Dan K. Fordice, III, President
Lester C. Snyder, III Senior Vice President
Thomas Brown, Vice President
Henry J. Massman, IV, Treasurer
Stephen E. Sandherr, Chief Executive Officer
Jeffrey D. Shoaf, Chief Operating Officer

August 4, 2022

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

RE: AGC's Significant Concerns with the *Inflation Reduction Act of 2022*

Dear Majority Leader Schumer and Leader McConnell,

On behalf of the Associated General Contractors of America (AGC) – the leading construction industry association representing America's top general contractors and specialty-contracting firms in every state – I would like to share our significant concerns with the *Inflation Reduction Act of 2022's* (IRA) impact on the construction industry.

Based on these concerns, AGC opposes the IRA as released in draft form on July 27, 2022 and reserves the right to KEY VOTE any amendments to and final passage of the bill for the education of its 27,000 member companies.

AGC outlines its concerns below as follows:

I. The IRA Takes the Unprecedented Approach of Adding Construction Labor Mandates to the Tax Code that will Jeopardize Timely Delivery of a Clean Energy Future and Discriminate against Minority Contractors

II. The IRA Makes it More Difficult for the Construction Industry to Build Resilient Infrastructure and Assist Efforts to Combat Climate Change

III. The IRA Further Jeopardizes the Long-Term Viability America's Transit Systems and Highways Funded Via the Highway Trust Fund; Continues Inequities among EVs, Motor-Fueled Vehicles and their Drivers

IV. The IRA Supercharges IRS Funding without Providing Adequate Increases to Address Significant Taxpayer Service Needs or Guardrails to Prevent Waste

AGC further elucidates these concerns below:

I. The IRA Takes the Unprecedented Approach of Adding Construction Labor Mandates to the Tax Code that will Jeopardize Timely Delivery of a Clean Energy Future and Discriminate against Minority Contractors

In an unprecedented move, the IRA uses the tax code to limit competition on every clean energy and energy efficient building project financed through new tax credits that require a portion of work hours to be performed by qualified apprentices. Unfortunately, the legislation includes a restrictive definition of qualified apprentices that would largely prohibit nonunion contractors and apprentices in their training models.

The unilateral imposition of not less than 15 percent of project hours to be performed by registered apprentices will eliminate large swaths of the construction industry from competing for projects incentivized through the clean energy and energy-efficient commercial building tax credits and deductions, among others. This will reduce the pool of contractors and workers able to compete for and deliver these projects, jeopardizing the timeliness of a clean energy future. Of further concern is that minority and women-owned disadvantaged business enterprises and emerging minority contractors will be irrevocably harmed and excluded by these restrictions on the type of labor available to them. Consequently, the tax credits are inequitable.

The apprenticeship goals are misguided and potentially unattainable. According to the Bureau of Labor Statistics, there were 330,000 job openings in construction in June 2022. But, according to the U.S. Department of Labor's (DOL) Office of Apprenticeship, there were only 197,421 active apprentices in the construction industry for 2021. The 197,421 apprentices represent only 2.5 percent of the construction industry's 7,858,000 workers, far less than a 15 percent requirement as proposed in the IRA.

Although there are multiple paths into the industry, the fact remains that it is difficult for many firms and their partners to establish formal, U.S. DOL approved, apprenticeship programs for construction workers. And the IRA fails to address the widespread skilled construction worker shortages and its resulting impacts on inflation. Instead, these tax credits will significantly reduce competition, exclude minority firms, and make building clean energy projects and energy efficient buildings more challenging.

II. The IRA would Make it More Difficult for the Construction Industry to Build Resilient Infrastructure and Assist Efforts to Combat Climate Change

The construction industry is the project delivery system for building a safer, healthier, and environmentally sustainable future. Our nation cannot simply wish for a greener future; it must build it. And the construction industry must be an integral part of the policymaking processes to help ensure that our built environment can grow and prosper in a sustainable way. Unfortunately, as articulated below, the IRA presents challenges to the industry's ability build in more sustainable and resilient manners.

A. *Environmental Product Declarations and Low-Embodied Carbon Labeling*

The IRA ignores the environmental product declaration system that already exists today. Instead of working with private industry to adapt the current system, they are choosing to scrap it and put the

Environmental Protection Agency (EPA) in charge of creating a new one. The EPA's mission is to protect human health and the environment – which does not make them experts in construction materials. They should engage with industry partners and owner groups to better understand how material selection will impact projects, costs, equipment, materials, etc. – recognizing that the availability of raw materials, supplies and labor can all be influenced by extreme weather. Mandating the selection of certain materials may exacerbate the situation on cost and availability.

Likewise, if Congress wants to create a program for low-embodied carbon labeling they need to ensure that our infrastructure will still be resilient and built to last. Agencies like the Federal Highway Administration (FHWA), specifically their Turner-Fairbank Research Center, should be at the head of the table in setting up a system for low-embodied carbon labeling for construction materials. The primary objective in product selection should continue to be ensuring resilient infrastructure and FHWA is best suited to lead this effort.

B. *Environmental Review Implementation Funds*

The IRA does not include any significant provisions to accelerate the environmental review and permitting process – as evidenced by the promise of a vote on a separate bill to address this later. The IRA does, however, include "environmental review implementation funds." But, due to the broad eligibilities available for these funds, including the provision "other activities, including permitting activities, as the Administrator determines to be appropriate," there is no guarantee that these funds would actually help facilitate efficient project delivery.

This year, FHWA put out a memo entitled "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America" in which they appear to create new hurdles in the environmental review process by removing certain project types that would be otherwise eligible for a categorical exclusion. AGC is concerned that these funds will be instead used to fund administrative costs, and potential legal fees, and drown state and local governments in paperwork that are trying to undertake a highway project that involves an Environmental Impact Statement or an Environmental Assessment. This could further delay critical infrastructure projects – many of which would relieve congestion and improve air quality. If this is not the intent of this funding, then Congress must explicitly specify its allowed uses.

III. The IRA Further Jeopardizes the Long-Term Viability of America's Transit Systems and Highways Funded Via the Highway Trust Fund; Continues Inequities among EVs, Motor-Fueled Vehicles and their Drivers

Currently, the Highway Trust Fund (HTF) provides funding for America's transit systems and highways. It is funded largely through taxes on gasoline and diesel fuel. Federal motor fuels taxes have not increased since 1993, and because it is not indexed to inflation, the purchasing power of the gas tax has declined by over 60 percent since that time. Additionally, since 2008 the HTF has faced a chronic funding deficit, which Congress has filled with roughly $270 billion from the federal government's general revenue account.

Unfortunately, the IRA will further exacerbate this deficit by greatly expanding subsidies for the purchase of EVs without establishing a method for these vehicles to contribute to the HTF. Currently, the 30D electric vehicle (EV) tax credit is worth up to $7,500 per vehicle and is limited to

manufacturers with fewer than 200,000 EVs sold in the United States. The IRA would expand this subsidy by removing the 200,000 vehicle cap for manufacturers that meet certain conditions. Additionally, the IRA would create a new tax credit of up to $4,000 for the purchase of a used EV, and a new tax credit for commercial EVs worth up to $40,000.

Furthermore, the IRA's failure to establish a means by which EVs contribute to their use of the transportation system via the HTF continues a gross inequity between EVs and motor fueled vehicles. To this point, even if the IRA were to become law, it would remain an indisputable fact that a single, working mother driving a motor-fueled vehicle supports America's highway and transit systems by paying into the HTF via the 18.4 cents per gallon tax on gasoline. And a billionaire EV driver will still pay nothing.

The expansion of this EV subsidy does not exist in a vacuum. Some states, including California and New York (with the largest and fourth largest vehicle fleets, respectively), have indicated that by 2035, 100 percent of vehicles sold in those states will be zero emission vehicles. To be clear, AGC is not opposed to wide adoption of EVs, but AGC firmly believes that the user fee model of transportation construction is essential to maintaining the viability of the HTF and the future of America's surface transportation system.

IV. <u>The IRA Supercharges IRS Funding without Providing Adequate Increases to Address Significant Taxpayer Service Needs or Guardrails to Prevent Waste</u>

AGC recognizes that the Internal Revenue Service (IRS) could use additional funding and resources. The COVID-19 pandemic put an unprecedented strain on the agency that detrimentally impacted taxpayers, including construction firms. To this point, many construction firms who filed amended returns, or, for example, claimed the Employee Retention Tax Credit (ERTC), have not yet received a response from the IRS. In some cases, construction firms have waited over a year for refunds. Likewise, AGC members report that it is nearly impossible to reach an IRS customer service representative to handle routine inquiries.

The IRA provides an unprecedented level of funding to the IRS – a total of nearly $80 billion over 10 years. Unfortunately, 90 percent of this funding is allocated towards "enforcement" and "operations support," while a mere four percent is allocated to "taxpayer services." Although this mismatch in funding priorities may meet the needs of Congressional scorekeepers to raise additional revenue, it will not lead to a better taxpayer experience for construction firms. IRS enforcement actions against construction firms (especially small construction firms), such as random audits or full field audits, are time-consuming and expensive to comply with, regardless of whether the IRS determines any additional taxes are owed.

Likewise, AGC is concerned about the open-ended, unaccountable nature of this IRS funding. Beyond a broad mandate to increase enforcement, this funding would allow the IRS "to purchase and hire passenger motor vehicles," as well as providing funding for "rent payments; facilities services; printing; postage; physical security; headquarters and other IRS-wide administration activities" and other uses.

With this wide discretion for the IRS to spend an unprecedented amount of money, the potential for waste is enormous, with little opportunity for Congressional oversight through the normal

appropriations process. In light of past abuses by the IRS, increased funding should be subject to the normal appropriations process with opportunities for Congressional review and oversight. The IRA instead flips this process on its head, by appropriating the (mandatory) funding now, with the opportunity to ask questions later.

For the reasons above, AGC opposes passage of the IRA as originally drafted. Thank you for your consideration of AGC's members and the association's input in the legislative process.

Sincerely,

James V. Christianson
Vice President, Government Relations

Cc: Members of the U.S. Senate