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HAMPTON TOWNSHIP ORDINANCE 2011-13

**AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF
HAMPTON,
COUNTY OF SUSSEX AND STATE OF NEW JERSEY TO INCLUDE
CHAPTER 21
ENTITLED
"PUBLIC CONTRACTS PAY-TO-PLAY"**

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

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

WHEREAS, pursuant to N.J.S.A. 40A:11-51, 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 such contracts can make during the term of a contract; and,

WHEREAS, in the interest of good government, it is deemed necessary to establish a policy to avoid the perception of improper influence in public contracting and local elections;

NOW, THEREFORE, BE IT RESOLVED, it shall be the policy of the Township of Hampton that a business entity which makes political contributions to municipal candidates and municipal political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the Township of Hampton; and,

BE IT ORDAINED by the Township Committee of the Township of Hampton, in the County of Sussex, and State of New Jersey, that the Code of Hampton Township is hereby amended to include the following Ordinance to be known as Chapter 21, "Public Contracts Pay-to-Play":

SECTION 21-1: DEFINITIONS

As used in Section 21 of the Hampton Township Code:

- (a) "Contribution" has the meaning prescribed in N.J.A.C. 19:25-1.7. By way of illustration, and not limitation, this definition includes pledges, loans and in-kind contributions.
- (b) A "contract for professional or extraordinary services" means all contracts for "professional services" and "extraordinary unspecifiable services" as such terms are used in N.J.S.A.40A:11-5.

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 KIM GUADAGNO
 SECRETARY OF STATE

- (c) A "business entity" means one whose contributions are regulated by Section 21 of the Hampton Township Code and who or which is: (i) a natural person including his/her spouse and any child/children residing with that person; (ii) a firm, corporation, professional corporation, partnership, limited partnership, limited liability company, organization, association and other legal commercial entity organized under the laws of any state or foreign jurisdiction; (iii) any person or entity owning 10% or more of the equity, ownership or income interests in an entity identified in subpart (ii) of this paragraph and, if a person, that person's spouse and child/children residing with that person; (iv) all partners or officers of such an entity, in the aggregate, and their spouses and child/children residing with those partners or officers; and (v) all persons who are an "affiliate" of a business entity as defined in subparts (i) and (ii) of this paragraph as such term is used in 11 U.S.C. 101(2).

SECTION 21-2: PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

- (a) To the extent not inconsistent with state or federal law, the Township of Hampton or any of its departments or agents shall not enter into any contract to procure goods or services from a business entity including but not limited to "professional services" as such term is defined in N.J.S.A. 40A:11-2(6) and used at N.J.S.A. 40A:11-5(1)(a)(i) and/or banking, insurance or other consulting service (hereinafter "professional services"), nor "extraordinary unspecified services" as such term is defined at N.J.S.A. 40A:11-2(7) and used at N.J.S.A. 40A:11-5(I)(a)(ii) and/or media, public relations, lobbying, or other consulting and/or management service (hereinafter "extraordinary unspecified services") from any business entity if such business entity has solicited or made any contribution to or for (i) a candidate, candidate committee or joint candidate committee of any candidate for elective municipal office in the Township of Hampton or a holder of public office having ultimate responsibility for the award of a contract, or (ii) any Township of Hampton political committee or political party committee, or (iii) any continuing political committee or political action committee that regularly engages in the support of Township of Hampton elections and/or the Township of Hampton candidates, candidate committees, joint candidate committees, political committees, political parties, political party committees (hereinafter "PAC"), in excess of the thresholds specified in Section 21-2(c) within one calendar year immediately preceding the date of the contract.
- (b) No business entity who submits a proposal for, enters into negotiations for or agrees to a contract with the Township of Hampton or any of its departments or instrumentalities for the rendition of professional services or extraordinary unspecified services shall knowingly solicit or make any contribution to or for (i) a candidate, candidate committee or joint candidate committee of any candidate for elective municipal office in the Township of Hampton, or a

holder of public office having ultimate responsibility for the award of a contract, or (ii) any Township of Hampton political committee or political party committee, or (iii) any PAC, starting from the time of first communication between that business entity and the municipality regarding a specific agreement for professional services or extraordinary unspecified services, and the later of (i) termination of negotiations, (ii) rejection of any proposal and (iii) the completion of performance by the specified time period of the contract.

- (c) The maximum monetary thresholds of contributions referred to in Section 212(a) are: (i) \$300 per calendar year each for any purpose to any candidate for Hampton Township Committee, or \$500 per calendar year to any joint candidate committee for the Hampton Township governing body, or \$300 per calendar year to a political committee or political party committee of the Township of Hampton; (ii) \$500 per calendar year to a Township of Hampton political committee or political party committee; and (iii) \$500 per calendar year to any PAC (as defined in Section 21-2(a)). However, with regard to each business entity which is a party to a contract for professional or extraordinary unspecified services as referred to in Section 21-2(a) or is engaged in negotiations for a contract referred to in Section 21-2(a), when such business entity's contribution is aggregated with all persons and entities included within the scope of the definition of "business entity" set forth in Section 21-1(c) by virtue of their affiliation with that business entity, the maximum monetary threshold shall be \$2,500 per calendar year in the aggregate to all Township of Hampton candidates, candidate committees, joint candidate committees and holders of public office having ultimate responsibility for the award of a contract and all Township of Hampton political committees and political party committees, without violating Section 21-2(a). The foregoing thresholds are subject to adjustment pursuant to N.J.S.A.19:44A-7.2, as may be amended from time to time.
- (d) For purposes of Section 21-2, the office that is considered to have ultimate responsibility for the award of contracts shall be the Hampton Township Committee.
- (e) Rules regarding subcontractors. No business entity may be awarded a subcontract to perform under a contract subject to Section 21 of the Hampton Township Code if the subcontractor would be disqualified by Section 21-2(a) from receiving the contract at the time the subcontract is awarded; nor may any business entity who would be disqualified by Section 21-2(a) from receiving the contract perform substantially all of obligations described in a contract that is subject to Section 21 of the Hampton Township Code.

SECTION 21-3: CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No contribution or solicitation of contributions made before the effective date of Section 21 of the Hampton Township Code shall be deemed to give rise to a violation of Section 21 or its subsections.

SECTION 21-4: CONTRACT RENEWAL

No contract subject to Section 21 of the Hampton Township Code may be renewed, extended or materially modified unless the resulting renewal, extension or modification would be allowable under the provisions of this Section 21 if it were an initial contract.

SECTION 21-5: CONTRIBUTION STATEMENT BY BUSINESS ENTITY

- (a) At least 10 days before awarding a contract governed by Section 21 of the Hampton Township Code, the Township of Hampton shall receive a sworn statement from the business entity which is the intended recipient of the contract that he/she/it has not made a contribution which would be in violation of Section 21. Before the contract is awarded, the Hampton Township Clerk shall be responsible for informing the Hampton Township Committee whether the said sworn statement is received and whether the business entity is in compliance with Section 21.
- (b) A business entity shall have a continuing duty to report to the Hampton Township Clerk any contributions that fail to comply with Section 21 of the Hampton Township Code and are made during the negotiation, proposal process or pendency of a contract. The Hampton Township Clerk shall inform the Hampton Township Committee within 10 business days after receipt of said report from the business entity or at the next Township of Hampton Committee meeting following receipt of said report from the business entity, whichever comes first.
- (c) The certifications required by this Section shall be in addition to any other certifications required by law.

SECTION 21-6: RETURN OF EXCESS CONTRIBUTIONS

A business entity that is a party to a contract subject to this Section 21 of the Hampton Township Code may cure a violation of Section 21 or its subsections by - within 30 days after the date on which the applicable Election Law Enforcement Commission (ELEC) report is published - - notifying the Hampton Township Clerk of the violation in writing and submitting proof to the Hampton Township Clerk of reimbursement of the objectionable contribution(s) from the recipient(s) of such contribution(s).

SECTION 21-7: EXEMPTIONS

Section 21 of the Hampton Township Code shall only apply to a contract having an anticipated value greater than \$17,500.00 or such threshold set forth in N.J.S.A. 19:44A — 20.5, as may be amended. Section 21 of the Hampton Township Code shall not apply to contracts which (i) are awarded to the lowest responsible bidder after public advertising for bids and bidding therefor within the meaning of N.J.S.A. 40A: 11-4 or (ii) are awarded in the case of emergency under N.J.S.A. 40A: 11-6 or are awarded pursuant to a fair and open process as defined in N.J.S.A. 19:44A-20.7.

SECTION 21-8: PENALTY

- (a) It shall be a material breach of the terms of a Township of Hampton contract which is subject to Section 21 of the Hampton Township Code when a business entity that is a party to such contract has: made or solicited a contribution in violation of Section 21 or its subsections; knowingly concealed or misrepresented a contribution given or received; made or solicited contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; made or solicited any contribution on the condition or with the agreement that it will be re-contributed to a candidate, candidate committee or joint candidate committee of any candidate for elective municipal office in the Township of Hampton or a holder of public office having ultimate responsibility for the award of a contract, or any Township of Hampton political committee or political party committee, or any PAC; engaged or employed a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit a contribution which, if made or solicited by the business entity itself, would subject that entity to the restrictions of Section 21; funded contributions made by third parties including consultants, attorneys, family members and employees; engaged in any exchange of contributions to circumvent the intent of Section 21; or directly or indirectly, through or by any other person, entity or means, done any act which if done directly would subject that business entity to the restrictions of Section 21.
- (b) A business entity which violates Section 21 of the Hampton Township Code may be disqualified from eligibility for future Township of Hampton contracts for up to four calendar years from the date of the violation, as shall be determined by the governing body of the Hampton Township Committee.
- (c) Any person or entity who knowingly, purposely or recklessly violates any provision of Section 21 of the Hampton Township Code or conspires with another person or entity to violate a provision thereof or, with the purpose of promoting or facilitating a violation thereof, solicits another person or entity to commit it, or aids or agrees or attempts to aid another person or entity in planning or committing it, shall be subject to punishment including fines and/or imprisonment as fixed by law for violations of ordinances of the

Township of Hampton.

SECTION 21-9: SEVERABILITY AND CONFLICT

If any provision of Section 21 of the Hampton Township Code, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of Section 21 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 Section 21 are severable. If any provision of Section 21 conflicts with the N.J.S.A. 19:44A-1, et seq., the stricter provision shall prevail.

SECTION 21-10: REPEALER

All Ordinances or parts of Ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed to the extent of such inconsistencies.

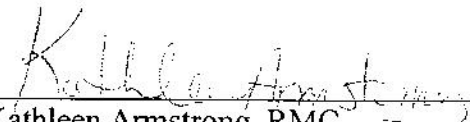
SECTION 21-11: EFFECTIVE DATE

This Ordinance shall become effective upon the final adoption hereof by the Township Committee of the Township of Hampton and shall be published as required by law.

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Township Committee at their regular meeting held December 20, 2011, at the Hampton Township Municipal Building, Baleville, Sussex County, New Jersey.

Date: 12/29/2011


Kathleen Armstrong, RMC
Township Clerk

HAMPTON TOWNSHIP NOTICE

TAKE NOTICE that the foregoing Ordinance #2011-13 was introduced and passed on First Reading at the regular meeting of the Hampton Township Committee held on November 29, 2011, and was ordered published according to law, and will be further considered at the regular meeting of the Hampton Township Committee to be held on December 20, 2011 immediately following the 2012 Budget Workshop, which is scheduled to commence at 6:00 P.M at the Hampton Township Municipal Building, Baleville, New Jersey. All interested parties may appear and be heard. A copy of this Ordinance has been posted on the Bulletin Board upon which public notices are customarily posted in the Township Hall of the Township.

Kathleen Armstrong, RMC
Township Clerk

**HAMPTON TOWNSHIP
NOTICE**

NOTICE IS HEREBY GIVEN that the foregoing Ordinance #2011-13 was adopted at Final Reading at the regular meeting of the Township Committee of the Township of Hampton, County of Sussex held on Tuesday, December 20, 2011 at the Hampton Township Municipal Building, Baleville, N.J.

Kathleen Armstrong, RMC
Township Clerk