Easton, Pennsylvania
October 4, 2018

A regular meeting of the Northampton County Council was held on the above date with the following present: Kenneth M. Kraft, President; Ronald R. Heckman, Vice President; John Cusick; Matthew H. Dietz; William B. McGee; Lori Vargo Heffner; Robert F. Werner; Tara M. Zrinski; Linda M. Zembo, Clerk to Council and Christopher T. Spadoni, Solicitor to Council. Absent was Margaret L. Ferraro.

Pledge of Allegiance

Mr. McGee led County Council in the pledge of allegiance.

Approval of the Minutes

Mr. Cusick made the following motion:

Be It Moved By the Northampton County Council that the minutes of the September 20, 2018 meeting shall be approved.

Mr. Dietz seconded the motion.

The minutes were approved by voice acclamation.

Courtesy of the Floor

Mr. Richard Szulborski, Northampton County Controller stated he wanted to address the resolution being presented tonight requesting the Controller’s Office to do an audit of Northampton County properties in the tax abatement program. He further stated they had no issue with doing this audit, but he would like to get some clarification because there were two types of programs and an objective should be tailored for the type of program they wanted audited.

Mr. Szulborski advised programs such as Keystone Opportunity Zone, Tax Increment Financing and Local Economic Revitalization Tax Assistance were meant to promote development in defined areas, but Acts 319 and 515 incentives were given to preserve open space.
County Executive Report

Mr. Kraft stated Mr. Lamont McClure, County Executive, was currently at an award ceremony and would be making his report later in the meeting.

Public Hearing on the Ordinance Entitled, "AN ORDINANCE OF NORTHAMPTON COUNTY, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN NORTHAMPTON COUNTY; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCESSES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE"

Mr. Kraft advised the following ordinance was introduced by Mr. Dietz and Ms. Zrinski at the September 20, 2018 meeting. He noted the adoption of this ordinance will concurrently adopt a resolution that addressed the challenges set forth in the ordinance and its terms would be incorporated in their entirety as material terms of this ordinance:

AN ORDINANCE OF NORTHAMPTON COUNTY, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN NORTHAMPTON COUNTY; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCESSES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Northampton County (County) is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major investments made by the County, as well as those relating to the public health, safety, and welfare for the citizens of the County; and

WHEREAS, the County has particular concerns regarding the challenges it faces in planning and executing public works construction projects, especially those relating to its ability to ensure the use of properly qualified contractors and
subcontractors and adequate numbers of craft personnel who have industry recognized training in the respective skills and trades needed for future projects; and

WHEREAS, County Council concurrently adopts the resolution, as provided in Exhibit A, resolving to address the above-referenced challenges through appropriate procurement and contracting legislation as embodied in this ordinance and wishes to incorporate the terms of this resolution in their entirety as material terms of this ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Council of Northampton County, Commonwealth of Pennsylvania, repeals County Ordinance 639 and enacts in its place as follows:

SECTION 1

§1. Purpose

Northampton County 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 public contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for public contracts and to protect the County's investments in such contracts, prospective contractors and subcontractors, should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past project performance, safety, law compliance and business integrity.

Further, due to the critical impact that skilled construction craft labor has on public works projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding, for the purpose of both promoting successful project delivery and ensuring future workforce development.
Therefore, the County shall require compliance with the provisions of this ordinance by business entities seeking to provide services to the County as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this ordinance conflict with any law, public policy or contracting documents of the County of Northampton this act shall prevail.

§2. Responsible Contractor Requirements

(a) All contractors and subcontractors of any tier that perform work valued at over $250,000.00 on any public facility or public works project, including construction, demolition, alteration, renovation, repair and contract service or contract maintenance work, shall meet the requirements of this ordinance.

(b) All firms engaged in contracts covered by this ordinance shall be qualified, responsible contractors or subcontractors 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 on public contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

§3. Contractor Responsibility Certifications

(a) As a condition of performing work on a public works contract subject to this ordinance, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification.

(b) The Contractor Responsibility Certification shall be completed on a form provided by the County and shall 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 valid, effective licenses, registrations or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations or certificates required to: (a) do business in the designated locale; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the firm proposes to self-perform.

(2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance 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 other 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 the contracting business in the past ten years.

(7) The firm has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licenses laws, tax laws, prompt payment 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 $1,000 or more.
(8) The firm will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

(9) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(10) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.

(11) The firm participates in a Class A Apprenticeship Program or an equivalent training program for the past three years, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project.

This apprenticeship requirement assures that workers in each trade or craft employed are graduates of an apprenticeship and training program in each trade or craft in which their services are utilized, which has been in continuous existence for no fewer than five (5) years prior to the commencement of the subject project. This apprenticeship requirement must be continuously registered with a State or Federal Government Agency for no fewer than five (5) years prior to the commencement of the subject project or otherwise deemed qualified by appropriate training such as military service in that trade or craft.

(A) For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently 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 an apprenticeship program that is 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 or an equivalent training program for each trade or classification listed.

(12) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(13) The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.

(14) The firm shall notify the County within seven days of any material changes to all matters attested to in this certification.

(15) The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that the information submitted is true, complete and accurate.

(d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility and the County may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The County may require that such information be included in a separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.

(e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in Section 5 of this ordinance.

(f) If the submitting firm has ever operated under another name or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach a separate statement 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 County because of its refusal to accept a bid for failing to provide information required by this section.

§4. Notice of Intent to Award Contract

(a) After it has received bids for a project, the County shall issue a Notice of Intent to Award Contract to the firm offering the lowest responsible bid.

(b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and Notice of Intent to Award Contract. The Notice shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination, as required by Section 5 and any other conditions deemed appropriate by the County.

§5. Subcontractor Lists, Subcontractor Responsibility Certifications

(a) A prospective awardee shall submit to the County a Subcontractor List containing the names of any subcontractors that will be used for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.

(b) At the time a perspective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the County. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the County and shall contain the same information and representations required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 3(c)(11), for each trade or classification of craft workers it will employ on the project.
(c) Subcontractor Responsibility Certifications shall be executed by 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.

§6. Contractor Responsibility Review and Determination

(a) After a Notice of Intent to Award Contract has been issued, the County shall undertake a review process to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this ordinance and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract. The time of the review process shall be as determined necessary by the County.

(b) As part of this review process, the County shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this ordinance, have been submitted and properly executed.

(c) The County 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 County may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

(d) If at the conclusion of the review process the County determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the prospective awardee and the firms on its Subcontractor List are satisfactory, it may issue a formal written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor. In the event a firm is determined to be non-responsible, the County shall proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project.
(e) A Contractor Responsibility Determination may be issued after the conclusion of the review process under Section 5. A Responsibility Determination may be revoked or revised in any manner at any time if the County obtains relevant information warranting any such revocation or revisions.

§7. Subcontractor Responsibility Review Requirements

(a) A construction manager, general contractor or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for the County unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5.

(b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from County and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

(c) In the event that the County determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this Section, 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;

   (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.

(d) In the event that a subcontractor is disqualified under this ordinance, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against the County the basis of a subcontractor disqualification.
§8. False or Misleading Responsibility Certifications

(a) If the County determines that a Contractor or Subcontractor Responsibility Certification contains false or misleading material 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 prohibited from performing work for the County for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the County under law. A contract terminated under these circumstances shall further entitle the County to withhold payment of any monies due to the firm as damages.

§9. Execution of Final Contract

(a) A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until Contractor and Subcontractor Responsibility Certifications have been issued by the County under Section 6(d). Upon completion of all requirements under this ordinance, the County may execute a final contract based upon the Notice of Intent.

(b) Prior to the execution of a final contract under this Section, the County shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists and Contractor Responsibility Determination on the County website for public inspection for a period of five (5) calendar days after the issuance of the Contractor Responsibility Determination.

SECTION 2

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.
SECTION 3

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

SECTION 4

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

EXHIBIT A

R. 123-2018    WHEREAS, many states and local jurisdictions in the U.S., faces critical contracting needs, including those for infrastructure projects, that must be addressed and will require it to plan, manage and oversee major capital investments in both the short and long term; see President’s Council of Economic 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 Northampton County seeks to utilize efficient procurement procedures that will help ensure that its projects are delivered with reasonable certainty and in a safe, timely manner, in accordance with applicable industry codes and standards and quality specifications that represent the best overall value; and

WHEREAS, securing successful delivery of projects in the construction industry is particularly difficult due to the unique, complex, unpredictable and inherently dangerous nature of the industry, wherein errors in project planning or execution can result in serious health and safety risks to project workers and/or the general public, significant and avoidable cost overruns, flawed or inferior projects, and disruptions in performance schedules that delay the availability and use of critical government facilities; Maureen Conway & Allison Gerber, Aspen Institute, Workforce Strategic Initiatives, 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, Northampton County 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 result in the selection of qualified, reputable contractors and subcontractors that are committed Northampton County’s goals of safe, timely, cost-effective project delivery; and

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

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

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

(b) construction is an inherently dangerous industry that requires craft personnel to receive proper safety training; National Institutes of Health, Accid Anal Prev., 39(6), Costs of Occupational Injuries in Construction in the United States Construction (2007), 1258-1266 (2008) (construction is a high risk industry and accounts for disproportionate share of work-related injuries); Fatalities in the Construction Industry, Bureau of Labor Statistics, Monthly Labor Review (July 2014) (industry accounts for 40% of all fatal work-related falls;

(c) under virtually any market conditions, construction projects require assurances of a reliable supply of well-trained craft personnel because it is a highly skilled, labor intensive industry; and
d) the construction industry is currently facing acute, worsening skill shortages and such conditions pose major risks to the planning and execution of capital construction projects; Construction Labor Market Analyzer, Construction Users RoundTable (CURT), The Long-Term Outlook for Construction, 6 (2017)(estimating an impending deficit of 1.5 million skilled workers through 2022 in the construction industry); David H. Bradley & Stephen A. Herzenberg, Construction Apprenticeship and Training in Pennsylvania 3 (2002)(describing “free rider” market failure that incentivizes employers to under-train construction workers in the absence of apprenticeship programs); and

WHEREAS, leading organizations in the construction industry, including trade associations representing project owners, such as CURT, have repeatedly issued strong recommendations to parties purchasing construction services for large capital projects that, due to shortages in the supply of skilled craft personnel, contractors and subcontractors should be required to prove their participation in skill training programs as a pre-qualification standard in order to protect the project owner’s financial and proprietary interests 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, Skilled Labor Shortage Risk Mitigation, WP-1101 (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 Institute, Workforce Strategies Initiative, Apprenticeship: Completion and Cancellation in the Building Trades 8-9 (2013)(proposing a requirement that all contractors participating in publicly funded projects participate in registered apprenticeship programs); Robert Lerman et al., Benefits and Challenges of Registered Apprenticeship: Sponsors’ Perspective ii (2009)(finding that 97% of employer-sponsors of registered apprenticeship programs would recommend the program to others and that over 80% of sponsors cited filling the demand for skilled workers as a “very important” benefit of apprenticeship); CURT, Confronting the Skilled Workforce Shortage (June 2004)(recommending all owners prequalify contractors on the basis of craft training); 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, H.R. REP. No. 75-945, 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 that 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, 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. 13845, 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 programs yields a return of $1.47); and

WHEREAS, research from both government and industry underscore the need to expand the use of apprenticeship training across the economy, especially in construction, as a means for promoting skills training to address current and future workforce development needs; such reports include a joint report issued by various agencies of the federal government—U.S. Departments of Labor, Commerce, Educ., and Health and Human Res.. What Works in Job Training: A Synthesis of the Evidence 8 (2014); Workforce Training and 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. Department of Commerce, Economics and Statistics Administration and Case Western Reserve University, 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 greater use of apprenticeship programs to train the U.S. workforce; Exec. Order No. 13801, 82 Fed. Reg. 28,229 (June 20, 2017); and

WHEREAS, the courts have consistently recognized that states and local jurisdictions seeking to protect substantial financial and proprietary interests have the right to enact contracting and procurement legislation and/or to impose contract bid specifications designed to ensure the performance capabilities of prospective contractors and subcontractors and their employees, including apprenticeship training requirements and other craft labor qualifications; see Bldg. & Const. Trades Council of the Metro. Dist. v. Assoc. Builders & Contractors of Mass. and R.I., Inc., 507 U.S. 218 (1993); Assoc. Builders & Contractors v. Mich. Dep’t of Labor & Econ. Growth, 543 F.3d 275 (6th Cir. 2008); Hotel Empl’s. & Restaurant Empl’s. Union, Local 57 v. Sage Hospitality Res., LLC, 390 F.3d 206 (3rd Cir. 2004); Assoc. Builders & Contractors, Inc. v. New Castle County, 144 F. Supp. 3d 633 (D. Del. 2015); and Allied Constr. Indus. v. City of Cincinnati, No. 16-4248, 2018 WL 283775 (6th Cir. 2018); and

WHEREAS, Northampton County finds that apprenticeship training programs which are registered with and approved by federal or state agencies, and maintained in accordance with regulations issued pursuant to the Fitzgerald Act, provide the most reliable means for securing a reliable supply of qualified craft labor for capital projects and further recognizes that essential levels of work quality, safety and cost-efficiency on its public works projects will be better achieved by requiring the use of contractors and subcontractors that participate in bona fide apprenticeship programs with a proven record of graduating apprentices and providing effective skill training in the construction industry; U.S. Dep’t of Labor Emp’t and Training Admin., Registered Apprenticeship Fact-Sheet 1 (2000) (workers that complete apprenticeships are more motivated, more productive, and have lower worker 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, Northampton County 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.

NOW, THEREFORE, BE IT RESOLVED that the Council of Northampton County, Commonwealth of Pennsylvania, 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.

Mr. Dietz stated he was withdrawing his name from co-sponsorship of the ordinance and made a motion to table it as he now felt the language would not satisfy the lawsuit.

The motion failed due to a lack of a second.

Ms. Vargo Heffner advised she would be a co-sponsor of the ordinance.

Public Hearing

Mr. Kraft asked if there were any questions or comments from the public.

There were no respondents.

As there were no questions or comments from the members of County Council, Mr. Kraft called for the vote.

The vote: Zrinski, "yes"; Vargo Heffner, "yes"; Heckman, "yes"; Kraft, "yes"; McGee, "yes"; Werner, "yes"; Cusick, "yes" and Dietz, "no".

The ordinance/resolution was adopted by a vote of 7-1.
Consideration of a Resolution Approving the Hiring of Dilworth Paxson, LLP for the Collection of E911 Fees

Mr. Heckman introduced the following resolution:

R. 124-2018 WHEREAS, Northampton County Administrative Code Section 11.03 Outside Legal Counsel, provides in Section 11.03 a., "The Solicitor, with the approval of the County Executive and County Council, may retain outside legal counsel where necessary." And in Section 11.03 b., "For the purposes of this section, outside legal counsel shall mean the use of any legal counsel, attorney, or firm of attorneys, other than the County Solicitor and Assistant County Solicitors, which may be used to defend and/or represent the County of Northampton, a County employee, or a County elected official in litigation; and/or assist the Solicitor's Office with matters involving the County of Northampton."; and

WHEREAS, Northampton County Administrative Code Section 16.04 Outside Legal Counsel, provides in Section 16.04 a., "The requirements set forth in Administrative Code Section 11.03, Outside Legal Counsel, shall apply to all departments, services, bureaus, offices, divisions, or other administrative unit under the direction and supervision of the County Executive." and in Section 16.04 b., "For the purposes of Section 11.03, the term approval of County Council shall mean either the adoption of a separate and specific resolution, or ordinance regarding any retention of outside legal counsel."; and

WHEREAS, on September 19, 2018, County Council received notification that the County Executive hired the firm of Dilworth Paxson LLP to represent the County as special counsel in connection with the recovery of certain 911 and/or E911 fees that are required to have been filled, collected and/or remitted by telecommunication providers to the County, either directly or indirectly for the benefit of the County through the Commonwealth of Pennsylvania or any of its officials or agencies during the period from September 1, 2012 through August 31, 2018 and any such additional periods for which recovery of such unbilled, uncollected and/or unremitted fees may be practicable under applicable law on a contingency basis. In conjunction therewith, Dilworth Paxson LLP shall work in collaboration with Phone Recovery Services LLC, which has been concurrently retained by the County under a separate agreement to provide forensic telecommunications auditing services related to that agreement.
NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council concurs with the hiring of Dilworth Paxson LLP.

Ms. Melissa Rudas, County Solicitor, stated Phone Recovery Services, LLC discovered mandatory 911 fees were not being collected by telephone companies throughout the country. She further stated this organization along with Dilworth Paxson LLP have begun filing litigation in a number of States and several counties in Pennsylvania. She noted the County had nothing to lose by joining in on this litigation as their fees were contingent on the outcome of the litigation.

In response to Mr. Cusick’s question as to whether the change in Pennsylvania’s 911 statutes for collections played a part in this litigation, Ms. Rudas replied it did. She then provided a document that provided a background for the proposal (see Attachment #1).

As there were no further questions or comments, Mr. Kraft called for the vote.


The resolution was adopted by a vote of 8-0.

Consideration of a Resolution Approving the Hiring of Dilworth Paxson, LLP as Outside Legal Counsel for a 911 Litigation - Class Action Suit

Mr. Heckman introduced the following resolution:

R. 125-2018 WHEREAS, Northampton County Administrative Code Section 11.03 Outside Legal Counsel, provides in Section 11.03 a., “The Solicitor, with the approval of the County Executive and County Council, may retain outside legal counsel where necessary.” And in Section 11.03 b., “For the purposes of this section, outside legal counsel shall mean the use of any legal counsel, attorney, or firm of attorneys, other than the County Solicitor and Assistant County Solicitors, which may be used to defend and/or represent the County of Northampton, a County employee, or a County elected official in litigation; and/or assist the Solicitor’s Office with matters involving the County of Northampton.”; and
WHEREAS, Northampton County Administrative Code Section 16.04 Outside Legal Counsel, provides in Section 16.04 a., “The requirements set forth in Administrative Code Section 11.03, Outside Legal Counsel, shall apply to all departments, services, bureaus, offices, divisions, or other administrative unit under the direction and supervision of the County Executive.” and in Section 16.04 b., “For the purposes of Section 11.03, the term approval of County Council shall mean either the adoption of a separate and specific resolution, or ordinance regarding any retention of outside legal counsel.”; and

WHEREAS, on October 3, 2018, County Council received a request from the County Executive for County Council to adopt a resolution approving a contract with Dilworth Paxson LLP for outside legal counsel for 911 litigation in a Class Action Suit which requires specialized Class Action Representation until the conclusion of the 911 Recovery Lawsuit for a contingent fee arrangement with fee scale from 10% to 40%, inclusive of the forensic auditing services, dependent upon stage of disposition.

NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council concurs with the hiring of Dilworth Paxson LLP.

In answer to Mr. Werner’s question as to who required the class action representation, Ms. Rudas advised the County was not required to do it, but they were asking for County Council’s support to do it so the County could receive the money.

In response to Mr. Werner’s question as to what “stage of disposition” meant, Ms. Rudas stated if it was settled pre-litigation, they would get a certain amount and the County would get a certain amount, but it was also dependent on what happened in each individual county.

In answer to Mr. Werner’s question as to whether there was a chance the County would lose money, Ms. Rudas indicated there was not.

As there were no further questions or comments, Mr. Kraft called for the vote.


The resolution was adopted by a vote of 8-0.
Consideration of a Resolution Requesting the County Controller’s Audit of Northampton County Properties in Tax Abatement Programs

Mr. Cusick withdrew the following resolution:

WHEREAS, Northampton County Home Rule Charter Article II Section 202. Powers provides that the County Council shall have, among others, the following powers: (8) to require periodic and special reports from elected officials and their subordinates; and

WHEREAS, the Northampton County Home Rule Charter Article IV Controller Section 402. Duties provides that the Controller, in person or through subordinates, shall (2) audit at any time at the request of the County Council any account of any agency receiving, disbursing, or authorizing the disbursement of County funds: and

WHEREAS, in Fiscal Year 2017 the County of Northampton provided tax abatements under six programs including Keystone Opportunity Zones (KOZ) and Keystone Opportunity Expansion Zones (KOEZ), Local Economic Revitalization Tax Abatements (LERTA), Tax Increment Financing (TIF), Clean and Green (Act 319), Land Preservation (Act 515) and Tax Millage Freeze (Act 4) in the total amount of $4,555,778.

NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council respectfully requests that the Northampton County Controller’s Office perform an audit on those properties within such aforementioned tax abatement programs to determine the efficiency and effectiveness of those programs. It is requested that said audit addresses, but not necessarily be limited to, the following questions/issues:

1. What year the property is in the program.

2. What improvements have been made to each property.

3. Whether the property continues to meet the requirements set forth in the laws governing the specific tax abatement program.

With regard to the Controller’s request, Mr. Cusick advised his goal was to look more at the economic development incentives than the farmland incentives, but he did not think it would hurt to look at both either separately or together.
Ms. Zrinski stated she felt the information would be overwhelming if the audits were done together so she would suggest doing them separately.

Mr. Kraft advised he felt this resolution was too broad and information could be provided on every incentive project. He further advised the State had to follow up with them when providing their abatements so he would suggest tabling this resolution and then perhaps asking for an audit on each incentive separately.

Mr. Cusick stated he would withdraw this resolution so the request could go before the Finance Committee to narrow it down and see what the Controller felt was workable.

Consideration of a Resolution Approving the Hiring of O'Donoghue & O'Donoghue, LLP as Outside Legal Counsel for Litigation

Mr. Heckman introduced the following resolution:

R. 126-2018 WHEREAS, Northampton County Administrative Code Section 11.03 Outside Legal Counsel, provides in Section 11.03 a., “The Solicitor, with the approval of the County Executive and County Council, may retain outside legal counsel where necessary.” And in Section 11.03 b., “For the purposes of this section, outside legal counsel shall mean the use of any legal counsel, attorney, or firm of attorneys, other than the County Solicitor and Assistant County Solicitors, which may be used to defend and/or represent the County of Northampton, a County employee, or a County elected official in litigation; and/or assist the Solicitor’s Office with matters involving the County of Northampton.”; and

WHEREAS, Northampton County Administrative Code Section 16.04 Outside Legal Counsel, provides in Section 16.04 a., “The requirements set forth in Administrative Code Section 11.03, Outside Legal Counsel, shall apply to all departments, services, bureaus, offices, divisions, or other administrative unit under the direction and supervision of the County Executive.” and in Section 16.04 b., “For the purposes of Section 11.03, the term approval of County Council shall mean either the adoption of a separate and specific resolution, or ordinance regarding any retention of outside legal counsel.”; and
WHEREAS, on October 1, 2018, the Northampton County Council received a request from the County Executive for County Council to adopt a resolution approving a contract with O’Donoghue & O’Donoghue, LLP for outside legal counsel in defense of Associated Builders and Contractors, Eastern, PA, during the active litigation time period at a price of $300.00 per hour for Attorney Fees and $150.00 per hour for Law Clerks and Paralegal Fees.

NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council does hereby concur with the recommendation of the County Executive, as set forth in the attached documentation, to approve a contract with O’Donoghue & O’Donoghue, LLP.

As there were no questions or comments, Mr. Kraft called for the vote.


The resolution was adopted by a vote of 6-2.

County Executive Report

Mr. Lamont McClure, County Executive, advised that Teledoc was exceeding expectations because the total claims saved as of today was $97,196 and the average response rate was seven minutes.

Mr. McClure stated he had a meeting with Mr. James Kostura, Director of Corrections, who pointed out some of the challenges he was facing. He further stated one of Mr. Kostura’s goals was to save money, but a lot of that had to do with reading contracts line by line and dealing with vendors for which he did not have the time.

Mr. McClure advised he and Mr. Kostura decided to fill the Deputy of Corrections for the Administration of Public Safety position that handled those duties and asked Mr. Kraft to accept the position, which he did.

In response to Mr. Cusick’s question as to whether County Council could get a copy of the prison inspection report, Mr. McClure replied he would provide it.
Mr. Kraft read and provided County Council with his letter of resignation (see Attachment #2).

Mr. McGee made a motion to accept the resignation of Mr. Kraft.

Ms. Vargo Heffner seconded the motion.

As there were no questions or comments, Mr. Kraft called for the vote.


The motion passed by a vote of 8-0.

**Jail Advisory Board Liaison Report**

Ms. Vargo Heffner advised the dog was now at the Jail and the projects were moving forward.

**Farmland Preservation Advisory Board Liaison Report**

Ms. Zrinski stated there was a discussion as to whether or not they could have individuals with conservation easements sign a voluntary sludge waiver and as there was quite a bit of discussion it was being extended to the next meeting. She further stated they were preserving farms 7-11 on the list and the Kleintop Farm closed a week ago.

**Lehigh Valley Planning Commission Liaison Report**

Mr. McGee advised the Transportation improvement fund was approved last Thursday. He further advised there was a series of Planning Action Team meetings held throughout the municipalities to talk about what was happening in their community and if any improvements could be made.

Mr. McGee stated the Lehigh Valley Gala Awards was being held on October 10, 2018.
Lehigh Valley Economic Development Corporation Liaison Report

Mr. McGee stated they talked about the Air Liquide expansion, as well as the B. Braun and Pet Fresh projects. He further stated there was also a discussion about not having enough affordable housing for workers for industries that may want to come to the area.

Mr. McGee advised they were working with a marketing group to create a program to promote the Lehigh Valley.

Council Clerk’s Report

Ms. Zembo stated the first budget hearing would be held at 4:00 p.m. on October 9, 2018.

Adjournment

Mr. Kraft made a motion to adjourn the meeting.

Ms. Vargo Heffner seconded the motion.

The motion to adjourn passed unanimously by acclamation.

Linda M. Zembo
Clerk to Council
9-1-1

Revenue Optimization Opportunity

Northampton County, Pennsylvania

PRESENTED BY
PHONE RECOVERY SERVICES, LLC
AND
DILLWORTH PAXSON LLP

Confidential and Proprietary Information of Phone Recovery Services, LLC
The New PA-9-1-1 Law provides for a uniform 9-1-1 charge of $1.65 per month per line. Changes vary greatly by state from as low as 90 cents per month to as high as $5 per month. These charges are remitted to the PA State Treasurer. Governmental authorities, under PA Act 12 of 2015 ("New PA-9-1-1 Law"), approved 9-1-1 charges per line and collect and remit that to the proper governmental authorities. Phone companies are required to charge on a customer’s phone bill the provision of 9-1-1 services associated with our counties, level and others at the county or city level. In PA primarily responsible for the state vary in implementation and some programs are controlled at the state emergency assistance. Surcharge on each phone line that had the capability of dialing 9-1-1, for 9-1-1 emergency response programs were established nationally over 40 years.
The 9-1-1 Problem

- Over the years 9-1-1 programs have needed constant technology upgrades and have also experienced rising personnel and other costs. In most states 9-1-1 fees have not kept pace with these increased expenses and the government's general fund has been forced to subsidize its 9-1-1 program, which was originally intended to be self-funding.

- In Alabama, an inquisitive 9-1-1 district discovered that the phone companies were not properly charging their large business customers for each line that could call 9-1-1, while small businesses and residents paid in full for each line.

- Recent research has indicated that this is a nationwide problem. In Pennsylvania, for example, a large law firm has 250 active lines but pays 9-1-1 fees on only 10 of them, and in New Jersey, another firm is charged no 9-1-1 fees on its 100 phone lines.
The Opportunity
Urgency

Several reasons to act NOW:

New 9-1-1 technologies, including the transition to Internet Protocol (IP) based systems (Next Generation 911 or NG911) are expensive for government entities, stressing general operating budgets.

Corporate wire lines being converted to mobile and VOIP technologies.

New digital technologies like ISDN PRI complicate surcharge collection.

Phone companies are exploiting new technologies to undercharge 911 fees to win business.

Most recently, 9-1-1 fee recovery efforts in which we are involved have provoked overtures by certain telephone companies to settle ongoing 9-1-1 litigation through alternative dispute resolution measures such as mediation. One such mediation with a specific national telephone service provider has been scheduled for next month (July). If you wish to be included with other PA counties and 9-1-1 jurisdictions outside PA in a possible settlement resulting from this mediation, time is very short and we need to know immediately. The total damages for Northampton County in the mediation scheduled for July (described on page 8) is potentially in excess of $500,000.

The New PA 9-1-1 Law made certain revisions to the prior PA 9-1-1 Law. As a result, damages for unbilled, uncollected and unremitting 9-1-1 fees prior to the August 1, 2015 effective date of the New PA 9-1-1 Law may be greater than those under the New PA 9-1-1 Law. The sooner Northampton County initiates suit the greater its potential damage recovery will be under applicable statutes of limitations.

Confidential and Proprietary Information of Phone Recovery Services, LLC
much as $4.22 to $12.66 million. Our preliminary estimate is a potential shortfall of as much as $100 million per Pennsylvania alone, we estimate that as much as $100 million per
responsible to strong litigation measures.
likely uncollected and unreported.

Given the monetary stakes, it is not surprising that the phone system's current revenues for these accounts nationwide much as $12.66 million. Our preliminary estimate is a potential shortfall of as much as $100 million per Pennsylvania alone, we estimate that as much as $100 million per
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Pennsylvania Overview

- The Pennsylvania Legislative Budget and Finance Committee’s Study in 2012 was thorough and highlighted the grim financial situation of Pennsylvania’s 9-1-1 Districts.

- Many issues were identified but the study noted (with a clear sense of frustration) that there is a problem with getting “actionable intelligence” regarding the integrity of the PA 9-1-1 fee revenue stream from phone companies.

- Our specific research in Pennsylvania indicates widespread under collection of 911 fees. We have reviewed a number of current end-user bills that document under collection of fees for both VOIP and wire lines, in particular ISDN PRI circuits.

- The passage of the New PA 911 Law in 2015 increased the Pennsylvania 9-1-1 surcharge to $1.65 per month per line. However, this legislation did little to address continued systemic under-billing, under-collection and under-remittance of such 9-1-1 surcharges attributable to under-counting of lines (especially for larger business accounts) by telephone companies which retain sole responsibility for 9-1-1 billing, collection and remittance.
Recent PA 9-1-1 Litigation Developments
Recent 9-1-1 Litigation Developments Outside PA

- Phone Recovery Services/Expert Discovery and its affiliates along with Dilworth Paxson and our other legal partners are also involved in similar 9-1-1 fee recovery efforts in 15 states other than PA (more than 50 individual jurisdictions) – a monumental legal war fought over many battlefields.

- We have experienced slow but steady success in many of the jurisdictions outside PA in our battle with a recalcitrant telephone service industry.

- Given our litigation success in PA and in other states, we have recently begun to receive overtures from individual telephone companies about possible settlements of the 9-1-1 litigation through alternative dispute resolution measures such as mediation.

- In fact, faced with an imminent trial on the merits in our Alabama litigation, a certain national telephone company requested a formal 2-day mediation session to explore a global individual settlement. This mediation has now been organized (along with the exchange of pertinent information and the selection of a mediator agreeable to both sides), and scheduled for later this summer.

- In Tennessee, after losing a very significant appeal in the federal Sixth Circuit Court of Appeals and faced with an actual trial on the merits, Bell South settled its 9-1-1 litigation with nine individual Tennessee counties. (See Cleveland Daily Banner article posted March 1, 2018 at https://cleveland.creativemedia.com/subscribe?referer=clevelandbanner.com/stories/bradley-bell-south-lawsuit-headed-for-trial.75429.)
Benefits to 911 Entities

General fund or for other General Governmental purposes
Past due recovery amounts may be used to repay advances from

System
Allow for needed technical improvements to the Local 9-1-1

Current revenues for certain types of telephone service
Provides a greatly enhanced future revenue stream of a 2-3 times
The Recovery Process

1. Our team will prepare a review of likely recovery results from proprietary data sources.

2. Our team will begin the direct data request process from the phone companies and prepare in-depth forensic audits of each company’s 9-1-1 billing practices.

3. Our team will prepare and deliver claim letters to the phone companies based upon our preliminary investigation.

4. Our team will negotiate on behalf of the designated 9-1-1 entity to secure a non-litigated settlement of past under-billings and proper future billing.

5. If negotiations are not successful, our team will institute legal proceedings to secure collection of past due amounts and proper future billings.

6. Our team will undertake all services on a contingent fee basis, thus the 9-1-1 entity will not have any out-of-pocket expense as the process proceeds and no risk of loss if success is not achieved. The process could drag on for a number of years with large costs incurred during the process.
Phone Recovery Services, LLC

- Phone Recovery Services is a joint venture between Expert Discovery, Inc. of Birmingham, Alabama and NW Financial Group, LLC, Pottstown, Pa. Expert Recovery delivers direct expertise in auditing of phone company bills and records based upon its successful work in Alabama where it has already realized over $10 million in recoveries for its clients. NW Financial provides expert advice on governmental financial matters and strategies.

- Phone Recovery Services is currently involved in 9-1-1 fee recovery efforts in 15 states and the District of Columbia.

- Our team's professionals are fully familiar with the intricacies of phone company billings and 9-1-1 services and have assisted clients in explaining these complex matters in a litigation setting, including the definition by a federal court of an "access line" and the proper line counts in ISDN PRI's for the purpose of billing 9-1-1 fees.
The Need for Litigation
In classic litigation:
- Law firm gets 33% of amount recovered, if any.
- Out-of-pocket expenses (audits, expert witnesses, litigation support, filing costs, etc.) come from client's 67% and can easily total more than 10% of amount recovered.

Instead... in our process, Phone Recovery and our legal partner (Dilworth Paxson LLP) bear all audit and expert witness costs, client gets 60% of recovered funds.

**This arrangement leaves both the legal and audit teams best positioned to move aggressively against non-complying phone companies with deep pockets.**
Philadelphia, PA 19102-2101
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Dillworth Paxson LLP

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(610) 559-3106 fax

October 4, 2018

Dear County Council Members:

Please accept my resignation as President and member of Northampton County Council effective October 5, 2018. It has been an honor and privilege to serve as a member of Northampton County Council and the residents of Northampton County.

Sincerely,

[Signature]
Kenneth M. Kraft