

5/6/15

49200

**CONTRACT BETWEEN
ABC MAILERS, INC.
AND
COUNTY OF GLOUCESTER**

THIS CONTRACT is made effective the 6th day of **May 2015**, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **ABC MAILERS, INC.**, with offices at 500 Sharpetown Road, Swedesboro, New Jersey 08085, hereinafter referred to as "Vendor".

RECITALS

WHEREAS, there exists a need for the County to contract for services pertaining to the mailing of sample ballots for all Gloucester County 2015 Primary, General, Special and School Board Elections; and

WHEREAS, the contract has been awarded consistent with the fair and open provisions of the Gloucester County Administrative Code and with N.J.S.A. 19:44A-20.4 et seq., which exempt this contract from competition because Vendor has certified that it will not make a disqualifying contribution during the term of the contract; and

WHEREAS, the services to be performed as to this contract are relative to election expenses and therefore is an exception to the Local Public Contracts Law as described and provided by N.J.S.A. 40A:11-5(1); and

WHEREAS, Vendor represents that it is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this contract.

NOW THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Vendor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM.** This contract shall be effective for the period commencing May 6, 2015 and concluding May 5, 2016.

2. **COMPENSATION.** Vendor shall be compensated pursuant to the unit prices set forth in, and subject to all terms and provisions of the Vendor's quote dated February 6, 2015, which is incorporated and made part of this contract as "Attachment A". Vendor shall be paid in an amount not to exceed \$38,000.00.

It is agreed and understood that this is an open-ended contract, thereby requiring the County to use Vendor's services only on an as-needed basis. There is no obligation on the part of the County to make any purchase whatsoever.

Vendor shall be paid in accordance with this contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall

be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all services. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Vendor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this contract.

3. **DUTIES OF CONTRACTOR.** The specific duties of the Vendor shall be as set forth in "Attachment B" which is incorporated and made part of this contract, together with any other specifications issued by the County in connection with this contract.

Vendor agrees that it has or will comply with, and where applicable shall continue throughout the period of this contract to comply with, all of the requirements of the bid documents and/or in the request for proposals, if any, as the case may be.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this contract, the Vendor agrees as follows:

The Vendor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Vendor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Vendor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Vendor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the vendor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Vendor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and

supplemented from time to time and the Americans with Disabilities Act.

The Vendor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Vendor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this contract, then prior to the effective date of this contract, and as a condition precedent to its taking effect, Vendor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this contract.

Vendor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor or its agents.

6. **TERMINATION.** This contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the Bid Specifications or in the Request for Proposals, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

B. If Vendor is required to be licensed in order to perform the services which are the subject of this contract, then this contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Vendor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Vendor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Vendor under this contract, shall be forthwith delivered to the County.

D. The County may terminate this contract for public convenience at any time by a notice in writing from the County to the Vendor. If the contract is terminated by the County as provided herein, the Vendor will be paid for the services rendered to the time of termination.

E. Notwithstanding the above, the Vendor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Vendor, and the County may withhold any payments to the Vendor for the purpose of set off until such time as the exact amount of damages due the County from the Vendor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **PROPERTY OF THE COUNTY.** All materials developed, prepared, completed, or acquired by Vendor during the performance of the services specified by this contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of the County, except as may otherwise be stipulated in a written statement by the County.

8. **NO ASSIGNMENT OR SUBCONTRACT.** This contract may not be assigned nor subcontracted by the Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Vendor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Vendor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Vendor's failure to provide for the safety and protection of its employees, or from Vendor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Vendor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **POLITICAL CONTRIBUTION DISCLOSURE AND PROHIBITION.** This contract has been awarded to Vendor based on the merits and abilities of Vendor to provide the goods or services described in this Contract. This contract was awarded through a non-competitive process pursuant to N.J.S.A. 19:44A-20.4 et seq. The signer of this Contract does hereby certify that Vendor, its subsidiaries, assigns or principals controlling in excess of 10% of the Vendor will not make a reportable contribution during the term of the contract to any political party committee in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County when the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

11. **INSURANCE.** Vendor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Vendor shall, simultaneously with the execution of this contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Vendor is a member of a profession that is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Vendor shall, simultaneously with the execution of this contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this contract taking effect. Vendor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

12. **SET-OFF.** Should Vendor either refuse or neglect to perform the service that Vendor is required to perform in accordance with the terms of this contract, and if expense is incurred by County by reason of Vendor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Vendor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

13. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this contract by circumstances beyond its control, then any obligations owing by the County to the Vendor shall be suspended without liability for the period during which the County is so prevented.

14. **METHODS OF WORK.** Vendor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

15. **NON-WAIVER.** The failure by the County to enforce any particular provision of this contract, or to act upon a breach of this contract by Vendor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

16. **PARTIAL INVALIDITY.** In the event that any provision of this contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this contract.

17. **CHANGES.** This contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this contract shall be determined by mutual agreement before executing the change involved.

18. **NOTICES.** Notices required by this contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

19. **APPLICABLE LAW.** The terms and provisions of this contract shall be construed pursuant to the laws of the State of New Jersey and, where applicable, the laws of the United

States of America.

20. **INDEPENDENT VENDOR STATUS.** The parties acknowledge that Vendor is an independent Vendor and is not an agent of the County.

21. **CONFLICT OF INTEREST.** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this contract. The Company further covenants that in the performance of this contract, no person having any such interest shall be employed.

22. **CONFIDENTIALITY.** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this contract, during the term of this contract, except to authorize County personnel or upon prior approval of the County.

23. **BINDING EFFECT.** This contract shall be binding on the undersigned and their successors and assigns.

24. **CONTRACT PARTS.** Attached hereto and incorporated herein are various appendices, schedules and attachments (collectively, "the attachments") which provide details of the Vendor's obligations concerning reporting requirements, record keeping and the like. Also incorporated herein are any other specifications issued by the County in connection with this contract. If there is a conflict between any of the attachments and the specifications the specifications will control. If there is a conflict between any of the attachments or the specifications and the contract, then this Contract will control.

THIS CONTRACT is made effective the 6th day of **May, 2015.**

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director, attested by its Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first part passed for that purpose, and Vendor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

ATTEST:



ROBERT N. DILELLA, CLERK

COUNTY OF GLOUCESTER



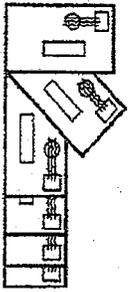
ROBERT DAMMING, DIRECTOR

ATTEST:

ABC MAILERS, INC.


By: _____
Title: *President*

ATTACHMENT A



ABC Mailers Inc.
 500 Stapleton Road
 Swedesboro, NJ 08085-3151
 (956) 241-2100 • Fax (956) 241-1010

Date: 02/06/15
 (Revised: 02/09/15)

TO: Mark Harris / Gloucester County Board / Election

FR: ABC Mailers, Inc.

RE: Quote - Ballot Mailings

PERSONALIZATION

	<u>5M - 10M</u>	<u>10M - 25M</u>	<u>25M - 75M</u>	<u>75M - 200M</u>
Postal Sortation	\$ 65.00	5.25M	4.00M	3.00M
NCOA Move Update	\$ 30.00	2.25M	1.25M	.70M
Reformat / Convert Data	\$ 35.00	3.00M	1.50M	1.00M
Sign-Offs (per version)	\$ 35.00	\$ 35.00	\$ 35.00	\$ 35.00
Samples (per version)	\$ 20.00	\$ 20.00	\$ 20.00	\$ 20.00
Letter Shop Services - HP Ink Jet address and vote book, then sort, tray and mail.	\$ 250.00	26.50M	24.00M	22.50M
Wafer Seal (2) 1 Pass	\$ 75.00	15.00M	14.00M	12.85M
Total CPM	\$ 510.00	52.00M	44.75M	40.05M
	(Flat Rates)			
Freight - Delivery to Belmawr Post Office (per drop)	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00

ATTACHMENT B

Program Specifications

SERVICE DESCRIPTION AND UNITS OF SERVICE:

- A. Vendor will provide mailing services for the period May 6, 2015 through May 5, 2016 in the mailing of sample ballots for all Gloucester County Primary, General, Special and School Board Elections.

By signing below, you are certifying that the information you have provided is accurate, and that you are aware that if you have made any misrepresentation in this certification, then you and/or your business entity will be liable for any penalty permitted under the law.

Name of Business Entity: ABC Mailers Inc.
Signed: Anthony L. Bucolo Title: President
Print Name: Anthony L. Bucolo Date: 4/01/15

Note: Copies of certain portions of the applicable law are attached to this certification as an accommodation to the vendor. However, the vendor is responsible for determining and certifying its compliance with the applicable law.

PARTIAL SCHEDULE OF RELEVANT STATUTES

N.J.S.A. 19:44A-20.26 Not later than 10 days prior to entering into any contract having an anticipated value in excess of \$17,500, except for a contract that is required by law to be publicly advertised for bids, a State agency, county, municipality, independent authority, board of education, or fire district shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L.1973, c.83 (C.19:44A-1 et seq.) and that were made by the business entity during the preceding 12 month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, an elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

PARTIAL SCHEDULE OF RELEVANT STATUTES (continued)

c. As used in this section:

“business entity” means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

“interest” means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

“State agency” means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

BUSINESS ENTITY DISCLOSURE CERTIFICATION

Contracting Agency: County of Gloucester

N.J.S.A. 19:44A-20-4 et seq., commonly known as the New Jersey Local Unit Pay-to-Play Law, provides that Gloucester County may not award a contract for more than \$17,500.00 to any business entity which has made certain reportable campaign contributions unless the contract is awarded pursuant to a fair and open process.

Reportable campaign contributions (as defined by N.J.S.A. 19:44A-1 et seq.) may not have been made to any County committee of a political party in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County at the time that the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

The law further prohibits the business entity receiving the contract from making such contributions during the term of the contract, unless the contract is awarded pursuant to a fair and open process.

Having considered the limitations set forth above, the undersigned business entity hereby certifies that neither it nor anyone with an interest in it has, during the one year period preceding the award of the contract, made such a reportable contribution that would bar the award of a contract to it. The undersigned further certifies that neither it, nor anyone within an interest in it, will make any such contribution during the term of the contract awarded.

The undersigned is fully aware that if he/she has made any misrepresentation in this certification, he/she and/or the business entity will be liable for any penalty permitted under the law.

Name of Business Entity: ABA Mailers Inc.
Signed: Anthony L. Buccia Title: President
Print Name: Anthony L. Buccia Date: 4/21/15

Note: Copies of certain portions of the applicable law are attached to this certification as an accommodation to the vendor. However, the vendor is responsible for determining and certifying its compliance with the applicable law.

PARTIAL SCHEDULE OF RELEVANT STATUTES

19:44A-20.6. Person as business entity; contributions by spouse or child of person; contributions by persons having interest in business

When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

19:44A-20.7. Definitions

As used in sections 2 through 12 of this act: [FNI]

"business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

"fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. The decision of a public entity as to what constitutes a fair and open process shall be final.

"State agency in the Legislative Branch" means the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch.

19:44A-20.8. Duty to report contributions

a. Prior to awarding any contract, except a contract that is awarded pursuant to a fair and open process, a State agency in the Legislative Branch, a county, or a municipality shall require the business entity to which the contract is to be awarded to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to this act.

PARTIAL SCHEDULE OF RELEVANT STATUTES

b. A business entity shall have a continuing duty to report to the Election Law Enforcement Commission any contributions that constitute a violation of this act that are made during the duration of a contract.

19:44A-20.9. Repayment of contribution

If a business entity makes a contribution that would cause it to be ineligible to receive a public contract or, in the case of a contribution made during the term of a public contract, that would constitute a violation of this act, the business entity may request, in writing, within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution and, if repayment is received within those 60 days, the business entity would again be eligible to receive a contract or would no longer be in violation, as appropriate.

19:44A-20.10. Violation of act by business entity; penalty

A business entity which is determined by the Election Law Enforcement Commission to have willfully and intentionally made a contribution or failed to reveal a contribution in violation of this act may be liable to a penalty of up to the value of its contract with the public entity and may be debarred by the State Treasurer from contracting with any public entity for up to five years.