>	_____	<i>Civil Service Commission</i>	<i>1st Mon. 2024 (6 yr. term)</i>
<i>David Tedjeske</i>	_____	<i>Civil Service Commission</i>	<i>1st Mon. 2024 (6 yr. term)</i>
<i>Bruce Shoupe</i>	_____	<i>Planning Commission</i>	<i>1st Mon. 2024 (4 yr. term)</i>
<i>Raymond Picard</i>	_____	<i>Review Board for UCC</i>	<i>1st Mon. 2024 (1 yr. term)</i>
<i>Andy Talone</i>	_____	<i>Review Board for UCC</i>	<i>1st Mon. 2024 (1 yr. term)</i>
<i>Tim Kennedy</i>	_____	<i>Review Board for UCC</i>	<i>1st Mon. 2024 (1 yr. term)</i>
<i>Ron Pitts</i>	_____	<i>Review Board for UCC</i>	<i>1st Mon. 2024 (1 yr. term)</i>
<i>Phillip Mandato</i>	_____	<i>Review Board for UCC</i>	<i>1st Mon. 2024 (1 yr. term)</i>
<i>Crystal Miller</i>	_____	<i>Zoning Hearing Board</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>Mary Anders</i>	_____	<i>Recreation Committee</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>Ralph Panzullo</i>	_____	<i>Recreation Committee</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>Avery Manning</i>	_____	<i>Human Relations Commiss</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>Walt Smith</i>	_____	<i>Human Relations Commiss</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>Vacant</i>	_____	<i>Human Relations Commiss</i>	<i>1st Mon. 2024 (3 yr. term)</i>
<i>AnneMarie Sortin</i>	_____	<i>Vacancy Board</i>	<i>2nd Mon. 2024 (1 yr. term)</i>

**WEST NORRITON
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2024-767

AN ORDINANCE AMENDING PART 11, RESPONSIBLE CONTRACTORS OF THE WEST NORRITON MUNICIPAL CODE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, West Norriton Township, Montgomery County, Pennsylvania (hereinafter “the Township”) is a Township organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Township 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; and

WHEREAS, the Township 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; and

WHEREAS, the Township has previously adopted rules and regulations regarding responsible contracting in the Township that are codified under Part 11 of the Municipal Code; and

WHEREAS, the Township desires and declares that it is in the best interest of the Township and the health, safety and welfare of the residents of the Township to adopt this Ordinance; and

WHEREAS, the Township hereby adopts Resolution No. _____ (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, and it is hereby **ORDAINED** by the West Norriton Township Board of Commissioners, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I: Amendment of Part 11, titled “Responsible Contractors.”

The Township hereby amends Part 11, titled “Responsible Contractors,” in its entirety as follows:

§1101. Purpose

- A. *West Norriton Township (“Township”) 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.*
- B. *To effectuate the purpose of selecting responsible contractors for these public contracts and to protect the Township’s investments in such contracts, prospective contractors and sub-contractors 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.*
- C. *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.*
- D. *Therefore, the Township shall require compliance with the provisions of this Article 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 Township. However, in the event that this Article conflicts with any local law, public policy or contracting documents of the Township the requirements of this Article shall prevail.*

§1102. Responsible Contractor Requirements

- A. *This Article shall apply to public works projects undertaken by the Township for construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities with a total value of \$250,000 or more for construction. All contractors and subcontractors of any tier that perform work on such projects, regardless of value of individual contract or subcontract packages shall meet the requirements of this Article.*
- B. *All firms engaged in public works contracts subject to this Article, 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.

- C. The firm will pay all craft employees on the project, at a minimum, the applicable prevailing wage and fringe benefit rates, as established for the classification in which the worker is employed, in accordance with 43 PA. CONS. STAT. § 165-1 et. seq.*

§1103. 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 Township 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 Township 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) 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 \$5,000 or more.

- (8) The firm will employ a sufficient number of craft labor personnel required to successfully perform any project work it self-performs or shall use qualified subcontractors to meet this requirement.*
- (9) The firm shall ensure that all craft labor it employs on the project will have completed, prior to working on the project the OSHA 10-hour training course established by the U.S. Department of Labor. If the firm is a prime contractor, it shall also ensure that at least one person on the project has completed the OSHA 30-hour construction training course established by the U.S. Department of Labor.*
- (10) 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 requirement, along with the requirements specified in Section 1103.C(11) of this Article help ensure 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.*
- (11) The construction manager, general contractor or other lead or prime contractor responsible for the project shall ensure that at least 70 percent of the craft labor workers employed on the project shall be comprised of either journeyperson workers who have successfully completed a Class A Apprenticeship Program as defined in Section 1103.C(10) of this Article. The apprenticeship participation specified by this section must be in the same trade or craft for which the workers are employed on the project.*

(12) The firm shall assign workers to perform only work in their respective craft or trade for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement.

(13) The firm shall comply with the wage and benefit requirements set forth in Section 1102.C of this Article.

(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 Township within seven days of any material changes in its operation that relate to any matter attested to in this certification.

D. Execution of the Contractor Responsibility Certification required by this Article shall not establish a presumption of contractor responsibility, and the Township 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 Township 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 1105 of this Article.

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 Township because of its refusal to accept a bid for this reason.

§1104. Notice of Intent to Award Contract

A. After it has received bids for a project, the Township 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 1106 of this Article, compliance with Subcontractor Certifications required by Section 1105 of this Article, and any other qualification standards required by the Township.*

§1105. 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 Township unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of this section.*
- 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 Township.*
- D. A prospective awardee shall determine whether any firm on its Subcontractor List is organized as a sole proprietorship owned and operated by a single person. This shall apply to subcontractors at any tier. For any such entity, the prospective awardee shall ensure that the sole proprietorship subcontractor is a legitimate business entity and not a misclassified employee by requiring the subcontractor to supplement its Subcontractor Certification with its Employer Identification Number and copies of any license, certificate or registration it is required to maintain in to do business in the state in which it is located.*
- E. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the Township and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by Section 1103.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 the Township and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.*

- H. In the event that the Township determines that a subcontractor fails to meet the requirements of this Article 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 Township.*
 - (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 Article, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of claim against the Township on the basis of a subcontractor disqualification.*

§1106. Contractor Responsibility Review and Determination

- A. After the Township 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 Article and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the Township.*
- B. As part of the review process, the Township shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this Article.*
- C. The Township 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 Township may seek relevant information from the firm, its prior clients or customers, its subcontractors, or any other relevant source.*
- D. After the Township 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 Township 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 Township obtains relevant information warranting any such revocations.*

§1107. Execution of Final Contract

- A. A contract subject to this Article shall not be executed until all requirements of this Article have been fulfilled and until a Contractor Responsibility Determination has been issued by the Township pursuant to Section 1106.*
- B. Prior to the execution of a final contract under this Section, the Township shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists, related supporting documentation and the Contractor Responsibility Determination on a publicly available website for public inspection for a period of ten (10) calendar days after the issuance of the Contractor Responsibility Determination.*

§1108. False, Incomplete or Misleading Responsibility Certifications

If the Township 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 Township for a period of three (3) years. The Township 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.

§1109 Effect on prior contracts.

The requirements of this Article shall not apply to contracts executed prior to the effective date of this Article, except that the exercise of an option on a contract covered by this Article shall be deemed to create a new contract for purposes of this Article.

SECTION 2: SEVERABILITY.

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, West Norriton Township Board of Commissioners 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 3: REPEALER.

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

SECTION 4: EFFECTIVE DATE.

This Ordinance shall be effective immediately upon approval.

ORDAINED AND ENACTED, by the Board of Commissioners of West Norriton Township, Montgomery County, Pennsylvania, this _____ day of _____, 2023.

ATTEST:

**WEST NORRITON TOWNSHIP
BOARD OF COMMISSIONERS:**

Jason Bobst, Township Manager

By: _____
Peter Smock, President

**WEST NORRITON
MONTGOMERY COUNTY, PENNSYLVANIA**

RESOLUTION NO. _____

WHEREAS, pursuant to the Pennsylvania Statutes Title 53 P.S. Municipal and Quasi-Municipal Corporations ¶ 56802, state competitive bidding law requires that most public works contracts lowers 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 successfully deliver public works; 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, the Township seeks to utilize reliable and efficient procurement procedures that will help ensure that its 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 difficulty 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 that 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, the Township 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 the Township's goal of safe, timely, cost-effective project delivery; and

WHEREAS, to establish efficient procurement procedures, the Township 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 inherently dangerous industry that requires craft personnel to receive property 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 fata 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; CONSTRUCITON LABOR MARKET ANALYZER, CONSTRUCTION USERS ROUNTABLE (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-7a90-90e2-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 60% 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 project 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 public 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 incentives employers to under-train construction workers in the absence of apprenticeship programs); *Restoring the Dignity of Work: Transforming in 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 as 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 development 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 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. & Constr. Trades Council of the Metro. Dist. V. Associated Builders & Contractors of Mass. & R.I., Inc.*, 507 U.S. 218 (1993); *Associated 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 (3^d Cir. 2004); *Associated Builders & Contractors, Inc. v. New Castle Cnty.*, 144 F. Supp. 3d 633 (D. Del. 2015); *Allied Constr. Indus. V. City of Cincinnati*, 879 F. 3d 215 (6th Cir. 2018); *Associated Builders & Contractors. E. Pa. Chapter, Inc. v. Cnty. Of Northampton*, 376 F. Supp 3d 476 (E.D. Pa. 2019), *aff'd*, --- F.App'x ----(3^d Cir. 2020) (unpublished decision).

WHEREAS, the Township 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 LBAOR EMP'T & TRAINING AMIN., 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, the Township 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;

WHEREAS, the Township 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 financial interests and create adequate safeguards to ensure the successful delivery of such projects to the fullest extent possible; and,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of West Norriton Township and hereby ENACTED as follows:

West Norriton Township Board of Commissioners believes that amendment of its Responsible Contractor Ordinance is necessary and appropriate for the health, safety and welfare of the Township and as an exercise of proper management, and control of the Township; and,

BE IT FURTHER RESOLVED THAT, this Resolution may serve as part of the legislative history and basis for such amendments to the Municipal Code relating to responsible contractors and contracting.

RESOLVED AND ADOPTED this _____ day of _____.

ATTEST:

**WEST NORRITON TOWNSHIP
BOARD OF COMMISSIONERS:**

Jason Bobst, Township Manager

By: _____
Peter Smock, President