

February 10, 2009 Draft for discussion purposes

## Public Contract Reform Ordinance

An amendment to the Town's Code of Ethics and Procurement Policies that defines eligibility to exclude firms that participate in campaign donations to certain candidates, elected officials, political parties, lobbyists and political action committees:

Be it enacted by the Town of Red Hook:

### Preamble

WHEREAS it has become common for professional business entities to make political contributions to the election campaigns of government elected officers who are ultimately responsible for awarding professional service contracts or agreements:

WHEREAS, political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received, and

WHEREAS, municipalities have the right to establish rules and procedures for contracting with professional business entities,

NOW, THEREFORE BE IT RESOLVED that the policy of the Town of Red Hook will be to ban contracts and agreements with professional and business entities that make campaign contributions to designated candidates, officeholders and political parties:

### SECTION 1

#### PROHIBITION on AWARDING PUBLIC CONTRACTS

Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not procure professional, banking, insurance coverage services or any other consulting services, from any professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any Red Hook Town, Village (Red Hook and Tivoli) or Dutchess County candidate or officeholder whose district includes part or all of the Town of Red Hook, as well as any New York State Legislature candidate or officeholder whose district includes part or all of the Town of Red Hook, as well as any Red Hook, Dutchess County or New York State political party or political action committee (PAC). (within the two calendar years immediately preceding the date of the contract or agreement. )

(a) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other consulting services shall solicit or make any contribution, including in-kind contributions, to any Red Hook Town, Village (Red Hook and Tivoli) or Dutchess County candidate or officeholder whose district includes part or all of the Town of Red Hook, as well as any New York State Legislature candidate or officeholder whose district includes part or all of the Town of Red Hook, as well as any Red Hook, Dutchess County or New York State political party and political action committee (PAC) between the time of first communications between that business entity and the Town regarding that specific services agreement and the later of the termination of negotiations or two years after the completion of the contract or agreement.

(b) For purposes of this ordinance, a "professional business entity" is any entity seeking or performing a public contract for professional, banking or insurance coverage services or any other consulting services and which may be an individual including the individual's spouse, if any, and any child living at home; a person; firm; corporation; professional organization or association. The definition of a business entity includes all principals who own equity in the corporation or business trust} partners, and officers employed by the entity as well as any subsidiaries directly controlled by the business entity.

(c) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

- (1) The Town Board of Red Hook and the Town Supervisor of Red Hook if the contract requires approval or appropriation from the Board.
- (2) The Town Supervisor of Red Hook, if the contract requires approval of the Supervisor, or if a public officer who is responsible for the award of the contract is appointed by the Supervisor.

## SECTION 2

### Contributions Made Prior to the Effective Date

No contribution of money or any other thing of value} including in-kind contributions, made by a professional business entity to any municipal candidate or committee referenced in this ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods or services} of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to March 1} 2009.

### SECTION 3

#### Contribution Statement by Professional Business Entity

- (a) Prior to awarding any contract or agreement to procure professional services, or banking or insurance coverage services or any other consulting services, with any professional business entity, the township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offer has not made a contribution in violation of Section 1 of this ordinance;
- (b) The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into contract or agreement with the Township and shall be in addition to any other certifications that may be required by any other provision of the law.

### SECTION 4

#### Return of Excess Contributions

A professional business entity or candidate or officeholder of municipal, county or state party committee or PAC referenced in this ordinance may cure a violation of SECTION 1 of this ordinance, if, within 30 days after the contribution, the professional business entity notifies the Town Board in writing and seeks and receives reimbursement of a contribution from the municipal, county or state political party or candidate or PAC referenced in this ordinance.

## SECTION 5

### Penalty

(a) It shall be a breach of the terms of the Red Hook Town professional service agreement for a business entity to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the understanding or agreement that it will be contribute~to a campaign committee of any candidate or holder of the public office of Red Hook; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance.

(b) Furthermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future Red Hook contracts for a period of four calendar years from the date of the violation.

## SECTION 6

### EXCLUSIONS

Contracts, agreements and professional services rendered in the aggregate amount of less than \$3,000 within any twelve month period and commodity and public works contracts that are required by law to be awarded through competitive bid shall be excluded from the provisions of this law. These exclusions shall not include professional services and consultants as defined in the Town's Purchasing Policy manual.

## SECTION 7

### EMERGENCY PROCUREMENTS

Notwithstanding any other provisions of this policy, the Purchasing Department, with approval of the Town Board may make or authorize others to make emergency procurements of commodities, supplies, services or constructions items when there exists a threat to public health, welfare, or safety. Those procurements shall be made with such competition as may be practicable under the circumstances.

## SECTION 8

### Severability and Repealer

(a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

## SECTION 9

### Effective Date

This ordinance shall become effective upon filing with the Secretary of State.