

**Resolution No. 1051**

**A RESOLUTION** amending Resolutions No. 984 and 1047, adding and amending certain definitions and clarifying provisions to make the E-Verify Program easier to understand and enforce.

**WHEREAS**, in December of 2009, City Council passed Resolution 984 requiring the City of Washougal to use the E-Verify Program for contracts with a value in excess of one hundred thousand (\$ 100,000.00) dollars;

**AND WHEREAS**, the City Council in Resolution No.1047 amended the resolution to delete the one hundred thousand (\$100,000.00) dollar requirement;

**AND WHEREAS**, unintended consequences therefore developed with regard to the definition of the word "Contract" which would be impractical for the City of Washougal to enforce;

**AND WHEREAS**, the City Council now wishes to redefine some terms in the E-Verify Resolution and add certain definitions to the Resolution with the intent of making the Resolutions clearer and easier to enforce.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WASHOUGAL, WASHINGTON as follows:**

**Section I**

That Resolutions No. 984 and 1047 are hereby amended to modify and add definitions and clarify provision with the intent to simplify the City of Washougal's participation in the E-Verify Program and make the Program easier to enforce. A copy of the amended Resolution is attached hereto, marked as Exhibit "A" and by this reference incorporated herein.

**Section II**

This resolution shall take effect on **May 11, 2012.**

**PASSED** by the Council for the City of Washougal at a regular meeting this **16<sup>th</sup>** day of **April, 2012.**

**City of Washougal, Washington**



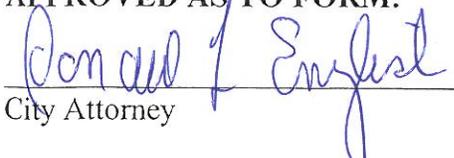
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Mayor

**ATTEST:**

  
\_\_\_\_\_  
Finance Director / City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
City Attorney

**A RESOLUTION** ensuring that those employed by the City through contracts have the lawful right to work in the United States.

**WHEREAS**, as the City has interest in ensuring that those who contract with the City employ only individuals who are employment eligible;

**AND WHEREAS**, E-Verify, an internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration, is free and voluntary;

**AND WHEREAS**, E-Verify is the best means available for determining employment eligibility of new hires and the validity of their Social Security numbers;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WASHOUGAL, WASHINGTON as follows:**

#### **Section I**

It is the purpose and intent of the City Council to ensure that those business entities that contract with the City have employees that have the lawful right to work in the United States. By requiring Contractors to ensure that their employees pass the E-Verify confirmation, the City protects the interest of the public in upholding that only lawful workers receive money from the City. The City Council also recognizes that E-Verify is not a perfect system, but the best one available for this purpose. If in the future, the City Council finds that there is a better method to achieve the goal of City contracts going to legal workers, it is encouraged to replace E-Verify with that method.

#### **Section II**

When used in this Resolution, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law.

(a) Business Entity - any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit with the City. The term Business Entity shall include, but not be limited to, self-employed individuals, partnerships, corporations, contractors, and subcontractors doing business with the City.

(b) City - The City of Washougal, Washington.

**Exhibit "A"**

(c) Contract - means a Contract in writing for the execution of Public Work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a Contract awarded under the small works roster process in RCW 39.04.155. Contracts shall also include contracts for professional services with a Service Provider. Contracts shall not include contracts with a period of performance of less than thirty (30) days.

(d) Contractor - A person, employer, Business Entity or Service Provider that enters into a Contract in exchange for valuable consideration. No governmental agency shall be considered to be a Contractor for purposes of this chapter. Other examples not considered to be a Contractor for the purposes of this chapter include: banks, insurance agencies and retail outlets.

(e) E-Verify - E-Verify shall mean the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Title IV, s. 403 (a), as amended, and operated by the United States Department of Homeland Security, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant to the Immigration Reform and control Act of 1986, Pub. L. No. 99-603.

(f) Unauthorized Alien - A person who is unauthorized to be lawfully employed in the United States, pursuant to 8 U.S.C. 1324a(h)(3). The City shall not conclude that a person is an Unauthorized Alien unless and until an authorized representative of the City has verified with the federal government, pursuant to 8 U.S.C. 1373(c), that the person is an Unauthorized Alien.

(g) Public Work - means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All Public Work, including maintenance when performed by Contract shall comply with Chapter 39.12 RCW.

(h) Service Provider - Service Provider shall mean a person or entity rendering professional services, such as accounting, architecture, archaeology, computer hardware and software services, engineering, investigating, landscape architecture, legal services, planning, land surveying, and all other consulting services.

### **Section III**

(a) As a condition for the award of any City Contract to a Business Entity or Contractor after the 11<sup>th</sup> day of May, 2012, the Business Entity or Contractor shall

enroll in E-Verify. The Business Entity or Contractor shall be required to continue its participation in the program throughout the course of its business relationship with the City.

(b) As a condition for the award or renewal of any City franchise or Contract made after the 11<sup>th</sup> day of May, 2012, the Business Entity shall enroll in the E-Verify program prior to the award of said franchise. The Business Entity or Contractor shall continue its participation in E-Verify throughout the term of its business relationship with the City.

(c) If a Business Entity or Contractor described in (a) uses a subcontractor in connection with the performance of the Contract, the subcontractor shall, as a condition of Contract, certify to the Contractor in a manner that does not violate federal law that the subcontractor has registered and is participating in the E-Verify program and will not knowingly employ or contract with an unauthorized alien.

(d) The City shall include specific written notice in all requests for bids that Business Entities and any subcontractors are required to enroll in the E-Verify program pursuant to subsection (a) above. Business Entities are exempt from subsection (a) if they received requests for bids not containing such notices.

(e) The City may require, at its discretion, proof of continued compliance with the E-Verify program during the term of the contract, pursuant to this Section.

#### **Section IV**

(a) The Mayor or designee shall implement procedures necessary to implement and enforce the requirements of this Resolution into all Contracts into which the City has entered with Business Entities or Contractors. These procedures shall ensure that no business engages in discrimination based on national origin, ethnicity, race or any other classification deemed suspect by the City or any agency or court.

(b) The City may suspend a Contract entered into after the effective date of this Resolution with any Business Entity or Contractor that the United States Attorney General or the Secretary of Homeland Security has found to be in violation of 8 U.S.C. 1324a.

(c) The City may suspend a Contract entered into after the effective date of this Resolution with any Business Entity or Contractor that fails to correct a violation of 8 U.S.C.1324a within thirty (30) business days after notification of the violation by the United States Attorney General or Secretary of Homeland Security.

(d) The City shall not suspend the Contract of any Business Entity or Contractor if, prior to the date of the violation, the Business Entity or Contractor had verified the

work authorization of the alleged unlawful workers using the E-Verify program.

(e) Every Contract entered into by the City after the effective date of this Resolution shall provide that the suspension for noncompliance with this Resolution shall terminate one (1) business day after a legal representative of the Business Entity or Contractor submits, at a City office designated by the Mayor or their designee, a declaration signed under penalty of perjury of the laws of the State, in the form provided by the City, stating that the violation of federal law has ended.

#### **Section V**

Severability - If any portion of this Resolution or its application to any person or circumstance is held invalid, the remainder of the Resolution or the application of the provision to other persons or circumstances shall not be affected.