ORDINANCE # 17-2010

ORDINANCE ESTABLISHING PUBLIC CONTRACTING ("PAY-TO-PLAY") REFORM

WHEREAS, large political contributions from those seeking to or performing business with a municipality, raises reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-law as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L.2005, c.271., a municipality is authorized to adopt by ordinance measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the Mayor and Council desire to establish a policy that will avoid the perception of improper influence in local elections,

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Spring Lake Heights, in the County of Monmouth and State of New Jersey, as follows:

Section 1. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) To the extent that it is not inconsistent with state or federal law, the Borough of Spring Lake Heights and any of its purchasing agents or departments or instrumentalities of the municipality thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any professional business entity, including those awarded pursuant to any process including a fair and open process, if such professional business entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to (i) a campaign committee of any Municipal candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Borough of

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KIM GUADAGNO
SECRETARY OF STATE

Spring Lake Heights or Monmouth County Party Committee, or (iii) to any political action committee (PAC) that regularly engages in the support of municipal or county elections and/or municipal or county parties, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.

(b) No professional business entity or vendor who submits a proposal for, enters into negotiations for, or agrees to any professional service contract or contract or agreement in excess of $17,500 (including non-emergency contracts awarded by 40A:11 *et seq* or the "Fair and Open" Process pursuant to 19:44A-20 *et seq*) with the Municipality or any departments thereof, for the rendition of professional services, or goods and services, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions, to: (i) any Municipality candidate or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Borough of Spring Lake Heights or Monmouth County party committee, or (iii) to any PAC that regularly engages in the support of municipal or county elections and/or municipal or county parties, between the time of first communication between that professional business entity or vendor and the municipality regarding a specific professional services agreement or goods and services agreement, as the case may be, and the later of the termination of negotiations or rejection of any proposal, or the completion of the contract or agreement.

(c) For purposes of this ordinance, a "professional business entity" and a "vendor" seeking a public contract mean 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 and vendor includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers [in the aggregate] employed by the entity or vendor, as well as any subsidiaries directly controlled by the business entity or vendor.

(d) Any individual meeting the definition of "professional business entity" or "vendor" under this section may annually contribute a maximum of $300 each for any purpose to any candidate, for mayor or governing body, or $300 to the Spring Lake Heights party or $500 to the Monmouth County party committee or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" or "vendor" under this section,

including such principals, partners, and officers of the entity or vendor in the aggregate, may not annually contribute for any purpose in excess of $2,500 to all Borough of Spring Lake Heights candidates and officeholders with ultimate responsibility for the award of the contract, and all Borough of Spring Lake Heights or Monmouth County political parties and PACs referenced in this ordinance combined, without violating subsection (a) 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:

(1) The Borough of Spring Lake Heights Mayor or Governing body, if the contract requires approval or appropriation from the Mayor or Governing body.

(2) The Mayor of the Borough of Spring Lake Heights, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

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 or vendor to any Borough of Spring Lake Heights candidate for Mayor or Governing Body, or Borough of Spring Lake Heights or Monmouth County party committee or PAC referenced in this ordinance shall be deemed a violation of this ordinance, 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 or vendor prior to the effective date of this ordinance.

Section 3. Contribution Statement by Professional Business Entity and Vendor.

(a) Prior to awarding any contract or agreement to procure services with any professional business entity and any contract or agreement to procure goods and services from a vendor, the Borough of Spring Lake Heights or its purchasing agents and departments, as the case may be, shall receive a sworn statement from the professional business entity or vendor, made under penalty of perjury, that the bidder or offer or has not made a contribution in violation of Section 1 of this ordinance.

(b) The professional business entity and vendor shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation, proposal process or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough of Spring Lake Heights, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.

Section 4. Return of Excess Contributions.

A professional business entity, vendor, or municipal candidate or officeholder, or Borough of Spring Lake Heights or Monmouth County party committee or PAC referenced in this ordinance, may cure a violation of Section 1 of this Ordinance, if, within 30 days after the date on which the applicable ELEC Report is published, the professional business entity or vendor notifies the municipality in writing and seeks and receives reimbursement of the contribution from the relevant municipal candidate or officeholder, Borough of Spring Lake Heights or Monmouth County political party or PAC referenced in this ordinance.

Section 5. Exemptions.

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which are required by law to be awarded to the lowest bidder.

Section 6. Penalty.

(a) It shall be a breach of the terms of the Borough of Spring Lake Heights professional service agreement or agreement for goods or services 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 agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Borough of Spring Lake Heights (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) Futhermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future Borough of Spring Lake Heights contracts for a period of four calendar years from the date of the violation.

Section 7. Severability.

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

Section 8. Repealer.

All ordinances or parts of ordinances which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.

Section 9. Effective Date.

This Ordinance shall take effect upon adoption and publication according to law.

ORD #17-2010 - Introduction	MOVED	SECONDED	AYES	NAYS	ABSENT	ABSTAIN
MR. BRENNAN			X			
MS. CINDEA		X	X			
MS. CRIPPEN	X		X			
MS. KEGELMAN			X			
MS. KING			X			
MR. MACCANICO			X			
MAYOR ENRIGHT						

I hereby certify that the above Ordinance was introduced by the Governing Body of the Borough of Spring Lake Heights at a meeting held on October 12, 2010.

Theresa S. Casagrand

Borough Clerk

ORD #17-2010 - Adoption	MOVED	SECONDED	AYES	NAYS	ABSENT	ABSTAIN
MR. BRENNAN			X			
MS. CINDEA			X			
MS. CRIPPEN		X	X			
MS. KEGELMAN	X		X			
MS. KING			X			
MR. MACCANICO					X	
MAYOR ENRIGHT						

I hereby certify that the above Ordinance was adopted by the Governing Body of the Borough of Spring Lake Heights at a meeting held on October 25, 2010.

Theresa S. Casagrande
Municipal Clerk

H. Frances Enright

H. FRANCES ENRIGHT
Mayor

10/26/10
DATE

Theresa S. Casagrande

THERESA S. CASAGRANDE
Municipal Clerk

10/26/10
DATE