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Brian T. Hildreth (SBN 214131)  
Thomas W. Hiltachk (SBN 131614)  
Paul T. Gough (SBN 75502)  
Terry J. Martin (SBN 307802)  
BELL, McANDREWS & HILTACHK, LLP  
455 Capitol Mall, Suite 600  
Sacramento, California 95814  
Telephone: (916) 442-7757  
Facsimile: (916) 442-7759

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Superior Court of California  
County of Los Angeles

**JUL 17 2018**

**Sherri R. Carter, Executive Officer/Clerk of Court  
By: Jenny Tang, Deputy**

Attorneys for Plaintiffs,  
*HOWARD JARVIS TAXPAYERS  
ASSOCIATION; and JOHN SUTTIE*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

HOWARD JARVIS TAXPAYERS  
ASSOCIATION, A California Nonprofit  
Corporation; and JOHN SUTTIE, an individual,

Plaintiffs,

v.

COUNTY OF LOS ANGELES; and DOES 1  
through 99, inclusive,

Defendants.

Case No. **BC714579**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND FOR STATUTORY  
CIVIL PENALTIES UNDER THE  
POLITICAL REFORM ACT OF 1974,  
AS AMENDED. [GOVERNMENT  
CODE §§ 526, 526a, 815.2, 820, 8314,  
54964, 84200, 84200.5, 84204, 84501,  
84506, 84510, 89001, 91003, 91004,  
91006, 91009; and LOS ANGELES  
COUNTY CODE § 2.195.050.]**

***STATUTORY FINES & PENALTIES  
DEMANDED: \$3,421,486.87***

***REPAYMENT TO PUBLIC TREASURY  
DEMANDED: \$978,249.37***

**By Fax**

1 Plaintiffs, HOWARD JARVIS TAXPAYERS ASSOCIATION and JOHN SUTTIE,  
2 allege as follows:

3 1. The California Supreme Court stated nearly 40 years ago in *Stanson v. Mott*:

4 A fundamental precept of this nation's democratic electoral  
5 process is that the government may not 'take sides' in election  
6 contests or bestow an unfair advantage on one of several  
competing factions.

7 (*Stanson v. Mott* (1976) 17 Cal.3d 206, 217.)

8 2. Plaintiffs bring this action in the public interest to rectify gross misconduct on the  
9 part of public officials within the County of Los Angeles, and their agents, who illegally spent  
10 more than \$980,000 of public/taxpayer funds on a political ad campaign supporting a tax increase  
11 ballot measure in 2017. The Measure (Measure H) was placed on the March 7, 2017 ballot by the  
12 County itself and was narrowly approved by voters.

13 3. Plaintiffs further bring this action to enforce the provisions of the Political Reform  
14 Act of 1974. (Government Code §§ 81000 – 91014.) The Political Reform Act ("Act"), adopted  
15 as a statewide initiative, is to "be liberally construed to accomplish its purposes." (Gov. Code §  
16 81003.)

17 4. Los Angeles County and its agents violated the Act by failing to publicly report  
18 the hundreds-of-thousands of dollars in taxpayer funds it spent on its political campaign  
19 supporting Measure H. Defendants also violated the Act by failing to include proper notifications  
20 (disclaimers) required on all political advertisements.

### 21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction over the amount in controversy in this matter.  
23 As the causes of action in this matter occurred in connection with illegal public expenditures,  
24 omissions of political advertising disclaimers, and failure to file required campaign finance  
25 reports within the County of Los Angeles, the County of Los Angeles is the proper venue for this  
26 action, pursuant to Code of Civil Procedure § 393.

27 6. The Court has jurisdiction over Plaintiffs' claims for declaratory relief pursuant to  
28 Code of Civil Procedure § 1060.

1           7.       The Court has jurisdiction over Plaintiffs’ claims for injunctive relief pursuant to  
2 Code of Civil Procedure § 526 and Government Code § 91003.

3           8.       The Court also has jurisdiction over Plaintiffs’ taxpayer relief claims pursuant to  
4 Code of Civil Procedure § 526a, which provides:

5                         An action to obtain a judgment, restraining and preventing any  
6 illegal expenditure of, waste of, or injury to, the estate, funds, or  
7 other property of a county, town, city or city and county of the  
8 state, may be maintained against any officer thereof, or any agent,  
9 or other person, acting in its behalf, either by a citizen resident  
therein, or by a corporation, who is assessed for and is liable to  
pay, or, within one year before the commencement of the action,  
has paid, a tax therein.

10           9.       Section 526a is intended to enable citizens to challenge governmental action which  
11 would otherwise go unchallenged because of standing requirements. (*Blair v. Pitchess* (1971) 5  
12 Cal.3d 258, 267–268; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000)  
13 79 Cal.App.4th 1223, 1240.)

14           10.       Section 526a taxpayer standing allows prompt action to prevent public injury, and  
15 the statute is to be construed liberally to achieve this purpose. (See *Blair* at 268; *Connerly v.*  
16 *Schwarzenegger* (2007) 146 Cal.App.4th 739, 749.)

17   **CIVIL LIABILITY**

18           11.       On March 1, 2017, Plaintiffs filed a formal complaint with the California Fair  
19 Political Practices Commission (“FPPC”) and the County of Los Angeles alleging the campaign  
20 finance violations alleged herein. Because neither the FPPC nor the County of Los Angeles opted  
21 to pursue a civil enforcement action, Plaintiffs are authorized to bring this civil action under  
22 Government Code § 91007. Parties contemplating civil actions under the Political Reform Act  
23 must first request the civil prosecutor to file suit. Upon the party’s request, the civil prosecutor  
24 can either file suit or decline to file suit. If the civil prosecutor decides not to proceed the  
25 complaining party may commence suit (parties are not required to obtain a civil prosecutor’s  
26 affirmative permission to file suit). (See, e.g. *Gananian v. Wagstaffe* (2011) 199 Cal. App. 4th  
27 1532.)  
28

1           12. Government Code § 91004 provides that any person who intentionally or  
2 negligently violates any of the reporting requirements of the Act shall be liable in a civil action  
3 for an amount up to the amount(s) not properly reported. Persons (including public entities and  
4 public officials, and their agents) who violate Government Code provisions regarding disclosure  
5 of campaign expenditures are liable in a civil action brought pursuant to Government Code §§  
6 91004 and 91006 (joint and several liability).

7           13. Government Code § 84510 additionally authorizes civil penalties “up to three  
8 times the cost of the advertisement, including placement costs” for any political advertisement  
9 that fails to include required disclaimers. A political “Advertisement” is any general or public  
10 advertisement which is authorized and paid for by a person or committee for the purpose of  
11 supporting or opposing a candidate for elective office or a ballot measure or ballot measures.  
12 (Gov. Code, § 84501(a).) Such political advertisements are subject to the disclosure provisions of  
13 Government Code §§ 84500, *et seq.*<sup>1</sup>

14           14. Separately, the California Constitution and Government Code § 54964 expressly  
15 prohibit the expenditure of local agency funds to support or oppose the approval or rejection of a  
16 ballot measure, or the election or defeat of a candidate, by the voters. Taxpayer plaintiffs are  
17 permitted to pursue civil damages seeking reimbursement into the public treasury of public funds  
18 that have been expended unlawfully by public officials. (See, e.g., *Stanson v. Mott* (1976) 17  
19 Cal.3d 206, 226-27 [Concluding that public officials who fail to exercise due care in permitting  
20 political expenditure of public funds may be found personally liable to repay such funds].)

21           15. Additionally, Government Code § 820 provides for civil tort liability of public  
22 employees. Section 820 provides: “Except as otherwise provided by statute..., a public employee  
23 is liable for injury caused by his act or omission to the same extent as a private person.” Indeed,  
24 in appropriate situations, a public employee may even be liable for punitive damages. (*Runyon v.*  
25 *Superior Court* (1986) 187 Cal.App.3d 878, 881.)

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28 <sup>1</sup> The harshness of the Political Reform Act’s civil penalties spotlights the importance the voters  
and the Legislature have placed on the statutory campaign reporting requirements, and the critical  
public policies embedded therein.



1 responsible in some manner for the occurrences alleged herein.

2 **GENERAL ALLEGATIONS**

3 21. On December 6, 2016, the Los Angeles County Board of Supervisors voted  
4 unanimously to place Measure H on the March 7, 2017 ballot. Measure H was a proposal for a  
5 ¼-cent sales tax increase, designed to generate \$355 million for the County.

6 22. In conjunction with the placing of Measure H on the ballot, the County authorized  
7 expenditures of \$1 million in public treasury dollars to fund a campaign supporting Measure H.  
8 (See **Exhibit A** hereto.) This included County representatives entering into a contract with  
9 entities and individuals specializing in political campaigns to assist with formulating and  
10 executing the political campaign supporting Measure H. (*Id.*)

11 23. Thereafter, on or about January 20, 2017, the County began a full-scale, multi-  
12 faceted, multi-media political campaign to support Measure H. The County's campaign  
13 advertisements each unambiguously urged voters to cast a 'yes' vote on Measure H, all while  
14 using public funds to pay for their efforts. (See **Exhibit B** hereto.) The general theme of the  
15 County's unambiguous political campaign was: "*Measure H. Real Help. Lasting Change. Vote*  
16 *March 7.*" (*Id.*)

17 24. Indeed, when asked whether advertisements similar to L.A. County's Measure H  
18 advertisements were political advertisements, the FPPC unequivocally advised:

19 Yes. The communications described below fall within the Act's  
20 definition of "express advocacy" in Section 82031 and Regulation  
21 18225. Therefore, expenditures of funds for these communications  
22 would be subject to the Act's campaign reporting and advertising  
disclosure requirements.

23 (See **Exhibit C** hereto (emphasis added).)

24 25. Records show that the County funded their Measure H campaign with \$978,249.37  
25 of public treasury/taxpayer funds. (See **Exhibit D** hereto.) Plaintiffs are informed and believe  
26 that Defendant County of Los Angeles and other entities/individuals coordinated their efforts to  
27 violate the law in an unmitigated pursuit of political victory in the Measure H campaign.

28 26. On March 7, 2017, the voters of Los Angeles County narrowly passed Measure H

1 with approximately 69% of voters approving. As a tax increase, the measure required a 2/3's  
2 majority vote to pass.

3 **FIRST CAUSE OF ACTION**  
4 **(Declaratory and Injunctive Relief for the Unlawful Use of Public Funds**  
5 **Under the Free Speech Clause of the California Constitution)**  
6 **[As against Defendant County of Los Angeles]**

7 27. Plaintiffs reallege paragraphs 1 through 26 above and incorporate them in this  
8 cause of action as though fully set forth herein.

9 28. The California Constitution prohibits a public entity, like Los Angeles County  
10 (and including its officers and agents), from expending public funds to pay for “campaign”  
11 materials that advocate the passage or defeat of ballot measures such as Measure H. (*Stanson,*  
12 *supra*, 17 Cal.3d 206; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.)

13 29. In determining whether a publicly funded communication is a political  
14 advertisement, FPPC Regulation 18420.1(b) provides that a “communication paid for with public  
15 moneys by a state or local governmental agency unambiguously urges a particular result in an  
16 election ... [when] ... considering the style, tenor, and timing of the communication, it can be  
17 reasonably characterized as campaign material and is not a fair presentation of facts serving  
18 only an informational purpose.” (Emphasis added.) In *League of Women Voters v. Countywide*  
19 *Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 554 the Court of Appeal held that a  
20 public entity’s communications should be treated as political “advocacy” when they promote “a  
21 single view in an effort to influence the electorate.”

22 30. Here, each of the communications distributed by Los Angeles County expresses a  
23 single, unambiguous viewpoint – *Vote ‘Yes’ on Measure H*. Using expressive words and phrases  
24 like “Real Help;” “Lasting Change;” “Are you ready? Vote March 7,” there can be no other  
25 reasonable interpretation of these advertisements, other than soliciting a ‘yes’ vote on Measure H.

26 31. In conducting its campaign supporting a ‘yes’ vote on Measure H, Los Angeles  
27 County funded television and radio ads; ads in Spanish; and online ads, for example, distributed  
28 through Facebook and Twitter. (See **Exhibit D** hereto.) The County created hard-copy hand-out  
advertisements and so-called “fact-sheets.” (*Id.*) The ads had a singular purpose: to convince

1 voters to cast a ‘yes’ vote in favor of Measure H.

2 32. The California Supreme Court in *Stanson* held that publicly-funded  
3 communications must “necessarily include all consequences, good and bad, of the proposal, not  
4 only the anticipated improvement . . . , but also the increased tax rate and such other less desirable  
5 consequences as may be foreseen.” (17 Cal.3d at 220 (emphasis added).)

6 33. Here, the communications were in no way a “fair presentation” of facts that serve  
7 only an informational purpose -- none of the Los Angeles County-funded communications (not  
8 one) ever mentioned the sales tax increase that was at the core of Measure H. (*Clark v. Jordan*  
9 (1936) 7 Cal.2d 248, 251 [In assessing compliance with statutory provision intended to provide  
10 information to voters about a ballot measure, dodging the use of “tax” or similar language  
11 advising the electorate that the ballot measure was in fact a tax was misleading because it  
12 “includes all the sweet and excludes the bitter”].)

13 34. Because the communications funded by Los Angeles County unequivocally urge a  
14 particular result on the Measure H election, the communications are political advertisements.

15 35. Defendants had ample opportunity to, but chose not to, seek formal advice from  
16 the Fair Political Practices Commission regarding whether any proposed advertisements would  
17 constitute express political advocacy. (See, e.g., **Exhibit C** hereto.) Defendants apparently chose  
18 not to seek such advice.

19 36. Defendants violated the California Constitution by utilizing \$978,249.37 in public  
20 funds to pay for the creation and distribution of numerous political advertisements promoting the  
21 passage of Measure H.

22 37. An actual, present controversy exists between Plaintiffs and Defendants regarding  
23 whether use of the \$978,249.37 in public funds authorized for expenditure by Defendants to pay  
24 for the campaign communications supporting passage of Measure H constituted an unlawful use  
25 of public funds for “campaign” activity in violation of the California Constitution.

26 38. A judicial declaration is now necessary and appropriate in order that Plaintiffs may  
27 ascertain their rights, and that Defendants shall be informed of their obligation to not use public  
28 funds to pay for “campaign” activity such as the Measure H campaign communications.





1 To the contrary, the communications presented only one-sided, favorable statements in support of  
2 Measure H.

3 46. Government Code § 8314 makes it “unlawful for any elected state or local officer,  
4 including any state or local appointee, employee, or consultant, to use or permit others to use  
5 public resources for a campaign activity....” Section 8314 defines “campaign activity” to include  
6 “an activity constituting a contribution as defined in Section 82015.” Section 82015 then defines  
7 “contribution” to include “the payment of public moneys by a state or local governmental agency  
8 for a communication to the public that satisfies both of the following: (1) The communication  
9 expressly advocates the election or defeat of a clearly identified candidate or the qualification,  
10 passage, or defeat of a clearly identified measure, or, taken as a whole and in context,  
11 unambiguously urges a particular result in an election [and] (2) The communication is made at the  
12 behest of the affected candidate or committee.”

13 47. Since Measure H was placed on the ballot by Defendant County, payments it made  
14 for its own communications are clearly at the behest of the “committee” sponsoring the measure.

15 48. An actual, present controversy exists between Plaintiffs and Defendants regarding  
16 whether Defendants’ use of public funds to pay for the Measure H campaign communications  
17 violated Government Code §§ 8314 and/or 54964.

18 49. A judicial declaration is now necessary and appropriate in order that Plaintiffs may  
19 ascertain their rights, and that Defendants shall be informed of their obligation as to the ban on  
20 utilizing public monies for political purposes.

21 50. Plaintiffs further desire a judicial determination as to whether any of the  
22 individually named Defendants and/or Doe Defendants failed to exercise reasonable diligence in  
23 authorizing the expenditure of public funds to create and distribute the Measure H campaign  
24 communications, and whether in the absence of such reasonable diligence any individually named  
25 Defendants and/or Doe Defendants should be required to personally repay the public funds  
26 expended to create and distribute the Measure H campaign communications.

27 51. Plaintiffs desire a judicial determination of their rights and of the Defendants’  
28 duties, and a declaration that Defendants violated Government Code §§ 8314 and/or 54964.

1           52. Defendants’ actions in expending public funds to pay for the Measure H campaign  
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communications caused irreparable harm to the taxpayers and residents of the County of Los  
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Angeles, and Plaintiffs lack an adequate remedy at law to remedy that harm. Plaintiffs, therefore,  
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further desire an order from this Court that enjoins one or more of the individual Defendants /  
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Doe Defendants to personally compensate the County of Los Angeles for the unlawful use of  
6  
public funds.

7  
**THIRD CAUSE OF ACTION**

8           **(Declaratory and Injunctive Relief for Violation of Government Code § 89001)**  
9           **[As against all Defendants, and each of them.]**

10           53. Plaintiffs reallege paragraphs 1 through 52 above and incorporate them in this  
11  
cause of action as though fully set forth herein.

12           54. Government Code § 89001 states that “[n]o newsletter or other mass mailing shall  
13  
be sent at public expense.” The California Fair Political Practices Commission has promulgated  
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regulations interpreting and implementing Government Code § 89001. (See 2 Cal. Code Regs.,  
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tit. 2, § 18901.1.) Regulation 18901.1 states in relevant part:

16           (a) Except as provided in subdivision (b), a mailing is prohibited  
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by Section 89001 if all of the following criteria are met:

18                       (1) The item sent is a tangible item, such as a written  
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document... or button and is delivered, by any means, to the  
recipient at his or her residence, place of employment or  
20  
business, or post office box.

21                       (2) The item sent either:

22                               (A) \* \* \*

23                               (B) When taken as a whole and in context,  
24  
unambiguously urges a particular result in an  
election.

25                       (3) Public moneys are paid for either of the following:

26                               (A) The costs of distributing the item.

27                               (B) Costs, exceeding \$50, that are reasonably  
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related to designing, producing, printing, or  
formulating the content of, the item including, but

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not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency’s employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election, but excluding any item described in subdivision (b).

(b) Notwithstanding subdivision (a), a mailing of the following items is not prohibited by Section 89001:

(1) An agency report providing the agency’s internal evaluation of a measure sent to a member of the public upon the individual’s request,

(2) A written argument sent to a voter in the voter information pamphlet.

(3) A communication clearly and unambiguously authorized by law.

(c) *For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria:*

(1) *It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.*

(2) *When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.*

(d) For purposes of subdivision (a)(4), an item is “substantially similar” to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.

(e) *For purposes of subdivision (c)(2), when considering the style, tenor, timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:*

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(1) Funded from a special appropriation related to the measure as opposed to a general appropriation.

(2) Is consistent with the normal communication pattern for the agency.

(3) Is consistent with the style of other communications issued by the agency.

(4) Uses inflammatory or argumentative language.

(Italics added.)

55. As **Exhibit D** hereto shows, the County funded the printing of more than 250,000 copies of hard-copy documents related to Measure H. If those documents were subsequently mailed to voters, they constitute a “mass mailing” at public expense under Section 89001.

56. Upon information and belief, Defendants violated Government Code § 89001 in that the style, tenor, and timing of the mailings indicate that it is “campaign” activity in support of Measure H.

57. An actual, present controversy exists between Plaintiffs and Defendants regarding whether the Measure H campaign communications constituted a “mass mailing” within the meaning of Government Code § 89001.

58. A judicial declaration is now necessary and appropriate in order that Plaintiffs may ascertain their rights, and that Defendants shall be informed of their obligation to not send mass mailings at public expense.

59. Plaintiffs desire a judicial determination of their rights and of the Defendants’ duties, and a declaration that Defendants violated Government Code § 89001 by using public funds to send the Measure H campaign communications.

60. Government Code § 91003 authorizes this Court to issue an injunction to compel compliance with the provisions of the Political Reform Act, including the prohibition on mass mailings sent on public expense.

///

1 **FOURTH CAUSE OF ACTION**  
2 **(Declaratory and Injunctive Relief for Failure to**  
3 **File Campaign Reports; Statutory Penalties)**  
4 **[As against all Defendants, and each of them.]**

5 61. Plaintiffs reallege paragraphs 1 through 60 above and incorporate them in this  
6 cause of action as though fully set forth herein.

7 62. Section 2.195.050 of the Los Angeles County Code provides “each committee  
8 supporting or opposing any County ballot measure, that ... makes a total of ten thousand dollars  
9 (\$10,000) or more in expenditures, within the applicable reporting period, shall electronically file  
10 campaign statements and reports with the Registrar-Recorder pursuant to the relevant deadlines  
11 and timeframes provided by the Political Reform Act.” Under the Political Reform Act, the  
12 County was a “committee” for purposes of its Measure H campaign activities.

13 63. Government Code § 82013 defines a “committee” to include any person or  
14 combination of persons who makes contributions totaling \$10,000 or more in a calendar year to  
15 or at the behest of a committee, or makes independent expenditures totaling \$1,000 or more in a  
16 calendar year.

17 64. Government Code § 82031 states that “‘independent expenditure’ means an  
18 expenditure made by any person, including a payment of public moneys by a ... local government  
19 agency, in connection with a communication which expressly advocates the ... passage or defeat  
20 of a clearly identified measure, or taken as a whole and in context, unambiguously urges a  
21 particular result in an election but which is not made to or at the behest of the affected ...  
22 committee.”

23 65. The California Fair Political Practices Commission has promulgated regulations  
24 interpreting and implementing Government Code § 82031. (See 2 Cal. Code Regs., tit. 2, §  
25 18420.1.) Regulation 18420.1 states in relevant part:

26 *(a) A payment of public moneys by a... local governmental agency,*  
27 *or by an agent of the agency, made in connection with a*  
28 *communication to the public that expressly advocates the election*  
*or defeat of... the qualification, passage, or defeat of a clearly*  
*identified measure, as defined in Regulation 18225(b)(1), or that*  
*taken as a whole and in context, unambiguously urges a particular*  
*result in an election is one of the following:*

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(1) *A contribution under Section 82015 if made at the behest of the affected ... committee.*

(2) *An independent expenditure under Section 82031.*

(b) *For the purposes of subdivision (a), a communication paid for with public moneys by a... local governmental agency unambiguously urges a particular result in an election if the communication meets either one of the following criteria:*

(1) *It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.*

(2) *When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.*

(c) *For purposes of subdivision (a), payments of public moneys by a... local governmental agency made in connection with a communication include payments for both the direct and indirect costs of the communication. Indirect costs of a communication are costs reasonably related to designing, producing, printing, or formulating the content of the communication including, but not limited to, payments for polling or research; payments for computer usage, software, or programming; and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants.*

(d) *For purposes of subdivision (b)(2), when considering the style, tenor, timing of a communication, factors to be considered include, but are not limited to, whether the communication is any of the following:*

(1) *Funded from a special appropriation related to the measure as opposed to a general appropriation.*

(2) *Is consistent with the normal communication pattern for the agency.*

(3) *Is consistent with the style of other communications issued by the agency.*

(4) *Uses inflammatory or argumentative language.*

1 (e) Notwithstanding subdivision (a), a payment for the following  
2 communications shall not be considered a contribution or an  
independent expenditure:

3 (1) An agency report providing the agency's internal  
4 evaluation of a measure made available to a member of the  
5 public upon the individual's request.

6 (2) The announcement of an agency's position at a public  
7 meeting or within the agenda or hearing minutes prepared  
for the meeting.

8 (3) A written argument filed by the agency for publishing  
9 in the voter information pamphlet.

10 (4) A departmental view presented by an agency employee  
11 upon request by a public or private organization, at a  
meeting of the organization.

12 (5) A communication clearly and unambiguously  
13 authorized by law.

14 (f) *A... local governmental agency that qualifies as a committee  
15 under Section 82013 shall file campaign statements and reports  
pursuant to Chapter 4 and any other relevant provisions of the Act.*

16 COMMENT: Nothing in this regulation should be read as  
17 condoning or authorizing use of public moneys for campaign  
18 related activities by a... local governmental agency. Under many  
19 circumstances these activities may be illegal. (See Penal Code  
Section 424; Government Code Sections [] 54964, and 89001;...  
and *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.)

20 (Italics added.)

21 66. Upon information and belief, Defendants expended or otherwise authorized, aided  
22 or abetted in the expenditure of at least \$978,249.37 in public funds in calendar year 2017 to  
23 create and distribute numerous campaign communications supporting the passage of Measure H.

24 67. If made at the behest of a "committee" formed to support Measure H, Defendants'  
25 expenditures to create and distribute the campaign communications constitute "contributions" to  
26 the behesting "committee" under Government Code § 82015.

27 68. If not made at the behest of a "committee" formed to support Measure H,  
28 Defendants' expenditures to create and distribute the campaign communications constitute



1 “independent expenditures” under Government Code § 82031.

2 69. By either making a contribution of \$10,000 or more in calendar year 2017, or  
3 making an “independent expenditure” of \$1,000 or more in calendar year 2017, Defendant  
4 County became a “committee” under Government Code § 82013.

5 70. Defendant County was required under the Political Reform Act, including but not  
6 limited to, Government Code §§ 84200, 84200.5 and 84204, to file campaign reports publicly  
7 disclosing its expenditures to create and distribute the campaign communications. Defendants  
8 have failed to file the required campaign reports.

9 71. One of the express purposes of the Political Reform Act is to prevent corruption of  
10 the political process. To accomplish this mandate, the Act requires, among other things, that  
11 “[r]eceipts and expenditures in election campaigns...be fully and truthfully disclosed in order that  
12 the voters may be fully informed and improper practices may be inhibited.” (Gov. Code §  
13 81002(a).)

14 72. Here, Los Angeles County maintained a campaign disclosure obligation even  
15 though its political expenditures supporting Measure H may be illegal.

16 73. An actual, present controversy exists between Plaintiffs and Defendants regarding  
17 whether the expenditures to create and distribute the Measure H campaign communications  
18 constituted a “contribution” within the meaning of Government Code § 82015 or an “independent  
19 expenditure” within the meaning of Government Code § 82031 and whether the County was  
20 obligated under the Political Reform Act to file campaign finance reports publicly disclosing its  
21 expenditures to create and distribute the Measure H campaign communications.

22 74. A judicial declaration is now necessary and appropriate in order that Plaintiffs may  
23 ascertain their rights, and that Defendants shall be informed of their obligations under the  
24 Political Reform Act to file campaign finance reports publicly disclosing expenditures to create  
25 and distribute Measure H campaign communications.

26 75. Plaintiffs desire a judicial determination of their rights and of the Defendants’  
27 duties, and a declaration that Defendants violated the Political Reform Act by not filing the  
28 campaign finance reports publicly disclosing expenditures to create and distribute the Measure H

1 campaign communications.

2 76. Government Code § 91003 authorizes this Court to issue an injunction to compel  
3 compliance with the provisions of the Political Reform Act, including that a “committee” file  
4 certain campaign finance reports publicly disclosing the making of expenditures that constitute a  
5 “contribution” or “independent expenditures.”

6 77. Additionally, pursuant to Government Code § 91004, Defendants are liable to  
7 Plaintiffs, on behalf of the People of the State of California, for an amount not more than the  
8 amounts not properly reported (\$978,249.37), with fifty-percent of the amount to be deposited in  
9 the General Fund of the State of California pursuant to California Government Code § 91009.

10 **FIFTH CAUSE OF ACTION**  
11 **(Declaratory Relief for Failure to**  
12 **Include Proper Advertising Disclaimers; Statutory Penalties)**  
13 **[As against all Defendants, and each of them.]**

14 78. Plaintiffs reallege paragraphs 1 through 77 above and incorporate them in this  
15 cause of action as though fully set forth herein.

16 79. Government Code § 84506 provides that “[a]n advertisement supporting or  
17 opposing a candidate or ballot measure, that is paid for by an independent expenditure, shall  
18 include a disclosure statement that identifies ... [t]he name of the committee making the  
19 independent expenditure.”

20 80. Section 84506 applies to broadcast and mass mailing advertisements, which  
21 advocate the passage or defeat of any ballot measure, funded by independent expenditures.

22 81. Upon information and belief, Defendants authorized numerous political  
23 advertisements supporting Measure H, but failed to include the required advertising disclaimer.

24 82. Defendant County was required under the Political Reform Act, including but not  
25 limited to, Government Code § 84506 to include proper advertising declaimers on each of its  
26 communications promoting passage of Measure H. Defendants failed to include proper  
27 disclaimers on any of its advertisements advocating a yes vote on Measure H.

28 83. Los Angeles County maintained an obligation to properly disclaim its campaign  
advertisements even though its political expenditures supporting Measure H may be illegal.

1 84. An actual, present controversy exists between Plaintiffs and Defendants regarding  
2 whether the County included proper disclaimers on its campaign advertisements supporting  
3 Measure H, pursuant to Government Code §§ 84501 and 84506.

4 85. A judicial declaration is now necessary and appropriate in order that Plaintiffs may  
5 ascertain their rights, and that Defendants shall be informed of their obligations under the  
6 Political Reform Act to include advertising disclaimers on their political advertisements under the  
7 Political Reform Act.

8 86. Plaintiffs desire a judicial determination of their rights and of the Defendants'  
9 duties, and a declaration that Defendants violated the Political Reform Act by not including  
10 appropriate disclaimers on their Measure H campaign communications.

11 87. Additionally, pursuant to Government Code § 84510, Defendants are liable to  
12 Plaintiffs, on behalf of the People of the State of California, for an amount in civil penalties “up  
13 to three times the cost of the advertisement, including placement costs” (here \$2,443,237.50) for  
14 any political advertisement that fails to include the required disclaimers, with fifty-percent of the  
15 amount to be deposited in the General Fund of the State of California.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 18 1. For a declaration that the Measure H campaign communications constitute  
19 “campaign” activity in support of Measure H that could not be paid for with public  
20 funds, and that one or more Defendant(s) violated the free speech clause of the  
21 California Constitution, as construed by the California Supreme Court in *Stanson* and  
22 *Vargas*, by expending public funds to create and distribute the Measure H campaign  
23 communications;
- 24 2. For a declaration that one or more Defendant(s) failed to exercise due care in ensuring  
25 that the expenditure of public County treasury funds was not used for “campaign”  
26 activity in support of Measure H;
- 27 3. For a declaration that one or more of the Defendant(s) violated Government Code §§  
28 8314 and/or 54964 by expending public funds to create and distribute the Measure H

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- campaign communications;
4. With respect to the Second Cause of Action, for damages against Defendants other than Defendant County of Los Angeles, jointly and severally, to repay the amount illegally expended, payable to “General Fund of the County of Los Angeles,” according to proof, in an amount estimated to be \$978,249.37;
  5. For a declaration that one or more of the Defendant(s) violated Government Code § 89001 by unlawfully sending a mass mailing at public expense;
  6. For a declaration that one or more of the Defendant(s) failed to file the required campaign finance reports publicly disclosing the expenditures utilized to create and distribute the Measure H campaign communications as required by the Political Reform Act;
  7. With respect to the Fourth Cause of Action, for statutory penalties against the responsible Defendants, jointly and severally, one-half payable to “Bell, McAndrews & Hiltachk Client Trust Account” and one-half payable to “General Fund of the State of California,” according to proof, in an amount estimated to be \$978,249.37, as authorized by Government Code §§ 91004 and 91006;
  8. With respect to the Fifth Cause of Action, for statutory penalties against the responsible Defendants, jointly and severally, one-half payable to “Bell, McAndrews & Hiltachk Client Trust Account” and one-half payable to “General Fund of the State of California,” according to proof, in an amount estimated to be \$2,443,237.50, as authorized by Government Code §§ 84510 and 91006;
  9. For a permanent injunction ordering Defendants to refrain from using public funds to pay for the creation and/or distribution of “campaign” material in the future, and from approving or permitting the same by persons under their control and/or supervision;
  10. For an injunction that orders Defendant Los Angeles County to cause to be filed the necessary campaign finance reports with the Fair Political Practices Commission as required by the Political Reform Act;
  11. For costs of this proceeding;

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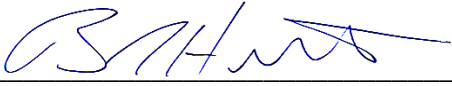
12. For attorneys' fees; and

13. Such other and further relief as the Court deems just and proper.

DATED: July 17, 2018.

Respectfully submitted.

**BELL, McANDREWS & HILTACHK, LLP**

BY:  \_\_\_\_\_

BRIAN T. HILDRETH  
THOMAS W. HILTACHK  
PAUL T. GOUGH  
TERRY J. MARTIN

Attorneys for Plaintiffs,  
*HOWARD JARVIS TAXPAYERS  
ASSOCIATION; and JOHN SUTTIE*

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VERIFICATION

STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    )

I, John Suttie, am the individual Plaintiff in this action. I am also a member and authorized representative of Plaintiff Howard Jarvis Taxpayers Association. I am presently, and at all times relevant to this action was, a resident of and registered voter and taxpayer in the County of Los Angeles.

I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR CIVIL PENALTIES and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2018, at Los Angeles California.

  
\_\_\_\_\_  
JOHN SUTTIE





DELEGATED AUTHORITY AGREEMENT FOR  
COMMUNICATIONS PLAN FOR  
HOMELESS BALLOT MEASURE  
PROFESSIONAL COMMUNICATIONS  
CONSULTING SERVICES

BETWEEN

THE COUNTY OF LOS ANGELES  
AND  
TBWB STRATEGIES

DELEGATED AUTHORITY AGREEMENT CONTRACT NUMBER: AO-17-039



**DELEGATED AUTHORITY AGREEMENT FOR  
COMMUNICATIONS PLAN FOR HOMELESS BALLOT MEASURE  
PROFESSIONAL COMMUNICATIONS CONSULTING SERVICES**

**DELEGATED AUTHORITY AGREEMENT CONTRACT NUMBER: AO-17-039**

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**CONTRACT BETWEEN  
COUNTY OF LOS ANGELES  
AND  
TBWB STRATEGIES  
FOR  
COMMUNICATIONS PLAN FOR HOMELESS BALLOT MEASURE  
PROFESSIONAL COMMUNICATIONS CONSULTING SERVICES**

This CONTRACT is entered into this 20<sup>th</sup> day of January 2017, by and between the County of Los Angeles (hereafter "COUNTY") and TBWB Strategies (hereafter referred to as "CONTRACTOR" or "CONSULTANT"), to provide COUNTY with consulting services.

**RECITALS**

WHEREAS, CONTRACTOR desires to provide, and COUNTY desires to acquire from CONTRACTOR, services as a consultant.

WHEREAS, CONTRACTOR is a firm of recognized professionals with extensive experience and training in their specialized field. In rendering these services CONTRACTOR shall at a minimum, exercise the ordinary care and skill expected from the average practitioner in CONTRACTOR's profession acting under similar circumstances.

WHEREAS, the Board of Supervisors has authorized the Chief Executive Officer, pursuant to Government Code Sections 23005 and 31000, to enter into contracts for such specialized consulting services.

NOW, THEREFORE, COUNTY and CONTRACTOR agree as follows:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G and H, are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority.

**Standard Exhibits:**

- 1.1 EXHIBIT A - Statement of Work
- 1.2 EXHIBIT B - Pricing Schedule
- 1.3 EXHIBIT C - Contractor's EEO Certification
- 1.4 EXHIBIT D - Consultant Employee Acknowledgement and Confidentiality Agreement

- 1.5 EXHIBIT E - Invitation For Bid/Request For Proposals Grounds For Rejection
- 1.6 EXHIBIT F - Safely Surrendered Baby Law
- 1.7 EXHIBIT G - Consultant Non-Employee Acknowledgement and Confidentiality Agreement

**Unique Exhibit:**

- 1.8 EXHIBIT H - Travel Expense Reimbursement Rates

This Contract and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous Contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract shall be valid unless prepared pursuant to subparagraph 8.1 - Amendments and signed by both parties.

**2.0 DEFINITIONS**

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 **"Agreement or Contract"** shall mean a contract executed between COUNTY and CONTRACTOR. It sets forth the terms and conditions for the issuance and performance of the Exhibit A – Statement of Work.
- 2.2 **"CONTRACTOR" or "CONSULTANT"** shall mean the sole proprietor, partnership, or corporation that has entered into a contract with the COUNTY to perform or execute the work covered by the Exhibit A - Statement of Work.
- 2.3 **"Day(s)"** shall mean calendar day(s) unless otherwise specified.
- 2.4 **"Fiscal Year"** shall mean the twelve (12) month period beginning July 1st and ending the following June 30th.

**3.0 WORK**

- 3.1 Pursuant to the provisions of this Contract, the CONTRACTOR shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein Exhibit A - Statement of Work.
- 3.2 If the CONTRACTOR provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the CONTRACTOR, and the CONTRACTOR shall have no claim whatsoever against the COUNTY.

**4.0 TERM OF CONTRACT**

- 4.1 The term of this Contract shall commence upon the date of execution by COUNTY and shall expire on March 31, 2017, subject to COUNTY's right to terminate earlier for convenience, non-appropriation of funds, default of CONTRACTOR, substandard performance of CONTRACTOR, non-responsibility of CONTRACTOR, improper consideration given/offered to COUNTY with respect to the award of this Contract, and breach of warranty to maintain compliance with COUNTY's Child Support Compliance Program.

**5.0 CONTRACT SUM**

- 5.1 The Maximum Amount of this Contract shall be \$1,000,000 for the term of this Contract as set forth Paragraph 4.0 - Term of Contract, above. Any costs incurred to complete this project in excess of the maximum not-to-exceed cost will be borne by the CONTRACTOR.
- 5.2 The CONTRACTOR shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the CONTRACTOR's duties, responsibilities, or obligations, or performance of same by any entity other than the CONTRACTOR, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the COUNTY's express prior written approval.
- 5.3 The CONTRACTOR shall maintain a system of record keeping that will allow the CONTRACTOR to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, the CONTRACTOR shall send written notification to the COUNTY Project Manager at the address herein provided in sub paragraph 8.34 – Notices.
- 5.4 No Payment for Services Provided Following Expiration/Termination of Contract

The CONTRACTOR shall have no claim against COUNTY for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the CONTRACTOR after the expiration or other termination of this Contract. Should the CONTRACTOR receive any such payment it shall immediately notify COUNTY and shall immediately repay all such funds to COUNTY. Payment by COUNTY for services rendered after expiration/termination of this Contract shall not constitute a waiver of COUNTY's right to recover such payment from the CONTRACTOR. This provision shall survive the expiration or other termination of this Contract.

5.5 Invoices and Payments

- 5.5.1 The CONTRACTOR shall invoice the COUNTY only for providing the tasks, deliverables, goods, services, and other work specified in Exhibit A – Statement of Work and elsewhere hereunder. The CONTRACTOR shall prepare invoices, which shall include the charges owed to the CONTRACTOR. Payment to CONTRACTOR shall be in arrears and based upon the approval and acceptance of services/deliverables as set forth in Exhibit A – Statement of Work, not to exceed the amounts reflected in Exhibit B – Pricing Schedule, provided that CONTRACTOR is not in default under any provision of this Contract and has submitted a complete and accurate statement of payment due. COUNTY acceptance of services/deliverables shall not be unreasonably withheld. CONTRACTOR'S fees shall include all applicable taxes, and any additional taxes that are not included remain the responsibility of the CONTRACTOR.
- 5.5.2 The CONTRACTOR's invoices shall be priced in accordance with Exhibit B – Pricing Schedule.
- 5.5.3 The CONTRACTOR's invoices shall contain the information set forth in Exhibit A - Statement of Work describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.
- 5.5.4 The CONTRACTOR shall submit the monthly invoices to the COUNTY by the 15<sup>th</sup> calendar day of the month following the month of service.
- 5.5.5 All invoices under this Contract shall be submitted in two (2) copies to the COUNTY Project Manager.
- 5.5.6 All invoices submitted by the CONTRACTOR for payment must have the written approval of the COUNTY Project Manager prior to any payment thereof. In no event shall the COUNTY be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.
- 5.5.7 Local Small Business Enterprises (SBEs) – Prompt Payment Program (*if applicable*). Certified Local SBEs will receive prompt payment for services they provide to COUNTY departments. Prompt payment is defined as 15 calendar days after receipt of an undisputed invoice.

6.0 ADMINISTRATION OF CONTRACT – COUNTY

**COUNTY Project Manager** – The COUNTY Project Manager shall be responsible for monitoring and evaluating CONTRACTOR's performance in the daily operation of the Contract and provide direction to

CONTRACTOR in the areas relating to policy, procedures and other matters within the purview of this Contract. The COUNTY Project Manager for this Contract shall be Joel Sappell, or designee. All work performed under this Contract shall be subject to the approval of the COUNTY Project Manager or designee.

## **7.0 ADMINISTRATION OF CONTRACT - CONTRACTOR**

### **7.1 CONTRACTOR Project Manager**

7.1.1 The CONTRACTOR Project Manager shall be responsible for the CONTRACTOR's day-to-day activities as related to this Contract and shall coordinate with COUNTY Project Manager on a regular basis. The CONTRACTOR Project Manager for this Contract shall be Jared Boigon.

7.1.2 The CONTRACTOR shall notify the COUNTY in writing of any change in the name or address of the CONTRACTOR Project Manager.

### **7.2 Approval of CONTRACTOR's Staff**

CONSULTANT shall provide qualified personnel to perform work and provide "work products" (deliverables) as indicated in the Agreement. COUNTY has the absolute right to approve or disapprove all of the CONTRACTOR's staff performing work hereunder and any proposed changes in the CONTRACTOR's staff, including, but not limited to, the CONTRACTOR Project Manager.

### **7.3 Background and Security Investigations**

7.3.1 At any time prior to or during term of this Contract, the COUNTY may require that all CONTRACTOR's staff performing work under this Contract undergo and pass, to the satisfaction of COUNTY, a background investigation, as a condition of beginning and continuing to work under this Contract. COUNTY shall use its discretion in determining the method of background clearance to be used, up to and including a COUNTY performed fingerprint security clearance. The fees associated with obtaining the background information shall be at the expense of the CONTRACTOR, regardless if the CONTRACTOR's staff passes or fails the background clearance investigation.

7.3.2 COUNTY may request that the CONTRACTOR's staff be immediately removed from working on the County Contract at any time during the term of this Contract. COUNTY will not provide to the CONTRACTOR nor to the CONTRACTOR's staff any information obtained through the COUNTY conducted background clearance.



- 7.3.3 COUNTY may immediately, at the sole discretion of the COUNTY, deny or terminate facility access to the CONTRACTOR's staff that do not pass such investigation(s) to the satisfaction of the COUNTY whose background or conduct is incompatible with COUNTY facility access.
- 7.3.4 Disqualification, if any, of the CONTRACTOR's staff, pursuant to this sub-paragraph 7.3, shall not relieve the CONTRACTOR of its obligation to complete all work in accordance with the terms and conditions of this Contract.

## **8.0 STANDARD TERMS AND CONDITIONS**

### **8.1 AMENDMENTS**

- 8.1.1 Any amendment to this Contract, including as set forth in Paragraph 4.0 - Term of Contract, shall be at the mutual consent of the COUNTY and the CONTRACTOR and shall be executed by the Chief Executive Officer, Auditor-Controller, and Executive Officer of the Board of Supervisors, and approved as to form by County Counsel.
- 8.1.2 For any change which does not materially affect the scope of work or any other term or condition included under this Contract, a Change Notice shall be prepared and signed by the COUNTY Project Manager and CONTRACTOR Project Manager.
- 8.1.3 For any change affecting CONTRACTOR's project personnel, CONTRACTOR shall submit written notification and request to effect the change to the COUNTY Project Manager; the COUNTY Project Manager or designee may accept or reject CONTRACTOR's written notification and request.

### **8.2 ASSIGNMENTS AND DELEGATION**

- 8.2.1 The CONTRACTOR shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of COUNTY, which is in its sole discretion to grant or not. Any attempted assignment or delegation without such written consent shall be null and void. For purposes of this sub-paragraph, COUNTY consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the COUNTY to any approved delegate or assignee on any claim under this Contract shall be deductible, at COUNTY's sole discretion, against the claims, which the CONTRACTOR may have against the COUNTY.
- 8.2.2 Shareholders, partners, members, or other equity holders of CONTRACTOR may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in

the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of CONTRACTOR to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment requiring an Amendment in accordance with all applicable provisions of this Contract, including the need for an Amendment.

- 8.2.3 Any assumption, assignment, delegation, or takeover of any of the CONTRACTOR's duties, responsibilities, obligations, or performance of same by any entity other than the CONTRACTOR, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without COUNTY's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR.

### **8.3 AUTHORIZATION WARRANTY**

The CONTRACTOR represents and warrants that the person executing this Contract for the CONTRACTOR is an authorized agent who has actual authority to bind the CONTRACTOR to each and every term, condition, and obligation of this Contract and that all requirements of the CONTRACTOR have been fulfilled to provide such actual authority.

### **8.4 BUDGET REDUCTIONS**

COUNTY retains the right to renegotiate the terms, conditions and fees during the period of the Agreement if such renegotiation is necessitated by budget shortfalls and reductions.

### **8.5 COMPLIANCE WITH APPLICABLE LAW**

- 8.5.1 The CONTRACTOR shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 8.5.2 The CONTRACTOR shall indemnify and hold harmless the COUNTY from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of the CONTRACTOR or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

**8.6 COMPLIANCE WITH CIVIL RIGHTS LAWS**

The CONTRACTOR hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The CONTRACTOR shall comply with Exhibit C - Contractor's EEO Certification.

**8.7 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

**8.7.1 Jury Service Program:**

This Contract is subject to the provisions of the COUNTY'S ordinance entitled CONTRACTOR Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

**8.7.2 Written Employee Jury Service Policy**

**8.7.2.1** Unless the CONTRACTOR has demonstrated to the COUNTY's satisfaction either that the CONTRACTOR is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the CONTRACTOR qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the CONTRACTOR shall have and adhere to a written policy that provides that its Employees shall receive from the CONTRACTOR, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the CONTRACTOR or that the CONTRACTOR deduct from the Employee's regular pay the fees received for jury service.

**8.7.2.2** For purposes of this sub-paragraph, "CONTRACTOR" means a person, partnership, corporation or other entity which has a contract with the COUNTY or a subcontract with a COUNTY CONTRACTOR and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more COUNTY contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the CONTRACTOR. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the COUNTY, or 2)

CONTRACTOR has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the CONTRACTOR uses any Subcontractor to perform services for the COUNTY under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract Agreement and a copy of the Jury Service Program shall be attached to the Agreement.

8.7.2.3 If the CONTRACTOR is not required to comply with the Jury Service Program when the Contract commences, the CONTRACTOR shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the CONTRACTOR shall immediately notify the COUNTY if the CONTRACTOR at any time either comes within the Jury Service Program's definition of "CONTRACTOR" or if the CONTRACTOR no longer qualifies for an exception to the Jury Service Program. In either event, the CONTRACTOR shall immediately implement a written policy consistent with the Jury Service Program. The COUNTY may also require, at any time during the Contract and at its sole discretion, that the CONTRACTOR demonstrate to the COUNTY's satisfaction that the CONTRACTOR either continues to remain outside of the Jury Service Program's definition of "CONTRACTOR" and/or that the CONTRACTOR continues to qualify for an exception to the Program.

8.7.2.4 CONTRACTOR's violation of this sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, COUNTY may, in its sole discretion, terminate the Contract and/or bar the CONTRACTOR from the award of future COUNTY contracts for a period of time consistent with the seriousness of the breach.

## **8.8 CONFLICT OF INTEREST**

8.8.1 No COUNTY employee whose position with the COUNTY enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the CONTRACTOR or have any other direct or indirect financial interest in this Contract. No officer or employee of the CONTRACTOR who may financially benefit from the

performance of work hereunder shall in any way participate in the COUNTY's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the COUNTY's approval or ongoing evaluation of such work.

8.8.2 The CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The CONTRACTOR warrants that it is not now aware of any facts that create a conflict of interest. If the CONTRACTOR hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be a material breach of this Contract.

**8.9 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the CONTRACTOR require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the CONTRACTOR shall give first consideration for such employment openings to qualified, permanent COUNTY employees who are targeted for layoff or qualified, former COUNTY employees who are on a re-employment list during the life of this Contract.

**8.10 CONSIDERATION OF HIRING GAIN/GROW PARTICIPANTS**

8.10.1 Should the CONTRACTOR require additional or replacement personnel after the effective date of this Contract, the CONTRACTOR shall give consideration for any such employment openings to participants in the COUNTY's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the CONTRACTOR's minimum qualifications for the open position. For this purpose, consideration shall mean that the CONTRACTOR will interview qualified candidates. The COUNTY will refer GAIN/GROW participants by job category to the CONTRACTOR. CONTRACTORS shall report all job openings with job requirements to: [GAINGROW@dpss.lacounty.gov](mailto:GAINGROW@dpss.lacounty.gov) to obtain a list of qualified GAIN/GROW job candidates.

8.10.2 In the event that both laid-off COUNTY employees and GAIN/GROW participants are available for hiring, COUNTY employees shall be given first priority.

## **8.11 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **8.11.1 Responsible CONTRACTOR**

A responsible CONTRACTOR is a CONTRACTOR who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the COUNTY's policy to conduct business only with responsible CONTRACTORS.

### **8.11.2 Chapter 2.202 of the County Code**

The CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the CONTRACTOR on this or other contracts which indicates that the CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the Contract, debar the CONTRACTOR from bidding or proposing on, or being awarded, and/or performing work on COUNTY contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the CONTRACTOR may have with the COUNTY.

### **8.11.3 Non-responsible CONTRACTOR**

The COUNTY may debar a CONTRACTOR if the Board of Supervisors finds, in its discretion, that the CONTRACTOR has done any of the following: (1) violated a term of a contract with the COUNTY or a nonprofit corporation created by the COUNTY, (2) committed an act or omission which negatively reflects on the CONTRACTOR's quality, fitness or capacity to perform a contract with the COUNTY, any other public entity, or a nonprofit corporation created by the COUNTY, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the COUNTY or any other public entity.

### **8.11.4 Contractor Hearing Board**

8.11.4.1 If there is evidence that the CONTRACTOR may be subject to debarment, the Department will notify the CONTRACTOR in writing of the evidence which is the basis for the proposed debarment and will advise the CONTRACTOR of the scheduled date for a debarment hearing before the Contractor Hearing Board.

8.11.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is

presented. The CONTRACTOR and/or the CONTRACTOR'S representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the CONTRACTOR should be debarred, and, if so, the appropriate length of time of the debarment. The CONTRACTOR and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

8.11.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.11.4.4 If a CONTRACTOR has been debarred for a period longer than five (5) years, that CONTRACTOR may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The COUNTY may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the CONTRACTOR has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the COUNTY.

8.11.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination

of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

8.11.4.6 The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.11.4.7 Subcontractors of CONTRACTOR

These terms shall also apply to Subcontractors of COUNTY CONTRACTORS.

**8.12 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The CONTRACTOR acknowledges that the COUNTY places a high priority on the implementation of the Safely Surrendered Baby Law. The CONTRACTOR understands that it is the COUNTY's policy to encourage all COUNTY CONTRACTORS to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the CONTRACTOR's place of business. The CONTRACTOR will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The COUNTY's Department of Children and Family Services will supply the CONTRACTOR with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

**8.13 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

8.13.1 The CONTRACTOR acknowledges that the COUNTY has established a goal of ensuring that all individuals who benefit financially from the COUNTY through Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the COUNTY and its taxpayers.

8.13.2 As required by the COUNTY's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the CONTRACTOR warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting



requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**8.14 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals and businesses that benefit financially from COUNTY through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers.

Unless CONTRACTOR qualifies for an exemption or exclusion, CONTRACTOR warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

**8.15 COUNTY'S QUALITY ASSURANCE PLAN**

COUNTY or its agent will evaluate CONTRACTOR's performance under this Contract on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with all Contract terms and performance standards. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvements/corrective action measures taken by COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Contract or impose other penalties as specified in this Agreement.

**8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

8.16.1 The CONTRACTOR shall repair, or cause to be repaired, at its own cost, any and all damage to COUNTY facilities, buildings, or grounds caused by the CONTRACTOR or employees or agents of the CONTRACTOR. Such repairs shall be made immediately after the CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If the CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs. All costs incurred by COUNTY, as determined by COUNTY, for such repairs shall be repaid by the CONTRACTOR by cash payment upon demand.

#### **8.17 EMPLOYMENT ELIGIBILITY VERIFICATION**

8.17.1 The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by law.

8.17.2 The CONTRACTOR shall indemnify, defend, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

#### **8.18 FACSIMILE REPRESENTATIONS**

The COUNTY and the CONTRACTOR hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **8.19 FAIR LABOR STANDARDS**

The CONTRACTOR shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the COUNTY and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the CONTRACTOR's employees for which the COUNTY may be found jointly or solely liable.

#### **8.20 FORCE MAJEURE**

8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such

failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

8.20.2 Notwithstanding the foregoing, a default by a subcontractor of CONTRACTOR shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both CONTRACTOR and such subcontractor, and without any fault or negligence of either of them. In such case, CONTRACTOR shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit CONTRACTOR to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

8.20.3 In the event CONTRACTOR's failure to perform arises out of a force majeure event, CONTRACTOR agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

#### **8.21 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The CONTRACTOR agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

#### **8.22 INDEPENDENT CONTRACTOR STATUS**

8.22.1 This Contract is by and between the COUNTY and the CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the COUNTY and the CONTRACTOR. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.22.2 The CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The COUNTY shall have no liability or responsibility for the payment

of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the CONTRACTOR.

8.22.3 The CONTRACTOR understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the CONTRACTOR and not employees of the COUNTY. The CONTRACTOR shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the CONTRACTOR pursuant to this Contract.

8.22.4 The CONTRACTOR shall adhere to the provisions stated in subparagraph 8.35 - Confidentiality.

### **8.23 INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend and hold harmless the COUNTY, its Special Districts, elected and appointed officers, employees, agents and volunteers ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

### **8.24 GENERAL INSURANCE REQUIREMENTS**

Without limiting CONTRACTOR's indemnification of COUNTY, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, CONTRACTOR shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon CONTRACTOR pursuant to this Contract. The COUNTY in no way warrants that the Required Insurance is sufficient to protect the CONTRACTOR for liabilities which may arise from or relate to this Contract.

#### **8.24.1 Evidence of Coverage and Notice to COUNTY**

A certificate(s) of insurance coverage (Certificate) satisfactory to COUNTY, and a copy of an Additional Insured endorsement confirming COUNTY and its Agents (defined below) has been given Insured status under the CONTRACTOR's General Liability policy, shall be delivered to COUNTY at the address

shown below and provided prior to commencing services under this Contract.

Renewal Certificates shall be provided to COUNTY not less than 10 days prior to CONTRACTOR's policy expiration dates. The COUNTY reserves the right to obtain complete, certified copies of any required CONTRACTOR and/or Subcontractor insurance policies at any time.

Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the CONTRACTOR identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any COUNTY required endorsement forms.

Neither the COUNTY's failure to obtain, nor the COUNTY's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the CONTRACTOR, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles  
Chief Executive Office - Countywide Communications  
Attention: Joel Sappell, Deputy Director of Countywide  
Communications  
500 W. Temple, Room 358  
L.A., CA 90012

CONTRACTOR also shall promptly report to COUNTY any injury or property damage accident or incident, including any injury to a CONTRACTOR employee occurring on COUNTY property, and any loss, disappearance, destruction, misuse, or theft of COUNTY property, monies or securities entrusted to CONTRACTOR. CONTRACTOR also shall promptly notify COUNTY of any third party claim or suit filed against CONTRACTOR or any of its Subcontractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against CONTRACTOR and/or COUNTY.

8.24.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively COUNTY and its Agents) shall be provided additional insured status under CONTRACTOR's General Liability policy with respect to liability arising out of CONTRACTOR's ongoing and completed operations performed on behalf of the COUNTY. COUNTY and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the CONTRACTOR's acts or omissions, whether such liability is attributable to the CONTRACTOR or to the COUNTY. The full policy limits and scope of protection also shall apply to the COUNTY and its Agents as an additional insured, even if they exceed the COUNTY's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

8.24.3 Cancellation of or Changes in Insurance

Contractor shall provide COUNTY with, or CONTRACTOR'S insurance policies shall contain a provision that COUNTY shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to COUNTY at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the COUNTY, upon which the COUNTY may suspend or terminate this Contract.

8.24.4 Failure to Maintain Insurance

CONTRACTOR'S failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which COUNTY immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. COUNTY, at its sole discretion, may obtain damages from CONTRACTOR resulting from said breach. Alternatively, the COUNTY may purchase the Required Insurance, and without further notice to CONTRACTOR'S, deduct the premium cost from sums due to CONTRACTOR or pursue CONTRACTOR reimbursement.

8.24.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the COUNTY with A.M. Best ratings of not less than A:VII unless otherwise approved by COUNTY.

8.24.6 Contractor's Insurance Shall Be Primary

CONTRACTOR's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to CONTRACTOR. Any COUNTY maintained insurance or self-insurance coverage shall be in excess of and not contribute to any CONTRACTOR coverage.

8.24.7 Waivers of Subrogation

To the fullest extent permitted by law, the CONTRACTOR hereby waives its rights and its insurer(s)' rights of recovery against COUNTY under all the Required Insurance for any loss arising from or relating to this Contract. The CONTRACTOR shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

8.24.8 Subcontractor Insurance Coverage Requirements

CONTRACTOR shall include all Subcontractors as insureds under CONTRACTOR's own policies, or shall provide COUNTY with each Subcontractor's separate evidence of insurance coverage. CONTRACTOR shall be responsible for verifying each Subcontractor complies with the Required Insurance provisions herein, and shall require that each Subcontractor name the COUNTY and CONTRACTOR as additional insureds on the Subcontractor's General Liability policy. CONTRACTOR shall obtain COUNTY's prior review and approval of any Subcontractor request for modification of the Required Insurance.

8.24.9 Deductibles and Self-Insured Retentions (SIRs)

CONTRACTOR's policies shall not obligate the COUNTY to pay any portion of any CONTRACTOR deductible or SIR. The COUNTY retains the right to require CONTRACTOR to reduce or eliminate policy deductibles and SIRs as respects the COUNTY, or to provide a bond guaranteeing CONTRACTOR's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.24.10 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. CONTRACTOR understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

8.24.11 Application of Excess Liability Coverage:

CONTRACTOR may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.12 Separation of Insureds

All liability policies shall provide cross liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

8.24.13 Alternative Risk Financing Programs

The COUNTY reserves the right to review, and then approve, CONTRACTOR use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The COUNTY and its Agents shall be designated as an Additional Covered Party under any approved program.

8.24.14 COUNTY Review and Approval of Insurance Requirements

The COUNTY reserves the right to review and adjust the Required Insurance provisions, conditioned upon COUNTY's determination of changes in risk exposures.

**8.25 INSURANCE COVERAGE REQUIREMENTS**

8.25.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming COUNTY and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million



- 8.25.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of CONTRACTOR's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.
- 8.25.3 Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If CONTRACTOR will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the COUNTY as the Alternate Employer, and the endorsement form shall be modified to provide that COUNTY will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to CONTRACTOR's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.
- 8.25.4 Professional Liability/Errors and Omissions Insurance covering CONTRACTOR's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, CONTRACTOR understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

## **8.26 LIQUIDATED DAMAGES**

- 8.26.1 If, in the judgment of the Department Head, or his/her designee, the CONTRACTOR is deemed to be non-compliant with the terms and obligations assumed hereby, the Department Head, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the CONTRACTOR's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the CONTRACTOR from the COUNTY, will be forwarded to the CONTRACTOR by the Department Head, or his/her designee, in a written notice describing the reasons for said action.
- 8.26.2 If the Department Head, or his/her designee, determines that there are deficiencies in the performance of this Contract that the Department Head, or his/her designee, deems are correctable by the CONTRACTOR over a certain time span, the Department Head, or his/her designee, will provide a written

notice to the CONTRACTOR to correct the deficiency within specified time frames. Should the CONTRACTOR fail to correct deficiencies within said time frame, the Department Head, or his/her designee, may: (a) Deduct from the CONTRACTOR'S payment, pro rata, those applicable portions of the Monthly Contract Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the CONTRACTOR to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is \$100 per day per infraction and that the CONTRACTOR shall be liable to the COUNTY for liquidated damages in said amount. Said amount shall be deducted from the COUNTY'S payment to the CONTRACTOR; and/or (c) Upon giving five (5) days notice to the CONTRACTOR for failure to correct the deficiencies, the COUNTY may correct any and all deficiencies and the total costs incurred by the COUNTY for completion of the work by an alternate source, whether it be COUNTY forces or separate private contractor, will be deducted and forfeited from the payment to the CONTRACTOR from the COUNTY, as determined by the COUNTY.

- 8.26.3 The action noted in sub-paragraph 8.26.2 shall not be construed as a penalty, but as adjustment of payment to the CONTRACTOR to recover the COUNTY cost due to the failure of the CONTRACTOR to complete or comply with the provisions of this Contract.
- 8.26.4 This sub-paragraph shall not, in any manner, restrict or limit the COUNTY'S right to damages for any breach of this Contract provided by law or as specified in the Performance Requirements Summary (PRS) or sub-paragraph 8.26.2, and shall not, in any manner, restrict or limit the COUNTY'S right to terminate this Contract as agreed to herein.

## **8.27 APPROVAL OF WORK**

All tasks, "work products" (deliverables), services or other work performed by CONTRACTOR are subject to the written approval of the COUNTY Project Manager or designee. Approval or rejection of deliverable(s) will not be unreasonably withheld by COUNTY.

## **8.28 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

- 8.28.1 The CONTRACTOR certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in

compliance with all applicable Federal and State anti-discrimination laws and regulations.

- 8.28.2 The CONTRACTOR shall certify to, and comply with, the provisions of Exhibit C- Contractor's EEO Certification.
- 8.28.3 The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.28.4 The CONTRACTOR certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 8.28.5 The CONTRACTOR certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.28.6 The CONTRACTOR shall allow COUNTY representatives access to the CONTRACTOR's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 8.28 when so requested by the COUNTY.
- 8.28.7 If the COUNTY finds that any provisions of this sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the COUNTY may terminate or suspend this Contract. While the COUNTY reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the CONTRACTOR has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the COUNTY that the CONTRACTOR has violated the anti-discrimination provisions of this Contract.

8.28.8 The parties agree that in the event the CONTRACTOR violates any of the anti-discrimination provisions of this Contract, the COUNTY shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

**8.29 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the CONTRACTOR. This Contract shall not restrict the COUNTY from acquiring similar, equal or like goods and/or services from other entities or sources.

**8.30 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

**8.31 NOTICE OF DISPUTES**

The CONTRACTOR shall bring to the attention of the COUNTY Project Manager any dispute between the COUNTY and the CONTRACTOR regarding the performance of services as stated in this Contract. If the COUNTY Project Manager is not able to resolve the dispute, the Department Head, or designee shall resolve it.

**8.32 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The CONTRACTOR shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

**8.33 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The CONTRACTOR shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles COUNTY, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit F of this Contract and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

#### **8.34 NOTICES**

8.34.1 Notices required or permitted to be given under the terms of this Contract or by any law now or hereafter in effect may, at the option of the party giving notice, be given by personal delivery or by enclosing the same in a sealed envelope addressed to the party for whom intended and by depositing such envelope with postage prepaid in the United States Post Office or substation thereof, or any public mail box.

The notices and envelopes containing same to COUNTY shall be addressed to:

County of Los Angeles  
Chief Executive Office - Countywide Communications  
Attention: Joel Sappell, Deputy Director of Countywide  
Communications  
500 W. Temple, Room 358  
L.A., CA 90012

Telephone: (213) 974-1441  
E-mail: [jsappell@ceo.laocounty.gov](mailto:jsappell@ceo.laocounty.gov)

The notices and envelopes containing same to CONTRACTOR shall be addressed to:

TBWB Strategies  
300 Montgomery Street, Suite 700  
Attention: Jared Boigon  
San Francisco, CA 94194

Telephone: (415) 291-1894 x326

8.34.2. In the event of suspension or termination of this Agreement, notices may also be given upon personal delivery to any person whose actual knowledge of such suspension or termination would be sufficient notice to CONTRACTOR.

#### **8.35 CONFIDENTIALITY AND SECURITY**

8.35.1 CONTRACTOR shall maintain the confidentiality of all its records, including but not limited to billing, COUNTY records, case records and patient records, materials, documents, data, and/or other information received, obtained, transmitted, and/or produced under the provisions of this Contract ("COUNTY's Confidential Information") in accordance with all applicable Federal, State and local laws, regulations, ordinances and directives relating to confidentiality, including without limitation, COUNTY policies concerning information technology security and the protection of confidential records and information. CONTRACTOR shall not disclose to any person or entity any

information identifying, characterizing, or relating to any trait, feature, function, risk, threat, vulnerability, weakness, or problem regarding any data or system security in COUNTY'S computer system(s) nor any safeguard, counter-measure, contingency plan, policy, or procedure for any data or system security contemplated or implemented by COUNTY, without COUNTY'S prior written approval. The CONTRACTOR shall comply with applicable security policies, procedures and requirements as set forth in this Contract. CONTRACTOR shall inform all of its officers, employees, and agents providing services hereunder of the confidentiality provisions of this Contract. As a condition of employment, all employees of CONTRACTOR must sign and adhere to the attached Consultant Employee Acknowledgment and Confidentiality Agreement (Exhibit D). Further, CONTRACTOR shall cause each non-employee performing services covered by this Contract to sign and adhere to the provisions of the Consultant Non-Employee Acknowledgment and Confidentiality Agreement (Exhibit G). These Confidentiality Agreements shall be filed in CONTRACTOR's personnel records for the employees and agents and CONTRACTOR shall provide a copy to COUNTY upon request.

#### 8.35.2 Information Security Requirements

- a) **Data Encryption.** CONTRACTOR and any approved Subcontractors that electronically transmit or store personal information ("PI"), protected health information ("PHI") and/or medical information ("MI") shall comply with the encryption standards set forth below. PI is defined in California Civil Code Section 1798.29(g). PHI is defined in Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and implementing regulations. MI is defined in California Civil Code Section 56.05(j).
- (i) **Stored Data.** CONTRACTOR's and Subcontractors' workstations and portable devices (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e. software and/or hardware) in accordance with: (a) Federal Information Processing Standard Publication (FIPS) 140-2; (b) National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management – Part 1: General (Revision 3); (c) NIST Special Publication 800-57 Recommendation for Key Management – Part 2: Best Practices for Key Management Organization; and (d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices. Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.
- (ii) **Transmitted Data.** All transmitted (e.g. network) COUNTY PI, PHI and/or MI require encryption in accordance with: (a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and (b) NIST Special

Publication 800-57 Recommendation for Key Management – Part 3: Application-Specific Key Management Guidance. Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

(iii) Certification. COUNTY must receive within ten (10) business days of its request, a certification from CONTRACTOR (for itself and any Subcontractors) that certifies and validates compliance with the encryption standards set forth above. In addition, CONTRACTOR shall maintain a copy of any validation/attestation reports that its data encryption product(s) generate and such reports shall be subject to audit in accordance with the Contract. Failure on the part of the CONTRACTOR to comply with any of the provisions of this Sub-paragraph 8.35.2 (Data Encryption) shall constitute a material breach of this Contract upon which the COUNTY may terminate or suspend this Contract.

b. **Security Incident.** A "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or interference with system operations in an information system, as such term is defined in 45 C.F.R. § 164.304.

(i) CONTRACTOR will promptly notify (but in no event more than twenty-four (24) hours after the detection of a Security Incident) the designated COUNTY security contact by telephone and subsequently via written letter of any potential or actual security attacks or Security Incidents.

(ii) The notice shall include the approximate date and time of the occurrence and a summary of the relevant facts, including a description of measures being taken to address the occurrence. A Security Incident includes instances in which internal personnel access systems in excess of their user rights or use the systems inappropriately.

(iii) CONTRACTOR will provide a monthly report of all Security Incidents noting the actions taken. This will be provided via a written letter to the COUNTY security representative on or before the first (1st) week of each calendar month. COUNTY or its third-party designee may, but is not obligated, perform audits and security tests of CONTRACTOR's environment that may include, but are not limited to, interviews of relevant personnel, review of documentation, or technical inspection of systems, as they relate to the receipt, maintenance, use, retention, and authorized destruction of PI and County Confidential Information.

(iv) COUNTY reserves the right to view, upon request, summary results (i.e., the number of high, medium and low vulnerabilities) and related corrective action schedule for which CONTRACTOR has undertaken on its behalf to assess CONTRACTOR's own network security. If requested, copies of these summary results

and corrective action schedule will be sent to the COUNTY security contact.

### **8.35.3 Return of Confidential Information**

On COUNTY's written request or upon expiration or termination of this Contract for any reason, CONTRACTOR will promptly: (a) return or destroy, at COUNTY's option, all originals and copies of all documents and materials it has received containing COUNTY's Confidential Information; (b) if return or destruction is not permissible under applicable law, continue to protect such information in accordance with the terms of this Contract; and (c) deliver or destroy, at COUNTY's option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in machine-readable form, prepared by CONTRACTOR or, prepared under its direction, or at its request, from the documents and materials referred to in Sub-paragraph 8.35.1, and provide a notarized written statement to COUNTY certifying that all documents and materials referred to in Subsection 8.35.1 have been delivered to COUNTY or destroyed, as requested by COUNTY.

## **8.36 PUBLIC RECORDS ACT**

8.36.1 Any documents submitted by the CONTRACTOR; all information obtained in connection with the COUNTY's right to audit and inspect the CONTRACTOR's documents, books, and accounting records pursuant to sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement of this Contract; as well as any documents which were required to be submitted in response to a Request for Proposals (RFP) if used in the solicitation process for this Contract, become the exclusive property of the COUNTY. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements that meet the exceptions set forth in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.36.2 In the event the COUNTY is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the CONTRACTOR agrees to defend and indemnify the COUNTY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.



### **8.37 PUBLICITY**

8.37.1 The CONTRACTOR shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the COUNTY shall not inhibit the CONTRACTOR from publishing its role under this Contract within the following conditions:

- The CONTRACTOR shall develop all publicity material in a professional manner; and
- During the term of this Contract, the CONTRACTOR shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the COUNTY without the prior written consent of the COUNTY's Project Manager. The COUNTY shall not unreasonably withhold written consent.

8.37.2 The CONTRACTOR may, without the prior written consent of COUNTY, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this sub-paragraph 8.37 shall apply.

### **8.38 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

The CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The CONTRACTOR shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The CONTRACTOR agrees that the COUNTY, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the CONTRACTOR and shall be made available to the COUNTY during the term of this Contract and for a period of five (5) years thereafter unless the COUNTY's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the CONTRACTOR at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the COUNTY's option, the CONTRACTOR shall pay the COUNTY for travel, per diem, and other costs incurred by the COUNTY to examine, audit, excerpt, copy, or transcribe such material at such other location.

- 8.38.1 In the event that an audit of the CONTRACTOR is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the CONTRACTOR or otherwise, then the CONTRACTOR shall file a copy of such audit report with the COUNTY's Auditor-Controller within thirty (30) days of the CONTRACTOR's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.38.2 Failure on the part of the CONTRACTOR to comply with any of the provisions of this sub-paragraph 8.38 shall constitute a material breach of this Contract upon which the COUNTY may terminate or suspend this Contract.
- 8.38.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the COUNTY conduct an audit of the CONTRACTOR regarding the work performed under this Contract, and if such audit finds that the COUNTY's dollar liability for any such work is less than payments made by the COUNTY to the CONTRACTOR, then the difference shall be either: a) repaid by the CONTRACTOR to the COUNTY by cash payment upon demand or b) at the sole option of the COUNTY's Auditor-Controller, deducted from any amounts due to the CONTRACTOR from the COUNTY, whether under this Contract or otherwise. If such audit finds that the COUNTY's dollar liability for such work is more than the payments made by the COUNTY to the CONTRACTOR, then the difference shall be paid to the CONTRACTOR by the COUNTY by cash payment, provided that in no event shall the COUNTY's maximum obligation for this Contract exceed the funds appropriated by the COUNTY for the purpose of this Contract.

#### **8.39 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the COUNTY landfills, the CONTRACTOR agrees to use recycled-content paper to the maximum extent possible on this Contract.

#### **8.40 SUBCONTRACTING**

- 8.40.1 The requirements of this Contract may not be subcontracted by the CONTRACTOR without the advance written approval of the COUNTY. Any attempt by the CONTRACTOR to subcontract without first obtaining prior written approval and the prior consent of the COUNTY may be deemed a material breach of this Contract.

8.40.2 If the CONTRACTOR desires to subcontract, the CONTRACTOR shall provide the following information promptly to the COUNTY:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the COUNTY.

8.40.3 The CONTRACTOR shall indemnify and hold the COUNTY harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were the CONTRACTOR employees.

8.40.4 The CONTRACTOR shall remain fully responsible for all performances required of it under this Contract, including those that the CONTRACTOR has determined to subcontract, notwithstanding the COUNTY's approval of the CONTRACTOR's proposed subcontract.

8.40.5 The COUNTY's consent to subcontract shall not waive the COUNTY's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Contract. The CONTRACTOR is responsible to notify its Subcontractors of this COUNTY right.

8.40.6 The CONTRACTOR shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the COUNTY's consent to subcontract.

8.40.7 CONTRACTOR shall include all Subcontractors as insureds under Contractor's own policies, or shall provide COUNTY with each Subcontractor's separate evidence of insurance coverage. CONTRACTOR shall be responsible for verifying each Subcontractor complies with the required insurance provisions set forth in this Contract.

**8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the CONTRACTOR to maintain compliance with the requirements set forth in sub-paragraph 8.13 - Contractor's Warranty of Adherence to COUNTY's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the COUNTY under any other provision of this Contract, failure of the CONTRACTOR to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the

COUNTY may terminate this Contract pursuant to sub-paragraph 8.44 - Termination for Default and pursue debarment of the CONTRACTOR, pursuant to County Code Chapter 2.202.

**8.42 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX PROGRAM**

Failure of CONTRACTOR to maintain compliance with the requirements set forth in sub-paragraph 8.14 Contractor's Warranty of Compliance with COUNTY's Defaulted Property Tax Reduction Program, shall constitute default under this contract. Without limiting the rights and remedies available to COUNTY under any other provision of this contract, failure of CONTRACTOR to cure such default within 10 days of notice shall be grounds upon which COUNTY may terminate this contract and/or pursue debarment of CONTRACTOR, pursuant to County Code Chapter 2.206.

**8.43 TERMINATION FOR CONVENIENCE**

8.43.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the COUNTY, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the CONTRACTOR specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

8.43.2 After receipt of a notice of termination and except as otherwise directed by the COUNTY, the CONTRACTOR shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.43.3 After receipt of the Notice of Termination, CONTRACTOR shall submit to COUNTY, in the form and with the certifications as may be prescribed by COUNTY, its termination claim and invoice. Such claim and invoice shall be submitted promptly, but not later than three (3) months from the effective date of termination. Upon failure of CONTRACTOR to submit its termination claim and invoice within the time allowed, COUNTY may determine, on the basis of information available to COUNTY, the amount, if any, due to CONTRACTOR in respect to the termination and such determination shall be final. After such determination is made, COUNTY shall pay CONTRACTOR the amount so determined.

- 8.43.4 Subject to the provisions of the subparagraphs 8.43.1 and 8.43.2, above, COUNTY and CONTRACTOR shall negotiate an equitable amount to be paid to CONTRACTOR by reason of the total or partial termination of work pursuant to this Paragraph. Said amount may include a reasonable allowance for profit on work done but shall not include an allowance on work terminated. COUNTY shall pay the agreed amount; subject to other limitations and provided that such amount shall not exceed the total funding obligated under this Agreement as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated.
- 8.43.5 All material including books, records, documents, or other evidence bearing on the costs and expenses of the CONTRACTOR under this Contract shall be maintained by the CONTRACTOR in accordance with sub-paragraph 8.38, Record Retention & Inspection/Audit Settlement.

#### **8.44 TERMINATION FOR DEFAULT**

- 8.44.1 The COUNTY may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of COUNTY's Project Manager:
- CONTRACTOR has materially breached this Contract; or
  - CONTRACTOR fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
  - CONTRACTOR fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the COUNTY may authorize in writing) after receipt of written notice from the COUNTY specifying such failure.
- 8.44.2 In the event that the COUNTY terminates this Contract in whole or in part as provided in sub-paragraph 8.44.1, the COUNTY may procure, upon such terms and in such manner as the COUNTY may deem appropriate, goods and services similar to those so terminated. The CONTRACTOR shall be liable to the COUNTY for any and all excess costs incurred by the COUNTY, as determined by the COUNTY, for such similar goods and services. The CONTRACTOR shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.
- 8.44.3 Except with respect to defaults of any Subcontractor, the CONTRACTOR shall not be liable for any such excess costs of the type identified in sub-paragraph 8.44.2 if its failure to perform this Contract arises out of causes beyond the control and

without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the CONTRACTOR. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the CONTRACTOR and Subcontractor, and without the fault or negligence of either of them, the CONTRACTOR shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the required performance schedule. As used in this paragraph 8.44, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

- 8.44.4 If, after the COUNTY has given notice of termination under the provisions of this paragraph 8.44, it is determined by the COUNTY that the CONTRACTOR was not in default under the provisions of this paragraph 8.44, or that the default was excusable under the provisions of sub-paragraph 8.44.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 8.43 - Termination for Convenience.
- 8.44.5 The rights and remedies of the COUNTY provided in this paragraph 8.44 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.45 TERMINATION FOR IMPROPER CONSIDERATION**

- 8.45.1 The COUNTY may, by written notice to the CONTRACTOR, immediately terminate the right of the CONTRACTOR to proceed under this Contract if it is found that consideration, in any form, was offered or given by the CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the CONTRACTOR's performance pursuant to this Contract. In the event of such termination, the COUNTY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of default by the Contractor.

- 8.45.2 The CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to the COUNTY manager charged with the supervision of the employee or to the COUNTY Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- 8.45.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

#### **8.46 TERMINATION FOR INSOLVENCY**

- 8.46.1 The COUNTY may terminate this Contract forthwith in the event of the occurrence of any of the following:
- Insolvency of the CONTRACTOR. The CONTRACTOR shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the CONTRACTOR is insolvent within the meaning of the Federal Bankruptcy Code;
  - The filing of a voluntary or involuntary petition regarding the CONTRACTOR under the Federal Bankruptcy Code;
  - The appointment of a Receiver or Trustee for the CONTRACTOR; or
  - The execution by the CONTRACTOR of a general assignment for the benefit of creditors.
- 8.46.2 The rights and remedies of the COUNTY provided in this paragraph 8.46 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.47 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The CONTRACTOR, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the CONTRACTOR, shall fully comply with the COUNTY's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the CONTRACTOR or any County Lobbyist or County Lobbying firm retained by the CONTRACTOR to fully comply with the COUNTY's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the COUNTY may in its sole discretion, immediately terminate or suspend this Contract.

**8.48 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, the COUNTY shall not be obligated for the CONTRACTOR's performance hereunder or by any provision of this Contract during any of the COUNTY's future fiscal years unless and until the COUNTY's Board of Supervisors appropriates funds for this Contract in the COUNTY's budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The COUNTY shall notify the CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date.

**8.49 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

**8.50 WAIVER**

No waiver by the COUNTY of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the COUNTY to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this paragraph 8.50 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**8.51 WARRANTY AGAINST CONTINGENT FEES**

8.51.1 The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business.

8.51.2 For breach of this warranty, the COUNTY shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**8.52 COUNTY LOBBYISTS**

Each County lobbyist as defined in Los Angeles County Code Section 2.160.010, retained by CONTRACTOR, shall fully comply with the COUNTY Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of any COUNTY lobbyist retained by CONTRACTOR



to fully comply with the COUNTY Lobbyist Ordinance shall constitute a material breach of this Contract upon which COUNTY may immediately terminate or suspend this Contract. CONTRACTOR shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts which do or could create a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

**8.53 PROHIBITION FROM INVOLVEMENT IN THE BIDDING PROCESS OF FUTURE RFPs**

CONTRACTOR understands and agrees that neither CONTRACTOR nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposals (RFPs) developed or prepared by or with the assistance of CONTRACTOR's services rendered pursuant to this Agreement, whether as a prime contractor or subconsultant, or as a contractor to any other prime contractor or subconsultant. Any such involvement by CONTRACTOR shall result in the rejection by COUNTY of the bid or proposal by the prime contractor in question.

**8.54 PROPRIETARY RIGHTS**

All materials, data and other information of any kind obtained from COUNTY personnel, and all materials, data, reports and other information of any kind developed by CONTRACTOR under this Agreement are confidential to and are solely the property of COUNTY. CONTRACTOR shall take all necessary measures to protect the security and confidentiality of all such materials, data, reports and information. The provisions of this Paragraph shall survive the expiration or other termination of this Agreement.

**8.55 LICENSES, PERMITS, REGISTRATIONS AND CERTIFICATES**

CONSULTANT shall obtain and maintain in effect during the term of this Agreement, all licenses, permits, registrations and certificates, if any, required by law, which are applicable to the performance of this Agreement, and shall further ensure that all of its officers, employees and agents who perform services hereunder obtain and maintain in effect during the term of this Agreement, all licenses, permits, registrations and certificates required by law which are applicable to their performance of services hereunder.

**8.56 COUNTERPARTS**

This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery,




DELEGATED AUTHORITY AGREEMENT FOR COMMUNICATIONS PLAN FOR HOMELESS BALLOT MEASURE  
PROFESSIONAL COMMUNICATIONS CONSULTING SERVICES  
DELEGATED AUTHORITY AGREEMENT CONTRACT NUMBER: AO-17-039

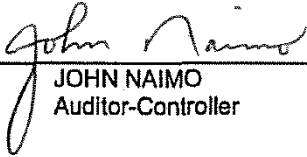
IN WITNESS THEREOF, COUNTY has caused this Contract to be executed by the Chief Executive Officer. CONTRACTOR has caused this Contract to be executed by its duly authorized representative.

COUNTY OF LOS ANGELES

By   
SACHI A. HAMAI  
Chief Executive Officer

Date 1/20/17

By   
LORI GLASGOW  
Executive Officer  
Board of Supervisors

By   
JOHN NAIMO  
Auditor-Controller

APPROVED AS TO FORM:

MARY C. WICKHAM  
County Counsel

By   
Deputy County Counsel

CONTRACTOR  
By   
TBWE Strategies

  
Taxpayer Identification No.

**EXHIBIT A**

**STATEMENT OF WORK (SOW)**

***Communications Plan for Homeless Ballot Measure  
Professional Communications Consulting Services***

**I. BACKGROUND**

On February 9 and 23, 2016, the County of Los Angeles (COUNTY) Board of Supervisors (Board) directed the Chief Executive Officer to work in collaboration with the Board to identify potential ballot measures to generate ongoing revenue and sustain the Homeless Initiative strategies approved by the Board on February 9, 2016. In response to those instructions, the Chief Executive Officer identified several potential options, secured an expert consultant to conduct polling, and reported to the Board on multiple occasions. On December 6, 2016, the Board voted to submit a one-quarter cent special sales tax measure (Homeless Ballot Measure) to the voters on the March 7, 2017 ballot

On December 20, 2016, the Board approved a motion directing the Chief Executive Officer to work with County Counsel, other County Departments, the Los Angeles Homeless Services Authority and United Way of Greater Los Angeles to develop a communications plan to inform communities, through a fair presentation of facts, about the March 2017 special sales tax measure approved by the Board on December 6, 2016 and its potential impact on the homeless crisis in Los Angeles County; and to look into the multilingual communication patterns that need to be considered and prioritize languages to target the appropriate voters.

**II. PURPOSE**

This Agreement will secure professional communications consulting services for the purpose of developing a communications plan to inform communities about the March 2017 special sales tax measure and its potential impact on the homeless crisis in Los Angeles County.

**III. OBJECTIVE**

- Develop a communications plan for the Homeless Ballot Measure to ensure that voters are informed through a fair presentation of facts about the sales tax measure.

#### **IV. GENERAL SCOPE OF WORK**

Under the direction of the COUNTY Project Manager, CONSULTANT shall consult and collaborate with the Chief Executive Office's Countywide Communications unit, and as directed by the COUNTY Project Manager, with the Office of County Counsel, other County Departments, the Los Angeles Homeless Services Authority and United Way of Greater Los Angeles, to develop a communications plan for the Homeless Ballot Measure to inform communities about the March 2017 special sales tax measure and its potential impact on the homeless crisis in Los Angeles County. CONSULTANT'S role in and the requirements of this communications plan is shown in further details in Sections V. Tasks/Deliverables, and VI. Draft and Final Review and Technical Requirements, of the SOW.

#### **V. TASKS/DELIVERABLES**

CONSULTANT shall consult and collaborate with the Chief Executive Office's Countywide Communications unit in completing the following tasks and deliverables during the term of the Agreement as outlined below:

#### **COMMUNICATIONS PLAN FOR THE HOMELESS BALLOT MEASURE**

##### **PHASE 1**

##### **Task 1A: Information and Education Program**

CONSULTANT shall develop and manage key benchmarks for the development and implementation of the Information and Education Program for the Homeless Ballot Measure for the March 7, 2017 ballot, including the following tasks/deliverables:

- Convene regularly with the COUNTY Project Manager and provide assistance to set agendas for the working group to ensure timely progress on all fronts.
- Provide recommendations and overall strategic direction for public information and materials.
- Recommend, plan and oversee the production of informational materials for stakeholder engagement for a variety of platforms and audiences.
- Advise regarding use of informational content for existing Countywide Communication networks.
- Ensure strategic consistency of messaging across all platforms.

##### **Task 1B: Opinion Research**

CONSULTANT shall plan, guide and analyze opinion research, including the following tasks/deliverables:

- Provide recommendations for timelines, sampling and questionnaire content for polling about how the homeless services are viewed by residents of the County.

**Task 1C: Ethnic News Media**

CONSULTANT shall create a strategy for informational news/earned news with ethnic media, in multiple languages, including the following tasks/deliverables:

- Identify and manage subcontractors specializing in Los Angeles-area news media outreach to ethnic media outlets, including foreign-language media.

**Task 1D: Digital/On-line Communication**

CONSULTANT shall create and implement a strategy for fair and impartial public informational digital messaging, including the following tasks/deliverables:

- Utilize social media platforms and electronic News websites and pages unpaid and paid media content.
- Provide graphic design and media production, print materials (handouts not mailings) as well as pre-roll video ads, Facebook, targeted banner ads and other electronic channels, delivery to a broad range of voters/residents in the County.

**PHASE 2** – Optional, at the sole discretion and approval of the COUNTY. Approval for the start date of Phase 2 shall be confirmed and provided in advance by the COUNTY Project Manager.

**Task 2C: Ethnic News Media**

CONSULTANT shall create a strategy for informational news/earned news with ethnic media, in multiple languages, including the following tasks/deliverables:

- Create a strategy for informational news/earned news with ethnic media, in multiple languages.
- Utilize paid advertorials in both print and digital ethnic media.

**Task 2D: Digital/On-line Communication**

CONSULTANT shall create and implement a strategy for fair and impartial public informational digital messaging, including the following tasks/deliverables:

- Provide/secure increase in information delivery to high-information audiences.
- Provide/secure increase in information delivery in languages other than English.

**Task 2E: Broadcast Communication**

CONSULTANT shall create and implement a strategy for fair and impartial public information broadcast messaging, including the following tasks/deliverables:

- Provide cable television information (production expenses included).
- Provide radio information (production expenses included).

**VI. DRAFT AND FINAL REVIEW AND TECHNICAL REQUIREMENTS**

All deliverables required under Section V. Tasks/Deliverables, of the SOW, are subject to the written approval of the COUNTY Project Manager. The COUNTY Project Manager and the Office of County Counsel, shall review and comment on CONSULTANT's draft deliverables for communications materials and provide final approval of final deliverables for communications materials (prior to any public release, use, publication and/or distribution). Start and completion dates, and format(s) for each task/deliverable shall be approved in advance by the COUNTY Project Manager.

**Note:**

Pursuant to Section 8.40, of the Agreement, the requirements of this Contract may not be subcontracted by the CONTRACTOR without the advance written approval of the COUNTY. Any attempt by the CONTRACTOR to subcontract without first obtaining prior written approval and the prior consent of the COUNTY may be deemed a material breach of this Contract.

**EXHIBIT B**

**PRICING SCHEDULE**

***Communications Plan for Homeless Ballot Measure  
 Professional Communications Consulting Services***

**MAXIMUM NOT TO EXCEED CONTRACT COST/SET FEE: \$1,000,000**

**MAXIMUM NOT TO EXCEED CONTRACT COST/SET FEE: \$1,000,000** for services rendered consistent with Exhibit A, Statement of Work (SOW), of Agreement, during the term of this Contract, at the direction of the COUNTY Project Manager. Payment shall be made in arrears in a manner and subject to the conditions as set forth here and in Paragraph 5.0, Contract Sum, of this Contract. Any costs incurred to complete this project in excess of the maximum not-to-exceed cost shall be borne by the CONSULTANT. In addition to the professional fees, the CONSULTANT shall be entitled to reimbursement of certain reimbursable/travel-related expenses required to complete the tasks/deliverables described in Exhibit A, SOW, of the Contract. All travel-related expenses shall be in accordance with the conditions set forth here and in Exhibit H, Travel Expense Reimbursement, of the Contract. CONSULTANT'S services provided shall be billed in accordance with CONSULTANT'S fee schedule set forth below:

**PROFESSIONAL FEES:**

TASK	DESCRIPTION	COST
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**PHASE 1**

Task 1A: Information and Education Program	\$ 50,000
Task 1B: Opinion Research	\$ 60,000
Task 1C: Ethnic News Media	\$ 50,000
Task 1D: Digital/On-line Communication	\$ 330,000
Misc. expenses (Travel-related expenses)	\$ 10,000
Phase 1: Sub-Total	\$ 500,000

**PHASE 2 - Optional, at the sole discretion and approval of the COUNTY**

Task 2C: Ethnic News Media	\$ 30,000
Task 2D: Digital On-line Communication	\$ 120,000
Task 2E: Broadcast Communication	\$ 350,000
Phase 2: Sub-Total	\$ 500,000

<b>TOTAL</b>	<b>\$1,000,000</b>
<b>MAXIMUM NOT-TO-EXCEED-CONTRACT COST/SET FEE</b>	<b>\$1,000,000</b>



EXHIBIT C

**CONTRACTOR'S EEO CERTIFICATION**

Public Finance Strategies LLC, d/b/a TBWB Strategies  
Contractor Name

400 Montgomery St., #700, San Francisco, CA 94104  
Address

Internal Revenue Service Employer Identification Number

GENERAL CERTIFICATION

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

CONTRACTOR'S SPECIFIC CERTIFICATIONS

1. The Contractor has a written policy statement prohibiting discrimination in all phases of employment. Yes  No
2. The Contractor periodically conducts a self analysis or utilization analysis of its work force. Yes  No
3. The Contractor has a system for determining if its employment practices are discriminatory against protected groups. Yes  No
4. Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. Yes  No

JARED BOICOW, Member/owner, Public Finance Strategies LLC  
Authorized Official's Printed Name and Title

[Signature]  
Authorized Official's Signature

1/18/17  
Date

**CONSULTANT EMPLOYEE ACKNOWLEDGMENT  
AND CONFIDENTIALITY AGREEMENT**

**General Information**

Your employer, \_\_\_\_\_, has entered into a contract with the County of Los Angeles to provide various services to the County. Therefore, we need your signature on this consultant employee acknowledgment and confidentiality agreement.

**Employer Acknowledgment**

I understand that \_\_\_\_\_ is my sole employer for purposes of this Agreement.

I understand and agree that I am not an employee of Los Angeles County for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer, \_\_\_\_\_, and the County of Los Angeles.

\_\_\_\_\_ (Initial and date)

**Confidentiality Agreement**

As an employee of \_\_\_\_\_, you may be involved with work pertaining to County services, and, if so, you may have access to confidential data pertaining to persons and/or entities represented by the County of Los Angeles. The County has a legal obligation to protect all confidential data in its possession, especially data concerning health, criminal and welfare recipient as well as that protected by the attorney/client privilege. Consequently, you must sign this Confidentiality Agreement for the County of Los Angeles.

Please read the attached Agreement and take due time to consider it prior to signing.

**CONSULTANT EMPLOYEE ACKNOWLEDGMENT AND  
CONFIDENTIALITY AGREEMENT**

I hereby agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between \_\_\_\_\_ and the County of Los Angeles.

I agree to forward all requests for the release of information received by me to my immediate supervisor.

I have been informed by my employer of Article 9 of Chapter 4 of Division 3 (Commencing with 6150) of the California Business and Professions Code (i.e. State Bar Act provisions regarding unlawful solicitations as a runner or capper for attorneys) which states:

". . . It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation or partnership or association to act as a runner or capper for any such attorneys to solicit any business for such attorneys. . ."

I have also been informed by my employer of Labor Code Section 3219 (i.e. provisions stating it is a felony to offer compensation to claims adjusters and/or for adjusters to accept compensation) which states:

". . . any person acting individually or through his or her employee or agents, who offers or delivers any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration to any adjuster of claims for compensation, as defined in Section 3207, as compensation, inducement, or reward for the referral or settlement of any claim, is guilty of a felony. . ."

I agree to report any and all violations of the above by any other person and/or by myself to my immediate supervisor, and I agree to ensure that said supervisor reports such violation to the County of Los Angeles, Department of Human Resources. I agree to return all confidential materials to my immediate supervisor upon termination of my employment with \_\_\_\_\_ or upon completion of the presently assigned work task, whichever occurs first.

I acknowledge that violation of this Agreement & Acknowledgment may subject me to civil and/or criminal action and that the County of Los Angeles will seek all possible legal redress.

Signature \_\_\_\_\_ Dated \_\_\_\_\_

Printed Name \_\_\_\_\_

Position/Title \_\_\_\_\_

**EXHIBIT E**

**INVITATION FOR BID/REQUEST FOR PROPOSAL  
GROUNDS FOR REJECTION**

*Los Angeles County Code Chapter 2.180.010, Certain Contracts Prohibited*, sets forth, among other things, the following:

Notwithstanding any other section of this Code, the County shall not contract with, and shall reject any bid or proposal submitted by the persons or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract:

- a) Employees of the County or of public agencies for which the Board of Supervisors is the governing body;
- b) Profit making firms or businesses in which employees described in subsection (a) serve as officers, principals, partners or major shareholders;
- c) Persons who, within the immediately preceding twelve (12) months, came within the provisions of subsection (a), and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Consultant, or (2) participated in any way in developing the Contract or its service specifications; and
- d) Profit making firms or businesses in which the former employees described in subsection (c) serve as officers, principals, partners or major shareholders.

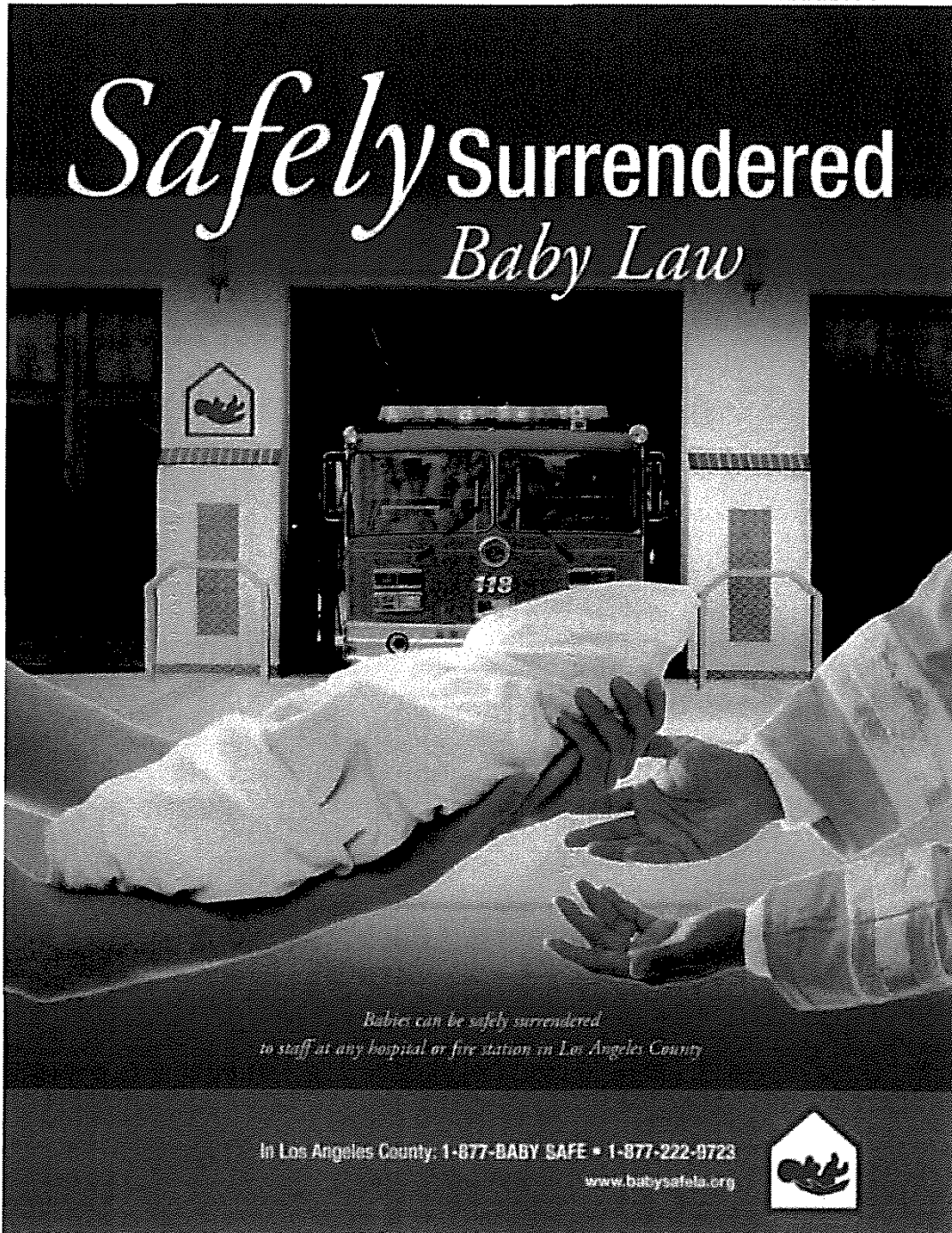
Consultant hereby certifies that personnel who developed and/or participated in the preparation of the Contract do not fall within the scope of Code Section 2.180.010 as outlined above.

\_\_\_\_\_  
Typed Name and Title of Signer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date


EXHIBIT F



# *Safely* Surrendered *Baby Law*

*Babies can be safely surrendered  
to staff at any hospital or fire station in Los Angeles County*

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-8723  
[www.babysafela.org](http://www.babysafela.org)



In Los Angeles County 1-877-BABY SAFE • 1-877-223-8223

www.babysafela.org

# Safely Surrendered Baby Law



*Babies can  
be safely  
surrendered  
to staff at any  
hospital or fire  
station in  
Los Angeles  
County.*

## What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

*Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a baby, let her know there are other options. For three days (72 hours) after birth, a baby can be surrendered to staff at any hospital or fire station in Los Angeles County.*

## How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

## Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

## Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

## Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a business reply envelope and can be sent in at a later time.

## What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

## What happens to the parent or surrendering adult?

Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

## Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

## A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wanted to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.



**EXHIBIT G**

**CONSULTANT NON-EMPLOYEE ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT**

Consultant Name \_\_\_\_\_ Contract No. \_\_\_\_\_

Non-Employee Name \_\_\_\_\_

**GENERAL INFORMATION:**

The Consultant referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires your signature on this Consultant Non-Employee Acknowledgement and Confidentiality Agreement.

**NON-EMPLOYEE ACKNOWLEDGEMENT:**

I understand and agree that the Consultant referenced above has exclusive control for purposes of the above-referenced contract. I understand and agree that I must rely exclusively upon the Consultant referenced above for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced contract.

I understand and agree that I am not an employee of the County of Los Angeles for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. I understand and agree that I do not have and will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced contract is contingent upon my passing, to the satisfaction of the County, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of the County, any such investigation shall result in my immediate release from performance under this and/or any future contract.

**CONFIDENTIALITY AGREEMENT:**

I may be involved with work pertaining to services provided by the County of Los Angeles and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, I may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. I understand that if I am involved in County work, the County must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by the above-referenced Consultant for the County. I have read this agreement and have taken due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between the above-referenced Consultant and the County of Los Angeles. I agree to forward all requests for the release of any data or information received by me to the above-referenced Consultant.

I agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Consultant proprietary information, and all other original materials produced, created, or provided to or by me under the above-referenced contract. I agree to protect these confidential materials against disclosure to other than the above-referenced Consultant or County employees who have a need to know the information. I agree that if proprietary information supplied by other County vendors is provided to me, I shall keep such information confidential.

I agree to report to the above-referenced Consultant any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to the above-referenced Consultant upon completion of this contract or termination of my services hereunder, whichever occurs first.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_



**EXHIBIT H**

**TRAVEL EXPENSE REIMBURSEMENT RATES**  
(Effective February 1, 2016)

In addition to the professional fees, the CONTRACTOR shall be entitled to reimbursement of travel-related expenses required to complete the tasks/deliverables described in Exhibit A, Statement of Work, of the Contract. Reimbursable travel-related expenses require advance written approval of the COUNTY Project Manager as set forth in Exhibit B, Pricing Schedule, of the Contract. All travel-related expenses/receipt documentation shall be in accordance with the conditions set forth here and in Paragraph 5.0, Contract Sum, and Exhibit B, Pricing Schedule, of the Agreement. The CONTRACTOR shall act in a reasonable manner to minimize reimbursable travel-related expenses. The maximum reimbursement rates for normal and reasonable travel-related expenses are as follows:

**Airfare**

Airfare costs will be reimbursed upon receipt of airline invoice but not to include business or first class travel. Reimbursement without a receipt will be limited to an amount determined by the COUNTY.

**Lodging – Maximum Daily Rate**

\$209.75 per night plus all taxes (with receipt) for a single occupancy hotel accommodation. Reimbursement without receipt will be limited to \$20.00 per night.

**Mileage Rate**

@ 54 cents per mile for all miles driven. (Effective January 1, 2016)

**Meals-Maximum Daily Rate**

- Breakfast - \$12.50;
- Lunch - \$16.50;
- Dinner - \$40.75; or
- Not to exceed \$69.75 per day when three meals are purchased on any one day; and
- Note: Meals reimbursement is not allowed if attending a COUNTY paid event where meals are included as part of the cost. In addition, itemized meal receipts should be included with the expense claim to ensure purchases do not include alcoholic beverages, tobacco products, etc. Gratuity is considered an incidental expense and should not be added as part of the meal allowance.

**Porterage**

\$1.00 per day

**AIRPORT PARKING (Receipt required):**

*Burbank - Burbank Airport Authority*

(818) 840-8838  
Central Parking Systems  
2627 Hollywood Way  
Burbank, CA 91505  
Lot A @ \$10.00/day  
Lot C @ \$13.00/day

*John Wayne (Orange County)*

(949) 252-6260  
Parking Concepts  
18601 Airport Way  
Santa Ana, CA 92707  
Lots A1, A2, B2, and C @ \$20.00/day  
Main Street Parking Lot @ \$14.00/day

*LAX (Los Angeles Airport)*

(310) 646-2911  
Five Star Parking  
251 World Way  
Los Angeles, CA 90045  
Lot B - Closed  
Lot C @ \$12.00/day

*Long Beach*

(562) 425-9665  
AMPCO System Parking  
4103 Donald Douglas Dr.  
Long Beach, CA 90808  
Lot A @ \$19.00/day  
Lot B @ \$17.00/day

*Ontario*

(909) 937-1240  
Parking Company of America  
Ontario, CA 91716  
Lot 5 @ \$9.00/day  
Lot 3 - Closed



**EXAMPLE COUNTY-FUNDED CAMPAIGN ADVERTISEMENTS**

The Los Angeles County HOMELESS INITIATIVE

**Measure H Helps:**

- Veterans
- Seniors
- Children and Foster Youth
- Domestic Violence Survivors
- Other Homeless Adults
- People with Disabilities

Real help. Lasting change.

[homeless.lacounty.gov](http://homeless.lacounty.gov)

The poster features a purple header with a house icon and the text 'The Los Angeles County HOMELESS INITIATIVE'. Below this, a yellow banner reads 'Measure H Helps:'. A central illustration shows a diverse group of people holding hands, with callouts above them identifying groups: Veterans, Seniors, Children and Foster Youth, Domestic Violence Survivors, Other Homeless Adults, and People with Disabilities. At the bottom, a yellow banner contains the slogan 'Real help. Lasting change.' and the website 'homeless.lacounty.gov'.

facebook [Sign Up](#)

**Los Angeles County Department of Human Resources**  
February 28 · 🌐

Measure H on the March 7 ballot would provide about \$355 million annually through a 1/4 cent sales tax to help continue proven strategies of the County's ongoing Homeless initiative, including helping more families and preventing and reducing homelessness in LA County.

Learn more at [homeless.lacounty.gov](http://homeless.lacounty.gov)

Engl  
Fran  
Priv  
Cool  
Face

The Facebook post displays the same Measure H poster as above. The post is from the Los Angeles County Department of Human Resources, dated February 28. The text of the post explains that Measure H on the March 7 ballot would provide \$355 million annually through a 1/4 cent sales tax to support the County's homeless initiative. A link to 'homeless.lacounty.gov' is provided. The poster itself is identical to the one in the first block, showing the 'Measure H Helps' graphic with various groups of people and the slogan 'Real help. Lasting change.' with the website URL.



The Los Angeles County  
**HOMELESS INITIATIVE**

**Measure H Means:**



**45,000**  
People  
Housed



In the first five years.

↑ = 5,000 people.



**30,000**  
People  
Staying in  
their Homes

**Real help. Lasting change.**  
[homeless.lacounty.gov](http://homeless.lacounty.gov)

 **Los Angeles County** @CountyofLA Feb 26  
 #MeasureH will help ~45,000 people move from homelessness to housing and keep 30,000 from becoming homeless.

[homeless.lacounty.gov](http://homeless.lacounty.gov)



The Los Angeles County  
**HOMELESS INITIATIVE**

**Measure H Means:**



**45,000**  
People  
Housed



In the first five years.

↑ = 5,000 people.



**30,000**  
People  
Staying in  
their Homes

**Real help. Lasting change.**  
[homeless.lacounty.gov](http://homeless.lacounty.gov)

**EXAMPLE COUNTY-FUNDED TELEVISION CAMPAIGN AD #1**

**No. 1 - Single Mom:**

**Text:** Shamaiah Single mother, Formerly homeless

**V/O:** "I feel like I'm breaking a cycle. We're back on our feet, now. Thanks to Los Angeles County."

**Text:** Measure H on March 7 Ballot/ LA County Homeless Initiative/ Real **Help.** Lasting **Change.**/  
<http://homeless.lacounty.gov/>

**Next Screen:** Are you Ready? Vote March 7.



Original commercial here:

<https://www.dropbox.com/s/0cnzpz5nyroh1u/Measure%20H%20Ad.%20No.1.MOV?dl=0>

**EXAMPLE COUNTY-FUNDED TELEVISION CAMPAIGN AD #2**

**No. 2 - Veteran:**

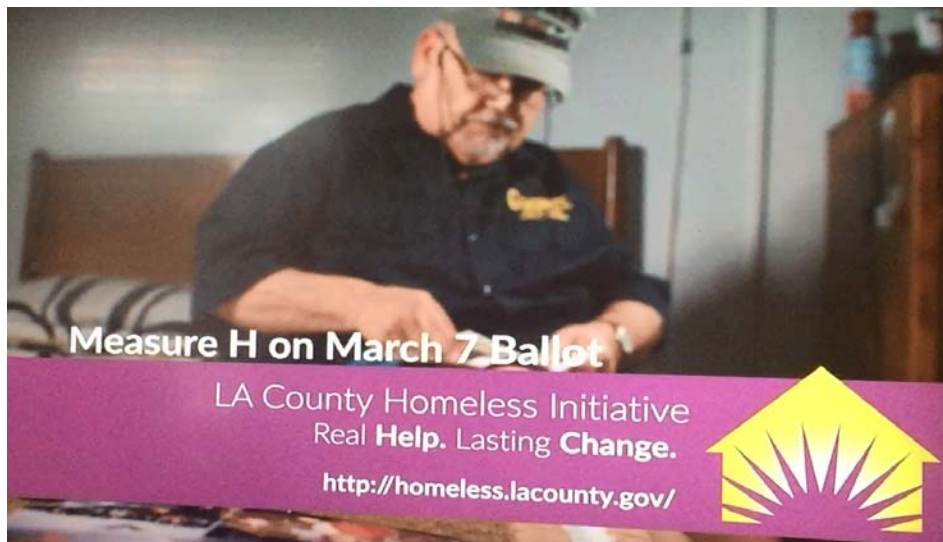
**Text:** Frank U.S. Army Veteran Formerly Homeless

**V/O:** "LA County is looking out for vets like me. I got laid off and I was homeless for seven years. Now I am back on my feet and taking care of myself. Thanks, Los Angeles!"

**Text:** Measure H on March 7 Ballot/ LA County Homeless Initiative/ Real **Help.** Lasting **Change.**/

<http://homeless.lacounty.gov/>

**Next Screen:** Are you Ready? Vote March 7.



Original commercial here:

<https://www.dropbox.com/s/3f3ceptjabm8jji/Measure%20H%20Ad.%20No.2.MOV?dl=0>





**BELL, McANDREWS & HILTACHK, LLP**

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 600

SACRAMENTO, CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

www.bmhlaw.com

RECEIVED  
FAIR POLITICAL  
PRACTICES COMMISSION  
17 MAR 17 AM 9:59

March 17, 2017

**BY HAND DELIVERY**

Hyla Wagner, Esq.  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

**RE: Request for Formal Written Advice Regarding Issue Advocacy.**

Dear Ms. Wagner:

This firm represents the Howard Jarvis Taxpayers Association (HJTA). HJTA is a nonprofit corporation and is exempt from federal income tax under Internal Revenue Code section 501(c)(4). It receives financial support from tens of thousands of individuals in quantities large and small. The mission of HJTA is to educate the public about taxation issues at all levels of government. HJTA has long advocated that voters should be required to approve tax increases and that the information provided to them be fair and accurate. In this regard, HJTA is considering spending a considerable amount of money in connection with several local tax measures in various cities on upcoming ballots throughout the state. As an example, the City of Seaside is proposing a sales tax increase measure on the upcoming June 6, 2017 ballot. We seek advice regarding whether certain communications (examples of which are described/displayed herein) pertaining to the local ballot measures would be considered "contributions" or "expenditures" (and, thus, subject to reporting, disclosure and disclaimers under the Political Reform Act) or "issue advocacy" (not subject to the Act). This is a request for formal advice pursuant to Government Code section 83114.

**I. QUESTION**

Are the proposed public communications described/displayed herein "contributions" or "expenditures" under the Act? The public communications will be made during the 30-day period immediately preceding the date of the election.

**II. FACTS: PROPOSED HJTA MULTI-MEDIA CAMPAIGNS**

HJTA is contemplating a \$1 million multi-media advertising campaign relating to several local tax measures on upcoming ballots in the state

For example, on March 2, 2017 the Seaside City Council approved a ½-cent sales tax increase measure for the June 6, 2017 ballot. The revenues of the proposed tax increase would be used to fund “essential services” such as “police, fire, 9-1-1 response and youth violence prevention projects.” HJTA is contemplating a multi-media campaign to educate and alert Seaside residents about the measure.

HJTA may spend up to \$100,000 on communications related to the tax measure. The advertising campaign will include television spots; internet advertisements; Twitter and Facebook posts; and an informational website. The communications will reference the tax increase measure but will not expressly urge a ‘yes’ or ‘no’ vote on the measure. The following are HJTA’s proposed communications relative to the Seaside tax increase measure. (Note: No letter designator has been assigned to the tax increase measure in Seaside so “Measure A” is used as a placeholder in the proposed communications discussed herein.)

**PROPOSED HJTA TELEVISION SPOTS:**

<b><u>Proposed HJTA Television Spot #1 (15-second spot):</u></b>	
<u>Superimposed Graphic:</u>	<b>[NAME], SEASIDE RESIDENT Single Mother • Formerly Homeless</b>
<u>V/O [In First Person]:</u>	<b><i>“Times have been tough for residents and taxpayers in Seaside. I feel like I am breaking a cycle. We’re back on our feet, now. But I am not sure I can afford to pay more in taxes for food, clothing and shelter. Think Seaside.”</i></b>
<u>Superimposed Graphics:</u>	<b><u>MEASURE A on June 6 Ballot</u> <u>Seaside Sales Tax Initiative</u> <u>Higher Taxes. Lasting Costs.</u> <u><a href="http://seaside-tax-increase.hjta.net/">http://seaside-tax-increase.hjta.net/</a></u></b>
<u>Full-Screen Graphic:</u>	<b>Are you ready? VOTE JUNE 6</b>

**Proposed HJTA Television Spot #2 (15-second spot):**

Superimposed Graphic:            **[NAME], SEASIDE RESIDENT**  
**Veteran • Taxpayer**

V/O [In First Person]:            *“The last few years have been tough for veterans like me. I got laid off and I was homeless for seven years. Now I am back on my feet and taking care of myself. But money is still tight for me... and every penny counts. Higher taxes? Think Seaside.”*

Superimposed Graphics:            **MEASURE A on June 6 Ballot**  
**Seaside Tax Increase Ballot Measure**  
**Higher Taxes. Lasting Costs.**  
*<http://seaside-tax-increase.hjta.net/>*

Full-Screen Graphic:            **Are you ready?**  
**VOTE JUNE 6**

**PROPOSED HJTA INTERNET/TWITTER/FACEBOOK COMMUNICATIONS:**

HJTA’s Twitter feed and Facebook timeline are available for viewing by the general public (including residents in Seaside). HJTA is proposing to promote an ad campaign related to the Seaside tax increase ballot measure featuring the following graphics (and similar) through their Twitter and Facebook accounts. HJTA may also pay to promote these communications through various social media outlets directed specifically to residents of Seaside.

*“From veterans to the needy, #MeasureA will hurt Seaside’s most vulnerable.”*

**The City of Seaside  
SALES TAX INITIATIVE**

**Measure A Hurts:**

Veterans  
Seniors  
Families and Kids  
Young People  
Homeless Adults  
The Disabled

**Higher Taxes. Lasting Costs.**

<http://seaside-tax-increase.hjta.net/>

***“#MeasureA is a tax increase that will cost Seaside residents \$1.9 million in additional taxes every year.*”**

**The City of Seaside**  
**SALES TAX INITIATIVE**

**Measure A Means:**

**35,000**  
Residents  
Taxed

**\$1,900,000**  
Add'l Taxes.  
Every Year.  
Forever.

**Higher Taxes. Lasting Costs.**

<http://seaside-tax-increase.hjta.net/>

**PROPOSED CONTENT ON HJTA INTERNET WEBSITE:**

HJTA also will dedicate part of its internet website to the Seaside tax increase measure. The website (<http://seaside-tax-increase.hjta.net/>) will promote the theme of “Seaside Tax Increase Ballot Measure” and “Higher Taxes. Lasting Costs.” At no time will the website ask visitors to expressly cast a ‘no’ (or ‘yes’) vote on the tax increase measure.

**III. CONCLUSION**

By this letter, we request advice as to whether the communications described/displayed herein are express advocacy (taken as a whole, unambiguously urging a particular result in an election), or if they are issue advocacy communications and, therefore, excluded from campaign reporting and disclaimer rules.

Thank you in advance for your analysis of this issue and advice.

Very truly yours,

A handwritten signature in blue ink, appearing to read "BTH", with a long horizontal flourish extending to the right.

Brian T. Hildreth



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

May 2, 2017

Brian T. Hildreth  
Bell, McAndrews & Hiltachk, LLP  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-17-072**

Dear Mr. Hildreth:

This letter responds to your request for advice regarding the campaign reporting provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### QUESTION

Do the proposed public communications described in the facts below contain “express advocacy” that qualify them as either “contributions” or “expenditures” under the Act?

### CONCLUSION

Yes. The communications described below fall within the Act’s definition of “express advocacy” in Section 82031 and Regulation 18225. Therefore, expenditures of funds for these communications would be subject to the Act’s campaign reporting and advertising disclosure requirements.

### FACTS<sup>2</sup>

Your firm represents the Howard Jarvis Taxpayers Association (“HJTA”), a nonprofit corporation exempt from federal income tax under Internal Revenue Code Section 501(c)(4). It receives financial support from tens of thousands of individuals in varying amounts. And seeks to educate the public about taxation issues at all levels of government. The HJTA has long advocated that voters should be required to approve tax increases and that the information provided to them be fair and accurate. In this regard, HJTA is considering spending a considerable amount of money in connection with several local tax measures in various cities on upcoming ballots throughout the state.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> The Fair Political Practices Commission is not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate.

You ask whether the proposed communications pertaining to the local ballot measures described below would be considered “express advocacy” and thus subject to reporting, disclosure and disclaimers under the Act or “issue advocacy” excluded from campaign reporting and disclaimer rules.

You state that these communications would be made independent of any coordination or cooperation with candidates for elective office or any existing campaign committees. The communications will be made during the 30-day period immediately preceding the date of the election.

Proposed HJTA Multi-Media Campaigns.

HJTA is contemplating a \$1 million multi-media advertising campaign relating to several local tax measures on upcoming ballots in the state. For example, on March 2, 2017, the Seaside City Council approved a ½-cent sales tax increase measure for the June 6, 2017 ballot. The revenues of the proposed tax increase would be used to fund “essential services” such as “police, fire, 9-1-1 response and youth violence prevention projects.” HJTA is contemplating a multi-media campaign to educate and alert Seaside residents about the measure.

HJTA may spend up to \$100,000 on communications related to the tax measure. The advertising campaign will include television spots; internet advertisements; Twitter and Facebook posts; and an informational website. The following are HJTA’s proposed communications relative to the Seaside tax increase measure.

*Proposed Television Spot #1 (15-second spot):*

Superimposed Graphic:

**[NAME], SEASIDE RESIDENT  
Single Mother • Formerly Homeless**

Voiceover [In First Person]:

*“Times have been tough for residents and taxpayers in Seaside. I feel like I am breaking a cycle. We’re back on our feet, now. But I am not sure I can afford to pay more in taxes for food, clothing and shelter. Think Seaside.”*

Superimposed Graphics:

**MEASURE A on June 6 Ballot  
Seaside Sales Tax Initiative  
Higher Taxes. Lasting Costs.  
<http://seaside-tax-increase.hjta.net/>**

Full-Screen Graphic:

**Are you ready?  
VOTE JUNE 6**

\* \* \*



*Proposed Television Spot #2 (15-second spot):*

Superimposed Graphic:  
**[NAME], SEASIDE RESIDENT**  
**Veteran • Taxpayer**

Voiceover [In First Person]:  
*“The last few years have been tough for veterans like me. I got laid off and I was homeless for seven years. Now I am back on my feet and taking care of myself. But money is still tight for me ... and every penny counts. Higher taxes? Think Seaside.”*

Superimposed Graphics:  
**MEASURE A on June 6 Ballot**  
**Seaside Tax Increase Ballot Measure**  
**Higher Taxes. Lasting Costs.**  
**<http://seaside-tax-increase.hjta.net/>**

Full-Screen Graphic:  
**Are you ready?**  
**VOTE JUNE 6**

\* \* \*

Proposed HJTA Internet/Twitter/Facebook Communications

HJTA’s Twitter feed and Facebook timeline are available for viewing by the general public (including residents in Seaside). HJTA is proposing to promote an ad campaign related to the Seaside tax increase ballot measure featuring the following graphics (and similar) through their Twitter and Facebook accounts. HJTA may also pay to promote these communications through various social media outlets directed specifically to residents of Seaside.

*Proposed internet Twitter/ Facebook communication #1:*

*“From veterans to the needy, #MeasureA will hurt Seaside's most vulnerable.”*

***The City of Seaside Sales Tax Initiative***

***Measure A Hurts:***

***Veterans, Seniors, Families and Kids, Young People, Homeless Adults, The Disabled***

**Higher Taxes. Lasting Costs.**  
**<http://seaside-tax-increase.hjta.net/>**

\* \* \*

*Proposed internet Twitter/ Facebook communication #2:*

***“#Measure A is a tax increase that will cost Seaside residents \$1.9 million in additional taxes every year.***

***The City of Seaside Sales Tax Initiative***

***Measure A Means:***

***35,000 Residents Taxed  
\$1,900,000 Add'l Taxes. Every Year. Forever.***

**Higher Taxes. Lasting Costs.**  
**<http://seaside-tax-increase.hjta.net/>**

\* \* \*

*Proposed Content on HJTA Internet Website:*

The Association also will dedicate part of its internet website to the Seaside tax increase measure. The website (<http://seaside-tax-increase.hjta.net/>) will promote the theme of “Seaside Tax Increase Ballot Measure” and “Higher Taxes. Lasting Costs.” The website will not ask visitors to expressly cast a “no” (or “yes”) vote on the tax increase measure.

**ANALYSIS**

Section 82031 defines “independent expenditure,” as:

“an expenditure made by any person . . . in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.”

Regulation 18225(b)(2) elaborates on the definition of “express advocacy” in Section 82031, as follows:

“(2) A communication ‘expressly advocates’ the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot,’ ‘vote against,’ ‘defeat,’ ‘reject,’ ‘sign petitions for’ or, within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

“(A) Except for those communications paid for with public monies by a state or local government agency and subject to Regulation 18420.1, a communication, taken as a whole, unambiguously urges a particular result in an election if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure. A communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure when, taken as a whole, it could only be interpreted by a reasonable person as containing an appeal to vote for or against a specific candidate or measure because:

“1. The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

“2. Reasonable minds could not differ as to whether it encourages a vote for or against a clearly identified candidate or measure, or encourages some other kind of action on a legislative, executive or judicial matter or issue.

“(B) The following non-exhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that in most contexts would be ‘susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure.’ ‘Smith’s the One;’ ‘No Measure A;’ ‘Rally ‘round O’Malley;’ ‘Create jobs with Measure X;’ ‘Only Nancy Brown can clean out City Hall;’ ‘Proposition 123 - your last chance to save California;’ ‘Joe Green will earn your trust;’ ‘Bob Boone is an unqualified, special-interest puppet;’ ‘Shirley Hall - bad for California, bad for you.’

“(C) The following non-exhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that would be susceptible of a reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure: “Assembly-member Nancy Brown needs to be tough on criminals. Call her and tell her to stand firm on AB 100;” “Poor children need a home too. Support the Mayor’s stance against more budget cuts;” “Thank you, Supervisor Smith, for continuing to support our farmers.”

“(D) Safe Harbor. A communication does not ‘expressly advocate’ the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure, within the meaning of this regulation, if:

“1. It does not mention an election, candidacy, political party (unless required by law), opposing candidate, voting by the general public, and does not take a position on the character, qualifications or fitness for office of a candidate or officeholder, or the merits of a ballot measure, and;

“2. it focuses on a legislative, executive or judicial matter or issue, either urging a candidate to take a particular position or action with respect to the

matter or issue, or urging the public to adopt a particular position and to contact the candidate with respect to the matter or issue.

“(E) Rules of Interpretation. If a communication does not qualify for the safe harbor defined above, the Commission shall consider whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified candidate or measure, in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or measure.”

As set forth in the regulation, depending on when the communication is made, one of two different tests applies to determine whether the communication contains express advocacy. You have indicated that the communications will be made during the 30-day period immediately preceding the date of the election.

Where, as here, the communication is made within the 60-day period before an election in which the identified candidate appears on the ballot, the applicable test includes not only express words advocating an electoral result, such as “vote against,” “reject,” or similar expressions, but communications which, taken as a whole, unambiguously urge a particular result in the election. (Regulation 18225(b)(2).)

The provisions of Regulation 18225(b)(2)(A) – (E) provide a detailed explanation of the “unambiguously urges” test.

Subparagraph (A) provides that a communication “unambiguously urges” if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against the measure. It further provides that the communication is only “susceptible” to such an interpretation when, taken as a whole, it can only be interpreted by a reasonable person as containing an appeal to vote for or against the measure because: (1) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) reasonable minds could not differ as to whether it encourages a vote for or against the measure or encourages some other kind of action on a legislative, executive or judicial matter or issue. In other words, if the communication can be reasonably read to possibly communicate a message other than to vote for or against the measure, there is no express advocacy.

Subdivisions (B) and (C) provide examples of communications that meet and do not meet the “unambiguously urges” test and subdivision (D) provides a “safe harbor,” which describes the types of communications that would definitively not contain express advocacy. For the safe harbor provision to apply, the communication must, among other things, not mention an election or take a position on the merits of a ballot measure, focus on a legislative, executive or judicial matter or issue, and either urge the candidate to take a position on the matter or urge the public to contact the candidate on the matter. (Regulation 18225(b)(2)(D)1 and 2.) If the safe harbor provision does not apply, the general test in subparagraph (A) applies. (See Regulation 18225(b)(2)(E).)

None of the communications described above contain express words advocating an electoral result as set forth in Regulation 18225(b)(2). Therefore, we must determine if any of these communications contain express advocacy, as set forth in Regulation 18225(b)(2)(A) – (E).

None of these communications meet the “safe harbor” requirements in Regulation 18225(b)(2)(D). Two of those requirements are that the communication does not mention an election or take a position on the merits of a ballot measure. Two of the communications include the language “VOTE JUNE 6” and all communications include the words “Higher Taxes. Lasting Costs,” a commentary on the merits of the ballot measure and its long-lasting impact. This would reasonably be interpreted by the reader to take a position against Measure A. Therefore, the safe harbor provision would not apply to any of the communications. Therefore, we analyze them to determine if they contain express advocacy under the general provisions of subparagraph (A).

We focus on whether these communications, *taken as a whole*, when broadcast or otherwise disseminated during the 60-day period before Measure A appears on the ballot, can be reasonably interpreted to communicate a message other than a vote for or against the measure. If they can, there is no express advocacy.

The proposed television spots both reference the election, and include the phrase “Higher Taxes. Lasting Costs.” In addition, they include statements by Seaside residents, both of whom are identified as being formerly homeless, and who indicate that paying more money through higher taxes would pose a financial burden, followed by the phrase “Think Seaside.” We believe a reasonable viewer of these communications would conclude that a tax increase would be harmful to Seaside residents, particularly lower-income working people, and that, taken as a whole, encourage the viewer to vote no on the tax increase. In addition, in all of the four above communications, only the upcoming vote on the tax increase measure A is at issue. The communications do not encourage viewers to take some other kind of action on a legislative, executive or judicial matter; they do not encourage viewers to support legislation, contact their elected representative, or take other action as certain issue advocacy communications may do.

Proposed internet Twitter/ Facebook communication #1 includes the language: “From veterans to the needy, #MeasureA will hurt Seaside’s most vulnerable” and “Measure A Hurts” followed by the words “Veterans, Seniors, Families and Kids, Young People, Homeless Adults, The Disabled.” “Higher Taxes. Lasting Costs.”

Proposed internet Twitter/ Facebook communication #2 includes the language: “#MeasureA is a tax increase that will cost Seaside residents \$1.9 million in additional taxes every year.” “The City of Seaside Sales Tax Initiative” “35,000 Residents Taxed” “\$1,900,000 Add’l Taxes. Every Year. Forever.” “Higher Taxes. Lasting Costs.” We believe a reasonable viewer of these communications would conclude that a tax increase would have a negative financial effect on Seaside residents, and that there is no other plausible alternative reading of this information other than encouraging the viewer to vote no on the tax increase.

Accordingly, we conclude the four communications you described fall within the Act’s definition of express advocacy and are subject to the Act’s campaign reporting and advertisement disclaimer requirements.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner  
General Counsel



By: Zachary W. Norton  
Senior Counsel, Legal Division

:jgl






To: Los Angeles County Office of Countywide Communications  
From: TBWB Strategies  
Subject: Invoice #1  
Date: January 23, 2016

	Total
TBWB Services per DAA; Payment 1 of 2	\$ 25,000.00
Signified Strategies: Video advertising (first 2 weeks), Facebook ads, video production and crew travel	\$ 170,000.00
FM3 Research: Issues Survey, Payment 1 of 2	\$ 30,000.00
New America Media, Ethnic Media Outreach, 1 of 2	\$ 25,000.00
<hr/> Total Due and Payable	<hr/> \$ 250,000.00

Remit To:  
TBWB Strategies  
400 Montgomery Street, 7th Floor  
San Francisco, CA 94104

APPROVED   
Joel Sappell, Acting Director

DATE 4/23/17

Good Services provided  
JS






To: Los Angeles County Office of Countywide Communications  
From: TBWB Strategies  
Subject: Invoice #2  
Date: February 1, 2016

	Total
Cable ads, Screen Strategies Media	\$ 150,000.00
Signified Strategies: Video advertising (first 2 weeks), Facebook ads, video production and crew travel	\$ 170,000.00
DPSS Handout (190,000) & Fact Sheet printing (75,000)	\$ 22,311.55
Spanish Language radio ads, Screen Strategies Media	\$ 30,000.00
Cable TV and radio ad production	\$ 10,000.00
<b>Total Due and Payable</b>	<b>\$ 382,311.55</b>

Remit To:  
TBWB Strategies  
400 Montgomery Street, 7th Floor  
San Francisco, CA 94104

Good services provided. Approved  
for payment.

  
Joel Sappell, Acting Director

2/1/17  
Date



To: Los Angeles County Office of Countywide Communications  
From: TBWB Strategies  
Subject: Invoice #3  
Date: February 16, 2017

	Total
Cable ads, Screen Strategies Media	\$ 190,000.00
Signified Strategies: additional digital ads; production	\$ 64,412.50
Additional Fact Sheet printing	\$ 1,525.32
Spanish Language radio ads, Screen Strategies Media	\$ 30,000.00
FM3 Research, Issues Survey, Payment 2 of 2	\$ 35,000.00
New America Media, Payment 2 of 2	\$ 25,000.00
<hr/>	
Total Due and Payable	\$ 345,937.82

Remit To:  
TBWB Strategies  
400 Montgomery Street, 7th Floor  
San Francisco, CA 94104

Goods / services received  
J [Signature]  
2/17/17