

1 **Section 1.** Article XIII titled “DISADVANTAGED WORKERS REQUIREMENT” is hereby
 2 established within **Chapter 2 - Administration**, and reads as set forth below. The remainder of
 3 **Chapter 2** remains in full force and effect.

4 **CHAPTER 2 - ADMINISTRATION**

5 **ARTICLE XIII – DISADVANTAGED WORKERS REQUIREMENT**

6 **Sec. 2-268. Findings of fact and intent.**

7 (a) Findings.

- 8 (1) Journey level construction workers are retiring in numbers greater than the number of
 9 applicants to replace those workers, creating shortages of skilled construction
 10 workers. The construction industry is facing severe shortage of craft labor skills. The
 11 lack of properly trained, qualified workers poses a threat to future capital
 12 improvement projects.
- 13 (2) The City has a proprietary interest in developing a skilled workforce for its future
 14 capital improvement projects. The shortage of craft labor skills is a challenge for the
 15 City and its capital improvements projects. To address the issue, the City must create
 16 a system through which disadvantaged workers can be properly trained in
 17 construction skills.
- 18 (3) As reported by the PEW Charitable Trust Foundation, being incarcerated reduces
 19 hourly wages for men by approximately 11 percent, annual employment by nine
 20 weeks and annual earnings by 40 percent.
- 21 (4) In November 2010, the Center for Economic and Policy Research released a study
 22 titled, "Ex-offenders and the Labor Market," which found that a felony conviction or
 23 imprisonment significantly reduces the ability of ex-offenders to find jobs, costing the
 24 U.S. economy an estimated \$57 to \$65 billion annually in lost economic output.
 25 Research conducted to isolate the effect of a felony conviction on employers'
 26 willingness to hire found that 80 to 90 percent of employers said they would hire
 27 "former welfare recipients, workers with little recent work experience or lengthy
 28 unemployment, and other stigmatizing characteristics," but only 40 percent said they
 29 would consider hiring job applicants with criminal histories.
- 30 (5) As reported by the American Bar Association Journal, a 2009 study sent job
 31 applicants who were evenly matched, except that one of the two had a criminal
 32 record, on job interviews. The criminal record reduced the chances of a callback by
 33 50 percent.
- 34 (6) Unemployment is linked to increased crime and lowering the unemployment rate will
 35 be a benefit to the safety of Gainesville residents. According to the Urban Institute,
 36 employment is a top factor identified by incarcerated individuals as being critical to
 37 their ability to successfully reintegrate into the community and stay crime free.

38 (7) The City awards millions of dollars in contracts for construction projects each year
39 which results in the creation of a wide variety of employment opportunities. The
40 contracts are paid for by taxpayer dollars which should be used to increase
41 employment opportunities and lower overall level of unemployment, increase
42 consumer income, decrease levels of poverty and reduce the need for taxpayer funded
43 programs in other areas.

44 (8) The percentage of persons receiving public assistance benefits in Florida has
45 increased by more than 50 percent since 2000. Requiring the employment of
46 disadvantaged workers on major construction projects will promote economic
47 security for persons working in the City and their families, decreasing the number of
48 citizens in Gainesville who rely on public assistance.

49 (9) In the event a prime contractor fails to comply with the requirements of this division,
50 the City will sustain damages in an amount that is not readily ascertainable due to the
51 loss of the benefits described in subsections (2), (7), and (8) above. Accordingly, the
52 consequences for noncompliance in section 2-270(k) are intended to be reasonable
53 and proportionate to the damage to the City that would be expected to follow from the
54 loss of benefits described in subsections (2), (7) and (8) above.

55 (b) Intent. The City desires to increase the number of employed disadvantaged workers to
56 attempt to counteract the economic and social ills associated with the unemployment
57 levels that exist within the City. It is the intent and policy of the City to require prime
58 contractors to employ disadvantaged workers or have subcontractors employ
59 disadvantaged workers to perform work and services on a major construction projects.

60 **Sec. 2-269. - Definitions.**

61 [The following words and phrases as used in this article shall have the following
62 meanings unless a different meaning is clearly required by the context:]

63 *Disadvantaged worker* means (i) a person who has a criminal record, (ii) a disabled
64 veteran, (iii) a person who is homeless, (iv) a person without a GED or high school diploma, (v)
65 a person who is a custodial single parent, (vi) a person who is emancipated from the foster care
66 system, or (vii) a person who has received public assistance benefits within the six months
67 preceding employment by the prime contractor or subcontractor.

68 *Employ* shall mean to permit a person to work for wages.

69 *Hours of work performed* means actual labor hours worked on a major construction
70 project (including actual labor hours worked by disadvantaged workers). Hours of work
71 performed shall not include hours worked by foremen, superintendents, owners and workers who
72 are not subject to the responsible wage required by section 2-277.

73 *Major construction project* means a City project with a contract amount of \$300,000.00
74 or more or \$75,000.00 for electrical contracts, which involves building, altering, repairing,

75 improving, demolishing or replacing any public structure, building, or roadway, or other public
76 improvement.

77 *Manager* means the General Manager of Utilities or City Manager having responsibility
78 for the procurement pursuant to the city's charter or each's designee.

79 *Prime contractor* means:

- 80 (1) A party to a contract for a construction project.
- 81 (2) A managing corporate officer of a party to a contract for a construction project
82 who has personal involvement or responsibility in obtaining such contract or in
83 supervising or performing the work prescribed by such contract; or
- 84 (3) A person or entity with more than fifty percent (50%) ownership interest in a
85 party to a contract for a construction project.

86 *Public assistance benefits* means unemployment benefits, Medicare or Medicaid benefits,
87 or food assistance benefits as administered by the federal government or State of Florida.

88 *Subcontractor* means a person or company that performs through a secondary contract
89 with the prime contractor some or all of the obligations of the prime contractor.

90 **Sec. 2-270.** – **Requirements a Bidder must comply with when bidding on City construction**
91 **projects.**

92 In the bidding of, or letting of contracts for construction work as defined herein, the Prime
93 contractors must commit to employing disadvantaged workers as part of the labor force that is
94 engaged on a construction project. Contractors must be able to demonstrate that at least ten
95 percent (10%) of all labor hours associated with the project will be performed by disadvantaged
96 workers. The following process outlines the steps that must be followed to qualify:

- 97 (a) Persons or entities responding to a solicitation for a major construction project must
98 submit the following with their bid, proposal, or statement of qualifications:
 - 99 (1) a list of the resources which will be used to identify disadvantaged workers,
 - 100 (2) a list of subcontractors proposed to be used for the project,
 - 101 (3) total work hours estimated for the major construction project,
 - 102 (4) a demonstration of ten percent (10%) of the total work hours proposed to be
103 performed by disadvantaged workers, and
 - 104 (5) a description of the work to be performed by the disadvantaged workers.
- 105 (b) The Manager may waive the requirements for disadvantaged workers in solicitation
106 documents if the Manager determines that the project involves a high proportion of
107 equipment and/or material costs compared to the anticipated labor hours, or that there is
108 an insufficient number of disadvantaged workers available to meet the contract
109 requirements. The Manager shall put their reasoning for the waiver in writing and submit
110 such reasoning to City Commission upon presenting the major construction project to
111 City Commission for contract approval.

- 112 (c) Disadvantaged worker-based requirements shall be determined on a “per project” basis.
113 As such, a Prime contractor may not combine disadvantaged worker employment from
114 previous or multiple on-going projects. A Prime contractor may include those
115 disadvantaged workers which are supported by one or more of their subcontractors
116 employed on the construction project being bid.
- 117 (d) The total bid price shall include not only the base bid price but also any adjustments to
118 the base bid price which are a result of alternates requested by the City.

119 **Sec. 2-271 – Prevailing Wage Rate Required; Exception for Conflict.**

- 120 (a) The Prime contractor and its subcontractors shall ascertain and comply with all applicable
121 general prevailing wage rates for apprentice and trades workers which are in effect as of
122 the date the Prime contractor submits its response to a solicitation for construction work
123 issued by the City.
- 124 (b) In the event of a conflict between the City’s Living Wage requirement and the prevailing
125 wage requirement, the higher wage shall apply unless pre-empted by Federal or State
126 regulations.

127 **Sec. 2-272 – Exemptions to the Disadvantaged Worker Requirement.**

128 The preference set forth in this article shall not apply to any of the following types of
129 construction projects:

- 130 (a) Projects where application of the Apprentice preference would be prohibited or in
131 conflict with federal or state law or the terms of a federal or state grant applicable to the
132 construction project.
- 133 (b) Projects that are initiated under a cooperative purchasing agreement.
- 134 (c) Projects which are solicited through another public agency’s procurement process as part
135 of an inter-local agreement.
- 136 (d) Projects initiated under an emergency situation.

137 **Sec. 2-273 – Compliance; Documentation; Corrective Action; Enforcement.**

- 138 (a) Source List. The Manager shall compile, maintain and make available source lists which
139 include entities which employ or assist disadvantaged workers and other sources to assist
140 with locating disadvantaged workers.
- 141 (b) Contract requirements. The contract for a construction project between the City and a
142 Prime contractor shall include a provision requiring the Prime contractor to comply with
143 the requirements of this ordinance.
- 144 (c) The Prime contractor must make, and require its subcontractors who employ
145 disadvantaged workers to make, good faith efforts to replace any disadvantaged worker
146 who can no longer work on a construction project with another disadvantaged worker in
147 order to achieve the work hours required for the project.

- 148 (d) The Prime contractor on a construction project shall be responsible for meeting the
149 required number of disadvantaged workers work hours, as well as fulfilling any other
150 commitments made to receive the preference award. If the Prime contractor is not able to
151 achieve the required number of work hours or the associated commitments, the Prime
152 contractor must submit documentation to the City department responsible for overseeing
153 the construction project, who will review and determine whether the Prime contractor
154 made a good faith effort to comply.
- 155 (e) The Prime contractor shall keep, and shall require its subcontractors who employ
156 disadvantaged workers to keep, accurate records showing the total hours of work
157 performed on a City construction project, and the name, address, hours worked, evidence
158 of disadvantaged worker status, and employment status of all disadvantaged workers
159 asserted to meet the percentage required to qualify for a disadvantaged worker
160 preference. In addition, the Prime contractor shall keep, and shall require its
161 subcontractors who employ disadvantaged workers to keep, accurate payroll records for
162 all disadvantaged workers which includes name, address, work classification, the straight
163 time and overtime hours worked each day and each week, fringe benefits (if any), and the
164 actual per diem wages paid to each disadvantaged worker hired in connection with a
165 construction project. In the event that there is no work performed during a given week by
166 a disadvantaged worker, the certified payroll record shall be annotated “No Work” for
167 that week. The Prime contractor shall submit these records upon request or at a minimum
168 on a quarterly cycle to the City department overseeing the construction project. Records
169 shall be cumulative for the duration of the construction project and shall indicate any new
170 disadvantaged worker hires.
- 171 (f) If the Prime contractor has not met the requirements of this section, the City department
172 responsible for overseeing the construction project will provide to the Prime contractor a
173 written notice of noncompliance. The Prime contractor will be required to present a
174 corrective action plan within ten (10) days of such notice. Once the corrective action
175 plan is approved by the overseeing department, the department will provide a time period
176 for completion of the corrective action plan. The time period for completion of the
177 corrective action plan shall not exceed thirty (30) days, unless the overseeing department
178 determines that the Prime contractor has demonstrated to the department’s satisfaction
179 that a longer time period is necessary and in the best interest of the City. If the Prime
180 contractor fails to correct the deficiency within the agreed upon time period, the
181 overseeing department shall address such noncompliance as follows:
- 182 (1) First violation – The Prime contractor will be disqualified from applying for any
183 bidding preferences of any type for one (1) year.
- 184 (2) Second violation – The Prime contractor will be disqualified from applying for any
185 bidding preferences of any type for three (3) years.

186 (g) Contracts and solicitation documents shall provide that the failure of any Prime
187 contractor to comply with any of the requirements of this section may result in
188 consequences for noncompliance.

189 **Sec. 2-274 – Manager Authority**

190 (a) The Manager is authorized to monitor major construction project contracts and prime
191 contractors for compliance with the requirements of this division throughout the duration
192 of the major construction project. The Manager is authorized to prepare administrative
193 policies and procedures to implement, monitor and enforce the requirements of this
194 division. The Manager’s evaluation of good faith efforts documentation submitted by a
195 prime contractor includes but is not limited to whether the prime contractor: (i) conducted
196 at least one monthly outreach event; (ii) placed at least two monthly advertisements in
197 two different community targeted local publications to promote prime contractor's
198 monthly outreach event and to inform the public of employment opportunities; (iii)
199 worked with workforce development organizations to recruit applicants; and (iv)
200 registered job openings, and required subcontractors to register job openings, with social
201 service organizations.

202 (b) The Manager shall annually provide a report to the City Commission regarding
203 disadvantaged workers participating in major construction projects. The report must
204 include the total dollar value of awards of major construction projects, the number of
205 disadvantaged workers hired on such projects and the number of hours worked by
206 disadvantaged workers on such projects.

207 **Sec. 2-274 – Conflict of Law**

208 The provisions of this ordinance shall be construed according to and in conformity with
209 state, federal and local laws concerning the solicitation and awarding of contracts. Where a major
210 construction project involves the expenditure of state or federal funds, the Manager shall comply
211 with such state or federal law and authorized regulations which are mandatorily applicable,
212 including those which dictate that the provisions of this division may not be required on a
213 particular project.

214 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
215 this Ordinance shall become and be made a part of the Code of Ordinances of the City of
216 Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be renumbered
217 or re-lettered in order to accomplish such intentions.

218 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance
219 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
220 finding shall not affect the other provisions or application of the ordinance which can be given
221 effect without the invalid or unconstitutional provisions or application, and to this end the
222 provisions of this ordinance are declared severable.

223 **Section 4.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
224 such conflict hereby repealed.

225 **Section 5.** This ordinance shall become effective 90 days after adoption.

226 **PASSED AND ADOPTED THIS ____ DAY OF _____, 2021.**

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LAUREN POE
MAYOR

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234 ATTEST:

Approved as to form and legality

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OMICHELE D. GAINEY
CITY CLERK

NICOLLE M. SHALLEY
CITY ATTORNEY

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This ordinance passed on first reading this ____ day of _____, 2021.

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This ordinance passed on second reading this ____ day of _____, 2021.

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