FILED
SEP 27 2007
NINA MITCHELL WELLS
SECRETARY OF STATE

ORDINANCE # 2007-18

ORDINANCE ADOPTING SPECIAL PAY-TO-PLAY RESTRICTIONS FOR PROFESSIONAL SERVICE CONTRACTS, EXTRAORDINARY UNSPECIFIABLE SERVICE CONTRACTS AND DEVELOPERS AND RE-DEVELOPERS

WHEREAS, substantial political contributions from those seeking to or performing business within the Township of Marlboro raise reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, the Township Council adopted Ordinance #2004-5 which precluded professional business entities which are seeking or which entered into a contract with Marlboro Township from entering into or continuing that contract if that entity or its principals who own 10% or more of the equity in the business entity made political contributions to a campaign committee of a Marlboro Township candidate, to a Marlboro Township or Monmouth county party committee or any PAC supporting Township candidates in excess of $400.00 to each candidate, $500 to a party committee or an aggregate not to exceed $2,500 per professional business entity; and

WHEREAS, the Legislature adopted Pay to Play Legislation, P.L.2005, c.271., which affirmed that municipalities are authorized to adopt by ordinance measures limited the awarding of public contracts to business entities that have made political contributions and limited the contributions that the

holders of a contract can make during the term of a contract; and

WHEREAS, pursuant to P.L. 2005, c.271., business entities receiving no-bid contracts are required to submit a list of political contributions that were made by the business entity during the preceding 12-month period; and

WHEREAS, the Council of the Township of Marlboro hereby declares that upon the effective date of this ordinance all professional and extraordinary unspecifiable service contracts shall be subject to the restrictions contained herein; and

WHEREAS, in the absence of the State adopting comprehensive pay-to-play reform with anti-wheeling protection, and due to a history of contributions made to candidates for office in the Township of Marlboro and Township of Marlboro political parties by entities from outside of the Township, and in the interest of good government, the Council of the Township of Marlboro desires to establish a policy that will avoid the perception of improper influence in awarding government contracts; and

WHEREAS, it has become more frequent for developers and redevelopers to make substantial political contributions to the election campaigns for local government offices, and to the political parties which support them; and

WHEREAS, the local government officials are, once elected, responsible for deciding the terms of a development and/or redevelopment agreement; and

WHEREAS, political contributions from developers entering into agreements for development and/or redevelopment projects approved by the elected officials who receive such contributions raises reasonable concerns on the part of taxpayers and residents as to their trust in the process of local redevelopment, including but not limited to redevelopment decisions on tax abatements, zoning densities, publicly funded infrastructure improvements, and acquisition of property rights pursuant to eminent domain; and

WHEREAS, there have been a number of elected and appointed officials in Marlboro Township who have either plead guilty or have been found guilty in connection with receiving unlawful payments from developers; and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. provides a mechanism to empower and assist local governments in efforts to promote programs for redevelopment; and

WHEREAS, N.J.S.A. 40A:12A-8 allows municipalities or a designated redevelopment entity to enter into agreements with redevelopers for planning, replanning, construction or undertaking of any project or redevelopment work without public bidding and at such prices and upon such terms as it deems reasonable within areas designated for redevelopment; and

WHERAS, N.J.S.A. 40A:12A-11 provides that redevelopment

entities are instrumentalities of the municipality; and

WHEREAS, both the exceptions to the Open Public Meetings Act, more specifically N.J.S.A. 10:4-12b and N.J.S.A. 40A:12A-8, provide that negotiations for such agreements can be conducted in executive session, provided the full terms of any such agreements are discussed and approved in open session; and

WHEREAS, the Township of Marlboro has declared, or in the future may declare, certain areas to be "Areas in Need of Redevelopment" under the Local Redevelopment and Housing Law, and may adopt a Redevelopment Plan; and

WHEREAS, given the potential of negotiating with private developers and/or redevelopers and the entering into developer agreements upon receipt of land use approvals pursuant to the Municipal Land Use Law or agreements with redevelopers without a formal public bidding process, as permitted by the Local Redevelopment and Housing Law, it is necessary to establish certain limitations on political contributions which may undermine public confidence in any redevelopment effort; and

WHEREAS, the policy of the Township of Marlboro will be to create such a regulation which states that any entity or individual seeking to enter into a developers agreement, a redevelopment agreement or amendment thereto, or is otherwise seeking to obtain rights to develop pursuant to a redevelopment agreement and who makes political contributions to Marlboro

elected officials and/or candidates for local office, and local and Township political committees, will be ineligible to enter into such agreements, or receive such rights from the Township of Marlboro.

NOW, THEREFORE, IT IS HEREBY ORDAINED, by the Municipal Council of the Township of Marlboro, County of Monmouth and State of New Jersey that Chapter 26, Public Contracts, of the Township of Marlboro is deleted entirely and replaced with the following:

§26-1. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) To the extend that it is not inconsistent with state or federal law, the Township of Marlboro and any of its purchasing agents or departments or instrumentalities of the Township thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any "business entity" as defined herein, including those awarded pursuant to any process including a fair and open process regardless of the amount of the contact, if such "business entity" has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, in excess of the thresholds specified in subsection 1(d) within one calendar year immediately preceding the Township's public announcement of or private solicitation of a request for proposals, to:

(i) Any Township candidate or holder of a public office having ultimate responsibility for the award of the contract, or

(ii) any campaign committee of such a candidate or holder of public office, or

(iii) any Township of Marlboro municipal party, or

(iv) any county party committee within the State of New Jersey, or

(v) any candidate committee, state or Township political party committee, legislative leadership committee, continuing political committee or political action committee (PAC)

organized under §572 of the Internal Revenue Code, that is organized for the purpose of promoting or supporting Township candidates or Township officeholders and/or that has within the last calendar year provided financial or in-kind support to Township of Marlboro municipal elections and/or Township of Marlboro municipal or Township parties.

(b) No "business entity" that submits a proposal for, or agrees to any contract or agreement (including non-emergency contracts awarded by N.J.S.A. 40A:11 *et seq.* or the "Fair and Open Process" pursuant to N.J.S.A. 19:44A-20 et seq.) with the Township or any departments thereof, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions in excess of the thresholds specified in subsection 1(d), between the time of the first public announcement or private solicitation of a request for proposals, as the case may be, and the later of the awarding of the contract to another proposer, or written withdrawal of the proposal, or, as to the successful applicant, the completion of the contract or agreement, except as permitted in section 1(d) to:

(i) any Township candidate or holder of public office having ultimate responsibility for the award of the contract, or

(ii) any campaign committee of such a candidate of holder of public office, or

(iii) any Township of Marlboro municipal party; or

(iv) any county party committee within the State of New Jersey; or

(v) any candidate committee, state or Township political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that is organized for the purpose of promoting or supporting Township candidates or Township officeholders and/or that has within the last calendar year provided financial or in-kind support to Township of Marlboro municipal elections and/or Township of Marlboro municipal or Township parties.

(c) For purposes of this ordinance, a "business entity" seeking a public contract means:

(i) any professional or provider of extraordinary unspecificable services as defined in N.J.S.A. 40A:11-5(1)(a), and

(ii) an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a "business entity" includes all principals who own 10% or more of the equity in the corporation or business trust, partnership, and officer employed by the entity, as well as any subsidiaries directly controlled by the business entity.

(iii) A "business entity" does not include non-for-profit organizations or their officers or board members.

(d) Any individual meeting the definition of "business entity" under this section may annually contribute a maximum of $300 each for any purpose to any candidate for Township of Marlboro office, $300 to municipal party committees within Township of Marlboro, $300 to a county party committee, $300 to any state political party committee, and $300 to any candidate committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, referenced in this ordinance, without violating subsection (a) or (b) of this section. However, any group of individuals meeting the definition of "business entity" under this section, including principals, partners, and officers of the entity in the aggregate, may not contribute for any purpose in excess of $2,500 to all Township of Marlboro candidates and officeholders with ultimate responsibility for the award of the contract, and all municipal or Township political parties, candidate committees, county political parties, state political parties, legislative leadership committees, continuing political committee, and PACs referenced in this ordinance combined, without violating subsection (a) or (b) of this section.

(e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be the Township of Marlboro and any of its political sub-

divisions, or any individual who is responsible for the award of a contract and is appointed by the Township of Marlboro, including the Township Council and the Mayor.

§26-2. Contributions Made Prior to the Effective Date.

This ordinance does not apply retroactively. Political contributions, whether monetary or "in-kind," made prior to the effective date of this ordinance shall not be deemed to be a violation of this ordinance, but rather shall be controlled by the provisions of Ordinance #2004-5.

§26-3. Disclosure & Contribution Statement by Professional Business Entity and Provider of Extraordinary Unspecifiable Services.

(a) Any business entity seeking a contract shall file a Public Disclosure Statement along with the proposal by the "business entity" consistent with the requirements of P.L. 2005, c.271, which must be filed no later than ten days prior to the awarding of a contract or agreement to procure services. The Township or any of its purchasing agents or agencies, as the case may be, shall maintain a completed Township of Marlboro Public Disclosure Statement form and provide that for public review at the Township Purchasing Department. The Township of Marlboro Public Disclosure Statement shall list all of the reportable political contributions by the "business entity" to any state, Township, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, holder of, an elective office of Township of

Marlboro; or of another elective office within Township of Marlboro; or of a legislative district which includes all or part of Township of Marlboro; or any continuing political committee, within one calendar year immediately preceding the Township's public announcement or private solicitation of a request for proposals, noting the candidate or campaign committee, the amount and date, and the nature of the contribution.

(b) The "business entity" will make the statement knowing that under penalty of perjury that it has not made a contribution in violation of the Ordinance hereof and has not made or solicited contributions through intermediaries, third parties, immediate relatives, candidate committees, or Political Action Committees for the purpose of concealing the source of the contributor(s).

(c) Filing an incorrect Public Disclosure Form may be deemed a breach of the contract and shall result in the "business entity" being debarred from being awarded any Township contract for a period of four years.

(d) The "business entity" shall have a continuing duty to report any violations of this Ordinance that may occur during the duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with Township of Marlboro and shall be in addition to any other certifications that may be required by any other provision of law. At a minimum, completion of the Public

Disclosure Statement will be an annual requirement of the "business entity."

(e) The annual Disclosure Form shall be filed within twenty (20) days following each anniversary of the proposal, if for a multi-year agreement.

§26-4. Prohibition of entering into and/or amending development and/or redevelopment agreements with certain contributors.

(a). Any other provision of law to the contrary notwithstanding, the Township of Marlboro or any of its, purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement, amend an agreement, or otherwise contract with any developer and/or redeveloper, as defined in Subsection C. below, for the planning; replanning, construction or undertaking of any development and/or redevelopment project including the acquisition or leasing of any public property in conjunction with the redevelopment of any area within the Township of Marlboro pursuant to the Local Redevelopment and Housing Law and/or the Municipal Land Use Law, if that developer and/or redeveloper has knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions in excess of the thresholds specified in Section 1(d) above, within one calendar year immediately preceding the date of entering into the developers agreement, redevelopment agreement, amended agreement, or contract (hereinafter "agreement"), except as permitted in Section 1(d) above to:

(i) any Township candidate or holder of public office having ultimate responsibility for the award of the contract, or

(ii) any campaign committee of such a candidate of holder of public office, or

(iii) any Township of Marlboro municipal party committee; or

(iv) any county party committee within the State of New Jersey; or

(v) any candidate committee, state political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that is organized for the purpose of promoting or supporting Township candidates or Township officeholders and/or that has within the last calendar year provided financial or in-kind support to Township of Marlboro municipal elections and/or Township of Marlboro municipal or Township parties.

(b). All Developer Agreements or amendments thereto and/or Redevelopment Agreements entered into by the Township of Marlboro shall contain a provision prohibiting developers and/or redevelopers, as defined in Subsection C below, to solicit or make any contribution in excess of the thresholds specified in Section 1 subsection (d) above.

(c). A "developer" or "redeveloper" means any person, firm, corporation, partnership, limited liability company,

organization, association, or public body that shall enter into or propose to enter into an agreement with a municipality or other redevelopment entity for the development of property pursuant to the Municipal Land Use Law, redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the Local Redevelopment and Housing Law, or for any construction or other work forming part of a development or redevelopment or rehabilitation project. For the purposes of this section the definition of a developer or redeveloper includes all principals who own ten percent (10%) or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the developer and/or redeveloper as well as any affiliates or subsidiaries directly controlled by the developer or redeveloper. Spouses and any child/children shall also be included.

(d). For the purposes of this section, the office that is considered to have responsibility for arranging and entering into the development agreement or redevelopment agreement shall be (i) the Township Council if the developers agreement or development agreement requires approval and/or appropriation from the Township Council or a public officer who is responsible for arranging and entering into the developers agreement or redevelopment agreement if that public officer is appointed by the Mayor and/or Township Council, or (ii) the Mayor of the

Township of Marlboro if the developers agreement or redevelopment agreement requires the approval of the Mayor or a public officer who is responsible for arranging and entering into the redevelopment agreement if that public officer is appointed by the Mayor, or (iii) a designated redevelopment entity, if the redevelopment agreement requires the approval of the redevelopment entity.

§26-5. Contribution Statement of Developers and/or Redevelopers; Notice given by Municipality.

(a). Prior to arranging and entering into a Developer's Agreement or Redevelopment Agreement with any developer or redeveloper, the Township of Marlboro or any of its purchasing agents or agencies or independent authorities, as the case may be, shall receive a sworn statement from the developer or redeveloper that the developer or redeveloper has not made any contribution in violation of Section 1, subsection (d) above. The Township of Marlboro, through any appropriate redevelopment agent, agency, officer, authority, or department, shall be responsible for informing the Mayor and the Township Council that the aforementioned sworn statement has been received and that the developer or redeveloper is not in violation of this Ordinance, prior to entering into any Developer's Agreement or Redevelopment Agreement. Furthermore, the developer or redeveloper shall have a continuing duty to report any violations of this chapter that may occur while arranging and entering into the Developer's Agreement or redevelopment

agreement, and until all specified terms or time period of the agreement have been completed. The certification required under this subsection shall be made prior to entry into the agreement with the municipality and shall be in addition to any other certifications that may be required by any other provision of law.

(b). It shall be the Township's continuing responsibility to give notice of this Ordinance to all developers who file any application with the municipality, its land use boards and/or any of its political subdivisions, including but not limited to the Planning Board or Zoning Board, to develop any tract of land within the municipality and/or when the municipality gives notice of redevelopment pursuant to 40A:12A-6 and/or when the municipality adopts a ordinance directing the Planning Board to prepare a redevelopment plan and at the time that the municipality adopts the ordinance to implement the redevelopment plan.

§26-6. Contribution restrictions and disclosure requirement applicability to consultants.

(a). The contribution and disclosure requirements in this chapter shall apply to all developers and/or redevelopers as well as professionals, consultants or lobbyists contracted or employed by the developer and/or redeveloper including those ultimately, designated by the developer/redeveloper to provide services related to the: (i) lobbying of government officials in

connection with the examination of an area and it designation as an area in need of redevelopment or in connection with the preparation, consultation and adoption of the redevelopment plan; (ii) obtaining the designation or appointment as redeveloper; (iii) negotiating the terms of a developer's agreement or redevelopment agreement or any amendments or modifications thereto; and (iv) performing the terms of a developer's agreement or redevelopment agreement.

(b). It shall be a breach of the consultant's contract with the developer and/or redeveloper, and shall require immediate termination, for a consultant to violate the contribution limits and disclosure requirements in this ordinance.

(c). A developer or redeveloper who participates in, or facilitates, the circumvention of the contribution restrictions through consultants or professionals shall be deemed to be in breach.

§26-7. Return of Excess Contributions.

A "business entity," developer, or redeveloper, or Township of Marlboro Candidate or officeholder, or municipal, county or state party committee, candidate committee, legislative leadership committee, continuing political committee or PAC referenced in this ordinance, may cure a violation of Section 1 of this Ordinance, if, within 30 days after the applicable ELEC report, the "business entity" notifies the Township of Marlboro in writing and seeks and received reimbursement of the

contribution from the relevant candidate or officeholder, municipal or county political party, state political party, candidate committee, legislative leadership committee, continuing political committee, or PAC referenced in this ordinance.

§26-8. Penalty and Anti-Circumvention Provision.

(a) It shall be a breach of a contract with Township of Marlboro for a "business entity," developer or redeveloper 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 a contribution through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition of or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Township of Marlboro; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make any contribution, which if made or solicited by the "business entity" itself, would violate this ordinance; (vi) fund contributions made by third parties, including consultants, attorneys, family members and employees; (vii) engage in any exchange of contribution to circumvent the intent of this ordinance; or (viii) directly or indirectly, through of by any

other person or means do any act which would violate this ordinance.

(b) Furthermore, any "business entity," developer or redeveloper that violates **§7**(a)ii-viii shall be debarred from eligibility for future Township of Marlboro contracts or for entering into a developers agreement or redevelopment agreement for a period of four (4) calendar years from the date of the violation.

§26-9. Anti-Wheeling Restrictions.

(a) No candidate committee for any candidate for Township of Marlboro office shall accept a contribution from a Township committee of a political party, other than the Township committee of the Township in which the candidate or candidates reside, in excess of $1,000 per election.

(b) No candidate committee for any candidate for Township of Marlboro shall accept a contribution from a county political party in excess of $1,000 per election.

(c) No candidate committee for any candidate for Township of Marlboro shall accept a contribution from a state political party in excess of $1,000 per election.

(d) No candidate committee for any candidate for Township of Marlboro office shall accept a contribution from a legislative leadership committee in excess of $1,000 per election.

(e) No candidate committee for any candidate for Township of Marlboro shall accept a contribution from a continuing political

committee or PAC organized under §527 of the Internal Revenue Code in excess of $1,000 per election.

(f) No candidate committee for any candidate for Township of Marlboro office shall accept a contribution from another candidate committee, other than from a candidate committee located in the Township of Marlboro, in excess of $1,000 per election.

(g) No candidate committee for any candidate for Township of Marlboro shall accept a contribution from a municipal political party committee, other than a municipal political party committee of a municipality located in Township of Marlboro, in excess of $1,000 per election.

(h) Any candidate or candidate committee who has taken contributions in excess of those outlined in Section 8(a)-(f) of this Ordinance shall be subject to a fine not exceeding $2,000 per violation, pursuant to N.J.S.A. 40:49-5.

§26-10. Severability.

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid by a court of the United States or this State, or by any administrative agency of the United States or this State, the remaining provisions shall remain in effect.

§26-11. Repealer.

This ordinance supplements, but does not supersede the contribution disclosure requirements, under P.L. 2004, c 19, s.7

amended P.L. 2005, c. 51, s. 15 (N.J.S.A. 19:44A-20.8) and P.L. 2005, c. 271, s. 2 (N.J.S.A. 19:44A-20.26), for contracts awarded through other than a fair and open process. All ordinances or parts of ordinances that are inconsistent with any provisions of this ordinance are hereby repealed to the extent of such inconsistencies.

§26-12. Incorporation by Reference.

The regulatory and penalty provisions of this Ordinance shall be incorporated by referenced into all Township of Marlboro contracts for professional services and extraordinary unspecifiable services and developer's agreements and redevelopment agreements.

§26-13. Filing with Secretary of State.

The Clerk of the Township of Marlboro shall file a certified true copy of this Ordinance with the Secretary of State in accordance with N.J.S.A. 40A:11-51(c).

§26-14. Effective Date.

This ordinance shall take effect in accordance with law.

CERTIFICATION

I hereby certify the above to be a true and exact copy of an Ordinance adopted by the Township Council of the Township of Marlboro at a meeting held on 9/20/07

Township Clerk

PASSED: September 6, 2007

ADOPTED: September 20, 2007

ALIDA MANCO
MUNICIPAL CLERK

ROBERT KLEINBERG
MAYOR

DATE SIGNED: 9/20/07