ORDINANCE NUMBER 22-2005

ORDINANCE ESTABLISHING A FAIR AND OPEN PROCESS FOR THE AWARD OF PROFESSIONAL SERVICE AGREEMENTS

WHEREAS, Professional entities are exempt from established New Jersey Public bidding laws, specifically said exception being set forth under N.J.S.A. 40A:11-5; and

WHEREAS, Washington Township has recognized that there is a need for a fair and open process for the awarding of professional service contracts where other contracts and agreements which are not subject to public bidding, in order to address the concerns of taxpayers regarding political contributions and to engender trust in the process of local government and to insure that quality public services are received;

WHEREAS, the State of New Jersey has enacted N.J.S.A. 19:44A-20.5 which bars any municipality, agency or instrumentality thereof from entering into a contract in excess of $17,500.00 (See N.J.S.A. 40A:11-3) with a business entity that has made a political contribution reportable pursuant to N.J.S.A. 19:44A-1 et. seq. to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded unless said contract is awarded pursuant to a fair and open process.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Washington, County of Gloucester and State of New Jersey, that the Township of Washington enact an Ordinance to be known as an Ordinance Establishing a Fair and Open Process for the Award of Professional Service Agreements, and said Ordinance shall read as follows:

Chapter 178 An Ordinance Establishing a Fair and Open Process for the Award of Professional Service Agreements

178-1 Prohibition Awarding Certain Public Contracts

A. Any other provision of the law to the contrary notwithstanding, the Township, or any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of $17,500.00 (See N.J.S.A. 40A:11-3) as determined in advance and certified in writing by the Township, agency or
instrumentality with a business entity that has made political contribution that is reportable by the receipt under N.J.S.A. 19:44A-1 et seq. to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded; and

A business entity that has entered into a Contract having an anticipated value in excess of $17,500.00 (See N.J.S.A. 40A:11-3) with the Township or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution reportable by the recipient under N.J.S.A. 19:44A-1 et seq., to any municipal committee of a political party in the Township if a member of that political party is serving in an elective public office of the Township when the Contract is awarded or to any candidate committee of any person serving in an elective public office of the Township when the Contract is awarded, during the term of that Contract.

B. When evaluating whether or not a person or business entity has made a contribution the following will be considered: If made by a natural person, a contribution by that person’s spouse or child shall be deemed to be a contribution by that person; made by a business entity, a contribution by any person or other business entity having an interest in said business entity shall be deemed to be a contribution by the business entity.

C. When using the terms “business entity” and “interest” the following definitions shall be utilized:

(1) The term “business entity” shall mean any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any legal commercial entity organized under the laws of this State or any other State or foreign jurisdiction.

(2) The term “interest” shall mean the ownership or control of more than 1% of the stock, assets, or profits of any public held company and any percentage interest of a privately held or closed corporation.
178-2 Fair and Open Process

A. Any professional service entity or other business entity providing services to the Township of Washington shall be subject to a fair and open process. That fair and open process shall be set forth in subsection B below which shall establish a criteria for the fair and open process.

B. The fair and open process established by the Township of Washington shall require the following:

(1) Any professional position or service contract not subject to bidding that shall expire as of December 31 of that calendar year shall be advertised by the Mayor's office, appointing authority or Board as the case may be, in the official newspaper of the Township of Washington for publication of notices, and published on the Township's website, not later than December 10. The published notice shall set forth the name of the position or contract which is to become open, and set forth the criteria to be considered and materials required to be submitted by the applicant.

(2) Should the applicant be a professional requiring licensure in the State of New Jersey, said applicant shall be licensed for a period not less than five (5) years.

(3) The applicant shall submit a "Certificate of Good Standing" or other similar document evidencing that the professional's license is not presently suspended or revoked.

(4) The applicant shall submit a resume which shall set forth information including, but not limited to the following (as applicable to a business entity or individual professional):

(a) Full name and business address;
(b) A listing of all post high school education of the applicant;
(c) Dates of licensure in the State of New Jersey and any other State;
(d) A listing of any professional affiliations or memberships in any professional societies or organizations, with an indication as to any offices held therein;
(e) The number of licensed professionals employed by/affiliated with the business entity or the business entity which employs the applicant;

(f) A listing of all special accreditations held by the individual licensed professional or business entity;

(g) A listing of all previous or current public entities served by the business entity or licensed professional, indicating the dates of services and position held.

C. The Mayor, appointing authority or Board shall thereafter select the professional or business entity for the position so advertised which shall thereafter be confirmed or approved as required by law or Ordinance.

178-3 Limitations of Certain Contributors

A. Notwithstanding the above establishing a fair and open process, the municipality, any of its Boards or independent authorities shall not enter into an agreement or otherwise contract to procure professional, banking, insurance coverage services or any other consulting services from any business entity if said business entity has made any contribution of money or a pledge of a contribution, including in-kind contributions, to any Washington Township candidate or holder of a public office having ultimate responsibility to award a contract, or to a campaign committee supporting such candidate or office holder, or to any Washington Township Party Committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections or municipal parties in excess of the thresholds specified in section B below within one (1) calendar year immediately proceeding the date of the contract or agreement.

B. Any business entity may annually contribute a maximum of $400.00 each for any purpose to any candidate for Mayor or Council, or any other elected office that serves the citizens of Washington Township, or $500.00 to the Washington Township Party Committee or to a PAC referenced in this Ordinance without violating section A of this subsection above. However, any group of individuals meeting the definition of a business entity under this section, including principals, partners and officers of the entity in the aggregate may not annually contribute for any purpose in excess of $2,500.00 to all Washington Township candidates and office
holders with ultimate responsibility for the award of the contract, and all Washington Township political parties and PAC’s referenced in this Ordinance combined, without violating section A of this subsection.

C. For the purpose of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

1. The Township Council if the contract requires approval or appropriation from Council; or

2. The Mayor of Washington Township, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of the Contract is appointed by the Mayor; or

3. A Planning Board or Zoning Board if the contract requires approval or appropriation by the Board since Council would be required to approve an appropriation, and the Mayor appoints members of said Boards.

D. It shall be deemed a breach of the terms of the Washington Township Professional Services Agreement for a business entity to make or solicit a contribution in violation of this Ordinance, directly or indirectly through any third parties, intermediaries, or lobbyists. Any business entity found to violate this Ordinance shall be disqualified from being awarded any Washington Township Municipal Contracts for a period of one (1) calendar year from the date of the violation, or the date that the violation is discovered.

E. It shall be the obligation of each business entity executing a public services agreement, that an authorized representative of said business entity sign a certification representing that the individual or business entity, as defined by this Ordinance, has not made a contribution in violation of this Ordinance. This provision is enacted so as to make the business entity responsible to the Township for such disclosure.

F. **Due Process Hearing.**

Should it be determined that a violation of this Ordinance has occurred, the person or business entity as defined herein shall receive written notice of the violation as provided under Article IIA of Chapter 1 of the Washington Township Code, General Provisions. However, should the violator request a hearing as provided under
Article IIA, the hearing officer as provided under § 1-10 shall be a retired judge of the
Superior Court of the State of New Jersey, designated by Township Council in the
case of non-township employees as set forth under § 1-10, or by the Mayor in the
case of township employees as provided under § 1-18.

178-4 Severability

If any of the provisions of this Ordinance, or the application of this Ordinance shall
be found invalid, the remainder of this Ordinance, to the extent that it can be given
effect or application, shall remain in full force and effect.

178-5 Effective Date

Nothing in this Ordinance shall be construed as effecting the ability of any
business entity to perform a public contract if that entity made a contribution to any
committee during a period of one (1) year immediately proceeding the effective date
of this Ordinance.

BE IT FURTHER ORDAINED, that this Ordinance will take effect after
adoption and publication according to law.

This Ordinance shall take effect thirty (30) days after final passage by Council
or twenty (20) days after approval by the Mayor, whichever comes first.

Introduced: October 13, 2005

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Public Hearing held October 27, 2005

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TOWNSHIP OF WASHINGTON

BY: [Signature]
FRANK R. SCARPATO, III
Council President

ATTEST:
JENNICA BILECI, Township Clerk

On this 2 day of November 2005 I hereby approve the above Ordinance.

PAUL MORIARTY, MAYOR