ORDINANCE # 04 - 10

AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF NORTH BRUNSWICK, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY, TO PROVIDE A NEW CHAPTER ENTITLED "REQUIREMENTS PRIOR TO AWARD OF CONTRACTS FOR GOODS AND SERVICES EXEMPT FROM PUBLIC BIDDING REQUIREMENTS, THE AMOUNT OF WHICH EXCEEDS THE BID THRESHOLD AMOUNT SPECIFIED IN N.J.S.A. 40A:11-3".

BE IT ORDAINED by the Mayor and Township Council of the Township of North Brunswick, County of Middlesex and State of New Jersey, as follows:

SECTION 1. Code Amended. The Code of the Township of North Brunswick is amended and supplemented by the addition of a new chapter entitled "Requirements Prior To Award of Contracts for Goods and Services Exempt from Public Bidding Requirements, The Amount Of Which Exceeds The Bid Threshold Amount Specified In N.J.S.A. 40A:11-3", to read as follows:

_____-1. Award of Contracts for Goods and Services Exempt from Public Bidding Requirements Whose Aggregate Value Exceeds the Bid Threshold Amount Specified in N.J.S.A. 40A:11-3.

A. Purpose. It shall be the purpose of this subsection to foster fair and open competition in the contracting process; to avoid the appearance of corruption and public cynicism that can arise from campaign contributions and the issuance of public contracts for goods and services to contributors, and to eliminate the appearance of buying contracts for goods and services through campaign contributions with resulting excess charges for such goods or services designed to recoup such contributions.

B. Findings. The Township Council finds:

1. Certain individuals and business entities that provide goods and services to local governments are exempt from the requirements of public bidding;

2. It is common for certain individuals and business entities providing goods and services to local governments to make substantial political contributions to the election campaigns of the officials who ultimately determine the award of contracts exempt from Public Bidding Requirements, for such goods or services, either directly through contributions to the candidate or through municipal or county political parties or through continuing political committees or other similar entities;

3. The practice of some local government officials to award discretionary contracts to individuals or business entities that have made substantial campaign contributions to those officials or to municipal and county political parties or continuing political committees which, in turn, contribute to the campaigns of such local officials raises concerns on the part of taxpayers as to the quality and cost of the services received, including, but not limited to, concerns whether the charges for such goods and services are inflated in order to recapture the funds contributed, and creates distrust of government processes;

4. Local governments are authorized, under the provisions of N.J.S.A. 40:48-2 and of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., to establish rules and procedures for contracting with the providers of goods and services when those contracts are exempt from the public bidding requirements set forth in said Law;

5. The Township Council concludes that disclosure of political contributions made by business entities is in the public interest.

C. Definitions. As used herein,

1. "Business Entity" shall mean an individual, including the individual's spouse, if any, and any child living at home; firm; corporation; professional corporation; partnership; organization; or association. The definition of business entity includes all principals who own 10 percent or more of the 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 and the spouse, if any, of any such principal, partner or officer and any child living at home of any such principal, partner or officer, provided, however, nothing herein, however, shall be construed to include within the term "contribution" a contribution from a spouse or child where such contribution shall be made from the private and separate, non-familial assets or income of such spouse or child and which shall be established by clear and convincing evidence.

2. "Candidate" shall have the same meaning as set forth in N.J.S.A. 19:44A-3.

3. "Continuing Political Committee" shall have the meaning set forth in N.J.S.A. 19:44A-3.

4. "Contribution" means every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to or on behalf of any candidate for candidate committee, joint candidates committee, political committee, continuing political committee, legislative leadership committee, or political party committee and any pledge, promise or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the ordinance, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed.

5. "Contribution Disclosure Statement" means a list specifying the amount, date, and the recipient of any and all Contributions made to or on behalf of any candidate, candidate committee, joint candidates committee, legislative leadership committee, political committee, continuing political committee or political party committee, made up to one year prior to contract.

6. "Joint Candidate Committee" shall have the same meaning as set forth in N.J.S.A. 19:44A-3.

7. The term "Legislative Leadership Committee" shall have the same meaning set forth in N.J.S.A. 19:44A-3(5).

8. The term "Political Committee" shall have the same meaning set forth in N.J.S.A. 19:44A-3(i).

9. "Political Party Committee" shall mean any county or state committee of a political party organized pursuant to N.J.S.A. 19:5-3 and N.J.S.A. 19:5-4 or any municipal committee of a political party organized pursuant to N.J.S.A. 19:5-2.

10. "Professional Business Entity" shall mean any business entity as defined in Section (1) of this Ordinance that provides services by individuals who are required to be professionally licensed under the laws or regulations of this State.

11. "Township" shall mean the Township of North Brunswick in Middlesex County, New Jersey, its officers, employees, boards, commissions, committees and subcommittees.

D. Disclosure Requirements.

1. Prior to the formal award of any contract exempt from Public Bidding Requirements whose value exceeds the bid threshold amount established pursuant to N.J.S.A. 40A:11-3, any contractor, professional, or business entity designated by the Mayor and/or Council to receive such a contract that is exempt from the requirements of public bidding and the aggregate amount of which in any fiscal year exceeds such bid threshold amount shall provide to the Municipal Clerk a Contribution Disclosure Statement.

2. During the term of the contract, the contractor, professional or business entity shall amend its Contribution Disclosure Statements to include continuing disclosure of all Contributions within the scope of disclosure requirement of this chapter.

E. Availability of the Disclosure Statement.

1. All Contribution Disclosure Statements shall be available in the office of the Township Clerk for review by any member of the public as a government record pursuant to N.J.S.A. 47:1A-1 et seq. and shall be posted on the Township's web site.

2. All Contribution Disclosure Statements shall be published along with and in the same manner as the notice of award of contract is so published.

F. Breach of Contract and Disqualification of Contractor.

1. All Township contracts for goods or services that are exempt from Public Bidding Requirements and whose aggregate value in any fiscal year exceeds the bid threshold amount established pursuant to N.J.S.A. 40A:11-3, shall provide that it shall be a breach of the terms of the contract for a business entity or professional business entity to violate this subsection or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contributions through intermediaries for the purposes of concealing or misrepresenting the source of the contribution.

2. Any business entity or professional business entity that knowingly fails to reveal a contribution made in violation of this subsection, or that knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Township contracts for a period of four (4) calendar years from the date of the determination of the violation and shall have any contract with the Township than in effect immediately terminated.

SECTION 2. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. Should any section, paragraph, sentence or clause of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be effected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are hereby declared severable.

SECTION 4. Ordinance shall take effect immediately upon final passage and publication, according to law.

☑ APPROVED
☐ REJECTED

FRANCIS WOMACK, III, MAYOR
Township of North Brunswick

5-17-04

FILED