**BOARD OF DIRECTORS**  
**AGENDA**

Friday, April 14, 2017  
10:30 a.m. to 12 noon  
SANDAG Board Room  
401 B Street, 7th Floor  
San Diego

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MESSAGE FROM THE CLERK

In compliance with Government Code §54952.3, the Clerk hereby announces that the compensation for legislative body members attending the following simultaneous or serial meetings is: Executive Committee (EC) $100, Board of Directors (BOD) $150, and Regional Transportation Commission (RTC) $100. Compensation rates for the EC and BOD are set pursuant to the SANDAG Bylaws and the compensation rate for the RTC is set pursuant to state law.

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San Diego Association of Governments  ·  401 B Street, Suite 800, San Diego, CA 92101-4231  
(619) 699-1900  ·  Fax (619) 699-1905  ·  sandag.org
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BOARD OF DIRECTORS
Friday, April 14, 2017

ITEM NO.  RECOMMENDATION

1. PUBLIC COMMENTS/COMMUNICATIONS/MEMBER COMMENTS

Public comments under this agenda item will be limited to five public speakers. Members of the public shall have the opportunity to address the Board on any issue within the jurisdiction of SANDAG that is not on this agenda. Other public comments will be heard during the items under the heading “Reports.” Anyone desiring to speak shall reserve time by completing a “Request to Speak” form and giving it to the Clerk of the Board prior to speaking. Public speakers should notify the Clerk of the Board if they have a handout for distribution to Board members. Public speakers are limited to three minutes or less per person. Board members also may provide information and announcements under this agenda item.

REPORTS

+2. GREENHOUSE GAS EMISSIONS REDUCTION TARGET-SETTING PROCESS (Muggs Stoll)  APPROVE

The Board of Directors is asked to: (1) approve the 2035 per capita greenhouse gas (GHG) emission reduction target recommendation for the San Diego region of 18 percent; and (2) authorize the Executive Director to submit the proposed target to the California Air Resources Board pursuant to Senate Bill 375 for its use in the GHG emissions reduction target setting process.

+3. INDEPENDENT EXAMINATION OF MEASURE A REVENUE ESTIMATE COMMUNICATIONS (Vice Chair Terry Sinnott; City of San Diego Council President Myrtle Cole; Poway Mayor Steve Vaus)*  DISCUSSION/POSSIBLE ACTION

The Executive Committee will make a recommendation on a law firm to conduct an independent examination of the Measure A revenue estimate communications for discussion and possible action by the Board of Directors.

+4. LEGISLATIVE STATUS REPORT (Vice Chair Terry Sinnott; Robyn Wapner)  DISCUSSION/POSSIBLE ACTION

Staff will provide an update on Senate Bill 1 (Beall), the Road Repair and Accountability Act of 2017, and Assembly Bill 805 (Gonzalez Fletcher), which would make various changes to the organizational, governance, and voting structures of SANDAG. The Executive Committee will make a recommendation to the Board of Directors regarding this legislation.

5. CONTINUED PUBLIC COMMENTS

If the five-speaker limit for public comments was exceeded at the beginning of this agenda, other public comments will be taken at this time. Subjects of previous agenda items may not again be addressed under public comment.
6. UPCOMING MEETINGS

The next Board Business meeting is scheduled for Friday, April 28, 2017, at 9 a.m.

7. ADJOURNMENT

+ next to an agenda item indicates an attachment

* next to an agenda item indicates that the Board of Directors also is acting as the San Diego County Regional Transportation Commission for that item
The Board of Directors is asked to:
(1) approve the 2035 per capita greenhouse gas (GHG) emission reduction target recommendation for the San Diego region of 18 percent; and (2) authorize the Executive Director to submit the proposed target to the California Air Resources Board pursuant to Senate Bill 375 for its use in the GHG emissions reduction target setting process.

Introduction

The next update of the Regional Plan will include the third Sustainable Communities Strategy (SCS) subject to the provisions of Senate Bill 375 (Steinberg, 2008) (SB 375). SB 375 requires that the Regional Plan include an SCS that demonstrates how development patterns and the transportation network, policies, and programs can work together to achieve per capita greenhouse gas (GHG) emission reduction targets for cars and light trucks (SB 375 targets) for the years 2020 and 2035 from a 2005 baseline as established by the California Air Resources Board (ARB).

Pursuant to SB 375, ARB is required to update the SB 375 targets by 2018. Before updating these targets, ARB is required to exchange technical information with SANDAG and other Metropolitan Planning Organizations (MPOs) as well as other agencies, and engage in a consultative process with public and private stakeholders. Toward that end, ARB has requested that SANDAG and other MPOs provide recommendations for the updated 2035 targets, along with technical analysis and documentation to support the recommendations. ARB will consider this information in establishing the updated SANDAG target, which will apply to the next update of the SANDAG Regional Plan, anticipated for adoption in 2019.

At the March 23, 2017, ARB Board meeting, ARB staff presented an informational update on the SB 375 Target Update process. Executive Directors of the four largest MPOs from the Sacramento Area Council of Governments (SACOG), Bay Area Metropolitan Transportation Commission (MTC), Southern California Association of Governments (SCAG), and SANDAG made a joint presentation at this meeting and summarized findings from the technical analyses presented to their respective boards.
Discussion

Existing SB 375 Targets for the San Diego Region

Established by ARB in 2010, the existing SB 375 targets for the San Diego region are to reduce GHG emissions from cars and light trucks by 7 percent, per capita, by 2020, and by 13 percent, per capita, by 2035, compared with a 2005 baseline. Table 1 shows that the Regional Plan adopted in 2015 would exceed the San Diego region’s SB 375 targets for 2020 and 2035.1

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<th>2020</th>
<th>2035</th>
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<tr>
<td>Existing SB 375 Targets</td>
<td>7 percent</td>
<td>13 percent</td>
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<tr>
<td>San Diego Forward: The Regional Plan GHG Reductions (2015)</td>
<td>15 percent</td>
<td>21 percent</td>
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Note: Average weekday per capita carbon dioxide reductions for cars and light trucks from 2005.

Figure 1 identifies the contributions made by specific components of the Regional Plan’s SCS toward SB 375 per capita GHG reductions from passenger vehicles in 2050. The chart shows that about half of the reductions are due to the Regional Plan’s investments in transportation capital projects, operations improvements, and Transportation Demand Management (TDM) measures that support teleworking (i.e., working from home or telecommuting). About one quarter of the reductions are due to changing land use and population characteristics, and another quarter are due to increases in auto operating costs.

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1 While the SB 375 analysis focuses on per capita GHG reductions from passenger vehicles, an analysis of total GHG emissions was included in the Regional Plan Environmental Impact Report (EIR) (Section 4.8). The EIR analysis showed that total GHG emissions in 2050 are projected to be 26 Million Metric Tons CO2e (Carbon Dioxide Equivalent), or 25.9 percent lower than GHG emissions in 2012 (Table 4.8-8).
Findings of Technical Stress Tests

On March 10, 2017, staff presented the Board of Directors with results of the technical “stress tests” that were conducted to inform the target update process (Attachment 1). The purpose of the stress tests was to evaluate the potential effectiveness of various transportation and land use strategies, pricing, technology innovations, and other variables that would help the state achieve its GHG reduction goals.
The findings of this analysis indicate that the 2015 Regional Plan GHG reductions, shown in Table 1, represent an ambitious performance. The 2015 Regional Plan reflects the land use transformation that has taken place in the past 15 years due to updates of local jurisdiction land use plans, robust transit investments, the Regional Bike Plan Early Action Program mobility hubs, and transportation demand and system management strategies.²

In the 2019 update of the Regional Plan, future revenue assumptions may differ from the 2015 Regional Plan. They will depend in part on whether the next Regional Plan assumes a new local transportation funding source, and on future state funding initiatives, such as transportation bond measures and mileage-based user fees.

In addition to challenges represented by funding constraints, there are new challenges that the region will face during the update of the Regional Plan. New targets must account for progress that the state is making in other climate programs, such as zero-emission vehicle market penetration and increases in overall fleet efficiency from the Advanced Clean Cars (ACC) program. As shared with the Board of Directors in March, the ACC program has some unintended consequences; that is, by increasing passenger vehicle fuel efficiency, the cost of driving is decreasing, which leads to projections that people will drive more and GHG will increase. This is known as the Vehicle Miles Traveled “rebound effect” and has the impact of limiting the ability of agencies like SANDAG to reduce GHG emissions from passenger vehicles through regional transportation and land use planning.

The technical stress tests presented at the March 10, 2017, SANDAG Board meeting evaluated strategies that are aspirational and fiscally unconstrained, and may not be feasible under existing circumstances. The findings of the stress tests indicate that only limited additional GHG reductions are achieved from aggressive land use changes and transit investment assumptions. Additionally, the stress tests showed that the best options to further reduce passenger vehicle GHG emissions are to increase the cost of driving and increase the amount of zero-emission miles that are driven on the region’s roadways—two factors that are outside the direct control of SANDAG and outside the framework of what MPOs can take credit for under SB 375.

Based on these factors, and through coordination with the other large MPOs (described further below), SANDAG staff believes an 18 percent per capita GHG reduction in 2035 is ambitious and achievable in the 2019 update to the Regional Plan. Figure 2 illustrates the current targets that were set by ARB in 2010 and a recommended target of an 18 percent reduction for 2035. This would represent an increase of 5 percentage points over the current target (13 percent).

² SANDAG regularly collaborates with ARB on the review of its modeling assumptions, and SANDAG makes its transportation model source code available online (https://github.com/SANDAG/ABM). Additionally, MPOs across the state have collaborated to standardize the core assumptions used in the travel models (e.g., auto operating costs) and SANDAG uses those standardized assumptions.
**MPO Coordination on Target Recommendations**

The four largest MPOs in the state (SACOG, MTC, SCAG, and SANDAG) along with the California Association of Councils of Governments (CALCOG) have been collaborating in the target setting process using a consistent technical methodology. Each of the MPOs are anticipated to request approval from their respective boards in April for an 18 percent 2035 GHG reduction target. Therefore, it is possible that the recommendations from the four major MPOs could align and result in a uniform target being recommended to ARB.
Next Steps

SANDAG will continue to participate in the SB 375 GHG target setting process with ARB, other MPOs, and CALCOG to advocate for targets that are both ambitious and achievable. The following schedule outlines the anticipated steps toward approval of the final targets by the ARB Board.

<table>
<thead>
<tr>
<th>Activity</th>
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<tr>
<td>SANDAG submits target recommendation and target-setting analysis to ARB</td>
<td>April 2017</td>
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<tr>
<td>ARB releases draft target setting staff report</td>
<td>Late Spring/early Summer 2017</td>
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<tr>
<td>ARB workshop</td>
<td>Summer 2017</td>
</tr>
<tr>
<td>SANDAG provides comments on draft targets (as needed)</td>
<td>Summer 2017</td>
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<tr>
<td>ARB releases final staff report and ARB Board adopts targets</td>
<td>Fall 2017</td>
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GARY L. GALLEGOS
Executive Director

Attachment: 1. March 10, 2017, Board of Directors Agenda Item No. 17-03-2

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Elisa Arias, (619) 699-1936, elisa.arias@sandag.org
GREENHOUSE GAS REDUCTION TARGET SETTING PROCESS

Introduction

SANDAG will initiate the update of San Diego Forward: The Regional Plan (Regional Plan) in 2017. This Regional Plan will include the third Sustainable Communities Strategy (SCS) subject to the provisions of Senate Bill 375 (Steinberg, 2008) (SB 375). SB 375 requires that the Regional Plan include an SCS that demonstrates how development patterns and the transportation network, policies, and programs can work together to achieve per capita greenhouse gas (GHG) emission reduction targets for cars and light trucks (SB 375 targets) for the years 2020 and 2035 from a 2005 baseline as established by the California Air Resources Board (ARB). The Board of Directors has adopted two Regional Plans (in 2011 and 2015) since ARB first established SB 375 targets for the San Diego region in 2010. Both Regional Plans have demonstrated that SANDAG would meet or exceed its SB 375 targets for 2020 and 2035.

Pursuant to SB 375, ARB is required to update the SB 375 targets by 2018. Before updating these targets, ARB is required to exchange technical information with SANDAG and other Metropolitan Planning Organizations (MPOs) as well as other agencies, and engage in a consultative process with public and private stakeholders. Toward that end, ARB has requested that SANDAG and other MPOs provide recommendations for the updated targets, along with technical analysis and documentation to support the recommendations. Once established, the updated targets will apply to the next update of the SANDAG Regional Plan, which is due in 2019. Because the updated targets also will apply to California MPOs with SCS’s due after 2020, ARB is not expected to update the 2020 targets and instead will focus its efforts on the 2035 target setting.

This report discusses the scenario framework developed by ARB to update the targets, share the technical information and results, and provide information for future action by the Board of Directors on target recommendations to ARB.

Discussion

Statewide Planning for Greenhouse Gas Reductions

The SB 375 GHG reduction targets for cars and light trucks is one of several programs that California has put in place to reduce GHG emissions from various sources throughout the state. The overall framework for reducing GHG emissions in California is established in the Climate Change Scoping Plan (Scoping Plan) prepared by ARB. As required by Assembly Bill 32 (Nunez, 2006) (AB 32), the Scoping Plan (first adopted in 2008 and updated in 2014) shows the various programs the state has put in place to achieve the AB 32 goal of returning statewide GHG emissions to 1990 levels by 2020.
With the adoption of a statewide goal for 2030 included as part of Senate Bill 32 (Pavley, 2016) (SB 32), ARB now is working on a new Scoping Plan Update to show how California will achieve a 40 percent GHG reduction to 1990 levels by 2030. ARB published a draft of its 2017 Climate Change Scoping Plan Update (Draft Scoping Plan) on January 20, 2017, and is expected to consider adoption of a final Scoping Plan at its June 2017 meeting. Separately, while a 2005 Governor’s Executive Order (S-3-05) calls for an 80 percent statewide GHG reduction from 1990 levels by 2050, the State Legislature has not adopted a 2050 statewide goal.

The Draft Scoping Plan’s Proposed Scenario includes the following major elements by 2030:

- 50 percent of electricity from renewable sources
- Doubling of energy efficiency savings
- Cleaner transportation fuels
- More than 4 million zero-emission vehicles
- More than 100,000 zero-emission trucks
- Continuation of the cap-and-trade program¹ with declining caps
- 20 percent reduction in GHG emissions from the refinery sector
- “Increased stringency” of SB 375 targets for 2035

The Role of SB 375 Targets in Statewide Planning for GHG Reductions

The Draft Scoping Plan does not quantify how much SB 375 targets might be increased, or quantify the contribution of GHG reductions from the SB 375 targets to the statewide 2030 goal.² However, it does state that “most of the GHG reductions from the transportation sector in this (draft) Plan will come from technologies and low carbon fuels,” and adds that, “a reduction in the growth of VMT (vehicle miles traveled) is also needed” to achieve the statewide 2030 goal. The Draft Scoping Plan further explains ARB’s position that, “(s)tronger SB 375 GHG reduction targets will enable the state to make significant progress toward this goal” of reducing the growth in VMT, but the SB 375 targets “alone will not provide all of the VMT growth reductions that will be needed.” The Draft Scoping Plan also acknowledges that, “(t)here is a gap between what SB 375 can provide and what is needed to meet the state’s 2030 and 2050 goals.” Furthermore, ARB recognizes that the burden for reducing VMT growth does not fall solely on MPOs like SANDAG, acknowledging that the state government also needs to take action “in parallel to SB 375” if the state’s GHG goals are to be achieved.

Existing SB 375 Targets for the San Diego Region

Established by ARB in 2010, the existing SB 375 targets for the San Diego region are to reduce GHG emissions from cars and light trucks by 7 percent, per capita, by 2020, and by 13 percent, per capita, by 2035, compared with a 2005 baseline. Table 1 shows that the two Regional Plans (the 2050 Regional Transportation Plan [RTP]/SCS in 2011 and San Diego Forward: The Regional Plan in 2015) adopted since ARB first established SB 375 targets would meet or exceed the San Diego region’s SB 375 targets for 2020 and 2035.

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¹ According to ARB, “The Cap-and-Trade Program is a key element of California’s climate plan. It sets a statewide limit on sources responsible for 85 percent of California’s greenhouse gas emissions, and establishes a price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy.”

² The currently adopted Scoping Plan (2014) shows that statewide implementation of SB 375 (not just SANDAG, but all California regions) provides just under four percent of the GHG reductions needed to meet the statewide 2020 goal. [https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf](https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf)
There are several reasons for the difference between the 2011 and 2015 Regional Plan’s GHG emissions in terms of meeting the 2035 targets. These include a reduction in low-density development in the rural unincorporated areas of the county, more compact land use pattern in the 2015 Regional Plan, advancement of transit investments, changes in auto operating cost assumptions, reductions in projected household income, and new information from the most recent travel studies about short walking and bike trips.

| Table 1: SB 375 Greenhouse Gas Reduction Targets and Regional Plan Greenhouse Gas Emissions Reductions Results |
|-------------------------------------------------|---------------|---------------|
| **2020**                                        | **2035**      |
| Existing SB 375 Targets                         | 7 percent     | 13 percent    |
| Our Region, Our Future 2050 RTP/SCS (2011)      | 14 percent    | 13 percent    |
| San Diego Forward: The Regional Plan GHG Reductions (2015) | 15 percent | 21 percent |

Note: Average weekday per capita carbon dioxide reductions for cars and light trucks from 2005.

**Technical Work to Inform the Target Setting Update**

As part of the collaborative process for updating the targets set forth in SB 375, SANDAG, other MPOs, and the California Association of Councils of Governments (CALCOG) have been working with ARB staff to conduct technical “stress tests” to inform the target setting update process. MPOs developed individual stress tests that all evaluated the potential effectiveness of various transportation and land use strategies, pricing, technology innovations, and other social and economic variables in helping the state meet its GHG reduction goals. These stress test scenarios include the Regional Plan adopted in 2015, along with six alternative scenarios consisting of strategies that are aspirational and fiscally unconstrained (e.g., they are not based on available funding), and may not be feasible under existing circumstances. Some scenario elements previously were studied in the Environmental Impact Report (EIR) for the 2015 Regional Plan.

The findings of the stress tests indicate that only limited additional GHG reductions are achieved from aggressive land use changes and transit investment assumptions. Additionally, the stress tests clearly show that the best options to further reduce passenger vehicle GHG emissions are to increase the cost of driving and increase the amount of zero emission miles that are driven on the region’s roadways — two factors that are outside the direct control of SANDAG and outside the framework of what MPOs can take credit for under SB 375. The effectiveness of these policies is confirmed by ARB’s own Scoping Plan.
**Stress Test Scenarios**

Strategies evaluated in the stress tests include (a) drastic changes in local land use patterns; (b) accelerated completion of transit capital projects and more frequent services; (c) a VMT user fee; (d) aggressive implementation of technology solutions (e.g., electric vehicles, autonomous vehicles); and (e) changes to other factors outside the control of SANDAG and other MPOs (e.g., increasing the cost of driving). Each of the stress test scenarios evaluated by SANDAG as part of this process is shown below and the descriptions and results are described in more detail in Attachment 1.

1. Revenue Constrained Regional Plan SCS (San Diego Forward)
2. San Diego Forward + Multiple Dense Cores Land Use
3. San Diego Forward EIR Alternative 2 (Advancing Transit)
4. San Diego Forward EIR Alternative 2 + Multiple Dense Cores
5. San Diego Forward 2035 Revenue Constrained SCS + 18-cent VMT User Fee
6. San Diego Forward EIR Alternative 2 + Multiple Dense Cores + 15-cent VMT User Fee
7. San Diego Forward Revenue Constrained SCS + additional 25 percent penetration of non-carbon VMT beyond Advanced Clean Cars\(^3\) standard

**Focus on Revenue Constrained Planning**

While SANDAG evaluated the seven scenarios as part of the stress tests, it is important to focus on Scenario 1, which reflects the adopted land use plans and revenue constraints of the 2015 Regional Plan. A focus on Scenario 1 is necessary (rather than on the aspirational or implausible nature of the other scenarios), because Regional Plans are required to include a financial element that is fiscally constrained. Setting higher targets not grounded in fiscal constraint and achievability will not automatically yield greater performance and may undermine the ability of the region to focus on the mandated revenue constrained planning required by federal law.

Complicating matters further, new targets set by ARB also must account for progress that the state is making in other climate programs, such as zero-emission vehicle market penetration and increases in overall fleet efficiency from the Advanced Clean Cars (ACC) program. The ACC program has some unintended consequences; that is, by increasing passenger vehicle fuel efficiency, the cost of driving is decreasing, which leads to projections that people will drive more and GHG will increase.\(^4\) This is known as the VMT “rebound effect” and has the impact of limiting the ability of agencies like SANDAG to reduce GHG emissions from passenger vehicles through regional transportation and land use planning. As a result, the focus on developing targets that are grounded in available

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\(^3\) The Advanced Clean Cars (ACC) Program is part of California’s requirements to reduce the state’s impact on climate change and improve ambient air quality. The components of the ACC program are the Low-Emission Vehicle regulations that reduce criteria pollutants and GHG emissions from light- and medium-duty vehicles, and the Zero-Emission Vehicle (ZEV) regulations, which require manufacturers to produce an increasing number of pure ZEVs (meaning battery electric and fuel cell electric vehicles), with additional provisions to produce plug-in hybrid electric vehicles in the 2018 through 2025 model years.

\(^4\) As a simple example, if gas costs $3 per gallon and you own a car that gets 20 miles to the gallon, your cost per mile to drive is $0.15 / mile. However, if you have a car that is twice as efficient and get 40 miles to the gallon, your cost of driving is cut in half to $0.075 / mile. SANDAG modeling and independent academic studies all conclude that reducing the cost of driving leads to more driving. This is the “rebound effect” of the ACC; SANDAG expects the impact of the ACC could lead to a 1 percent increase in regional VMT, albeit with much cleaner vehicles.
funding and other real-world constraints (i.e., ambitious and achievable) takes on greater importance.

**Scenario 1 Analysis**

Since the Board of Directors adopted the Regional Plan in 2015, SANDAG has updated its transportation model data and procedures. These model updates combined with changing revenue and income projections and the VMT rebound effect could lower GHG reduction results by as much as 3 percent in 2035. The next update of the Regional Plan will include an updated growth forecast based on changes to local land use plans and other updated economic and demographic assumptions. Furthermore, future revenue assumptions may differ from the 2015 Regional Plan and will depend in part on whether the next Regional Plan assumes voter approval of a new local transportation funding measure. Based on the analysis of all of these factors, SANDAG staff believes a reasonable range between 18 percent and 21 percent reduction in 2035 is achievable in the update to the Regional Plan.

**Additional Stress Test Results**

The results of the other six stress tests (Scenarios 2 through 7) help to provide some data around the evaluation of select variables that are outside the direct control of SANDAG and the other MPOs. Scenarios 2 through 4 focus on achieving passenger vehicle GHG reductions through major changes to local jurisdiction land use plans. Local land use plans have been updated over the past 14 years to concentrate growth within the urbanized areas of the region and closer to existing and planned transportation infrastructure. The planned land use changes between the late 1990s and 2015 resulted in an estimated per capita GHG reduction of between 25 and 30 percent. As shown by the stress tests, additional land use concentration within the San Diego region would do little to achieve additional passenger vehicle GHG reductions since so much progress already has been made. The stress test assumption that focuses forecasted housing and employment growth into four existing urban cores around high-quality transit stops (Multiple Dense Cores) (see map in Attachment 1) reveals an additional 2 percent passenger vehicle GHG reduction relative to Scenario 1.

The results of Scenarios 5 and 6 focus on the addition of pricing strategies in the form of a “Vehicle Miles Traveled user fee.” For purposes of the stress test, a per-mile fee of 15 to 18 cents is charged for every mile driven. This would effectively add $150 to $180 to the cost of every 1,000 miles driven. The VMT user fee is being explored actively by the State of California through a pilot study, but such a fee structure currently is not allowed at the regional or municipal level. It would require either state implementation or changes to existing state law to allow for such a regional VMT fee to be collected. The VMT fee analysis revealed that a six to seven percent reduction could be achieved over Scenario 1 from these pricing assumptions.

Finally, the evaluation of additional penetration of zero-emissions travel beyond ARB’s aggressive ACC standard was the focus of the Scenario 7 analysis. This scenario revealed that an additional 20 percent GHG reduction could be achieved over Scenario 1 by assuming that an additional 25 percent of miles traveled are on zero-emission vehicles beyond what ARB is assuming in the ACC standard. This much larger reduction points to ARB’s own conclusion that most of the GHG reductions from the transportation sector (as stated in the draft Scoping Plan) will come from technologies and low carbon fuels. As stated previously, ARB acknowledges that the state
government needs to take action “in parallel to SB 375” if the state’s GHG goals are to be achieved, and there are other factors not controlled by regional agencies that go well beyond the SB 375 targets and contribute far more to the achievement of the GHG goals.

**Regional Targets or Uniform Targets**

Rather than setting unique targets for each region, as was done in 2010, ARB has the option of setting a single statewide uniform target. ARB could set a uniform target for the four largest MPOs in the state (Sacramento Area Council of Governments, Bay Area Metropolitan Transportation Commission, Southern California Association of Governments, and SANDAG). SANDAG is working actively with those MPOs on the development of a single and uniform target.

**Next Steps**

Over the next several weeks SANDAG staff will continue to participate in the SB 375 GHG target setting process with ARB, other MPOs, and CALCOG. Additionally, ARB has scheduled three workshops on the target updates between March 7 and March 14, 2017. Staff will provide an update on the target setting process and expects to propose a recommended 2035 per capita GHG reduction target for Board action in the March/April timeframe. It is anticipated that the recommended target pursuant to SB 375 would be submitted to ARB for use in its target setting process in April 2017.

GARY L. GALLEGOS  
Executive Director

Attachment: 1. Stress Test Scenario Summaries

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Elisa Arias, (619) 699-1936, elisa.arias@sandag.org
Stress Test Scenario Summaries

The following are descriptions of each stress test scenario, and a summary of results is included as Table 1.

**Scenario 1: Revenue Constrained Regional Plan Sustainable Communities Strategy (“San Diego Forward”)**

This scenario is consistent with the phased transportation investments and revenue constrained financial estimates of San Diego Forward: The Regional Plan (Regional Plan) and land uses consistent with local General Plans.

**Scenario 2: San Diego Forward + Multiple Dense Cores Land Use**

The Multiple Dense Cores (MDC) scenario focuses all forecasted housing and employment growth into four existing urban cores around high-quality transit fixed-route stops. In this alternative, approximately 70 percent of the future housing growth is located within the Dense Cores, with the remaining 30 percent being mostly located in the surrounding Transit Priority Areas. Under this scenario, land development is prohibited in the remainder of the region. The Multiple Dense Cores land use assumption differs greatly from adopted local general plans. A map showing the Multiple Dense Cores is included as Figure 1.

**Scenario 3: San Diego Forward Environmental Impact Report Alternative 2 (Advancing Transit)**

Environmental Impact Report (EIR) Alternative 2 includes the following transportation investments:

- Complete all public transit capital projects and public transit operations improvements in the adopted plan by 2025 (the plan horizon year is 2050)
- Complete managed lanes (MLs) and ML connectors in the proposed Plan that support Rapid routes by 2025
- Implement ten-minute all-day frequencies for Urban Core local bus routes by 2025
- Complete all active transportation projects in the adopted plan by 2025

Significant new funding would be required to implement and operate the accelerated capital program of EIR Alternative 2, which is estimated at approximately $34 billion by 2025. This would require approximately $30 billion in new capital funds within a ten-year period. The cost to operate the transit facilities would expand from approximately $350 million annually in FY 2015, to nearly $1.1 billion annually in FY 2025. Total operating costs over the 35-year period (by 2050) would be nearly $49 billion.

**Scenario 4: San Diego Forward EIR Alternative 2 + Multiple Dense Cores**

This scenario represents the combination of the EIR Alternative 2 along with the Multiple Dense Cores land use from Scenarios 2 and 3. A map showing the Multiple Dense Cores is included as Figure 1.

**Scenario 5: San Diego Forward 2035 Revenue Constrained Sustainable Communities Strategy + 18-cent Vehicle-Miles-Traveled User Fee**

Scenario 5 includes the Regional Plan assumptions along with an 18-cent Vehicle-Miles-Traveled (VMT) fee. For this scenario, SANDAG analyzed how different VMT user fees could—in combination with the adopted Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS)—potentially achieve VMT reductions comparable to those assumed in the California Air Resources Board (ARB) Draft Scoping Plan (i.e., a 7.5 percent reduction in total light-duty VMT in 2035, relative
to 2035 levels under adopted RTP/SCS’s). The VMT fees used in this scenario increase auto operating costs by 67 percent beyond the baseline cost agreed to by the four large Metropolitan Planning Organizations (MPOs) for Round 2 SCS development.

**Scenario 6: San Diego Forward EIR Alternative 2 + Multiple Dense Cores + 15-cent VMT User Fee**

This scenario combines Scenario 4 with a 15-cent VMT fee. A map showing the Multiple Dense Cores is included as Figure 1. For this scenario, SANDAG analyzed how different VMT user fees could—in combination with aggressive land use and transportation investment assumptions described above—potentially achieve VMT reductions comparable to those assumed in the ARB Draft Scoping Plan (i.e., a 7.5 percent reduction in total light-duty VMT in 2035, relative to 2035 levels under adopted RTP/SCS’s). The VMT fees used in this scenario increase auto operating costs by 56 percent beyond the baseline cost agreed to by the four large MPOs for Round 2 SCS development.

**Scenario 7: San Diego Forward Revenue Constrained SCS + additional 25 percent penetration of non-carbon VMT beyond Advanced Clean Car standard**

This scenario combines the Regional Plan with an additional 25 percent penetration of non-carbon emitting VMT beyond the current Advanced Clean Car (ACC) standard set by ARB.

<table>
<thead>
<tr>
<th>Table 1: SB 375 GHG Stress Test Scenario Results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scenario</strong></td>
</tr>
<tr>
<td>1. Revenue Constrained Regional Plan SCS</td>
</tr>
<tr>
<td>2. San Diego Forward + Multiple Dense Cores Land Use</td>
</tr>
<tr>
<td>3. San Diego Forward EIR Alternative 2 (Advancing Transit)</td>
</tr>
<tr>
<td>4. San Diego Forward EIR Alternative 2 + Multiple Dense Cores</td>
</tr>
<tr>
<td>5. San Diego Forward 2035 Revenue Constrained SCS + 18-cent VMT User Fee</td>
</tr>
<tr>
<td>6. San Diego Forward EIR Alternative 2 + Multiple Dense Cores + 15-cent VMT User Fee</td>
</tr>
<tr>
<td>7. San Diego Forward Revenue Constrained SCS + additional 25 percent penetration of non-carbon VMT beyond ACC2 standard</td>
</tr>
</tbody>
</table>

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1 EIR Alternative 2 has minimal impacts in 2035 because the scenario is similar to the base SCS scenario. Alternative 2 accelerates deployment of transit to 2025 that would have occurred later in the plan.

2 The ACC Program is part of California’s requirements to reduce the State’s impact on climate change and improve ambient air quality. The components of the ACC program are the Low-Emission Vehicle regulations that reduce criteria pollutants and GHG emissions from light- and medium-duty vehicles, and the Zero-Emission Vehicle (ZEV) regulation, which requires manufacturers to produce an increasing number of pure ZEVs (meaning battery electric and fuel cell electric vehicles), with additional provisions to produce plug-in hybrid electric vehicles in the 2018 through 2025 model years.
Figure 1: Multiple Dense Cores
INDEPENDENT EXAMINATION OF MEASURE A
REVENUE ESTIMATE COMMUNICATIONS

Introduction

On February 24, 2017, the Board of Directors discussed approaches to selecting an independent investigator and requested that the Executive Committee bring back a recommendation on a party or parties for the Board’s consideration. On March 10, 2017, the Executive Committee discussed various individuals and types of organizations that could be selected and voted to form an ad hoc subcommittee to solicit and evaluate proposals from law firms with investigative expertise to conduct an independent examination of the agency’s Measure A revenue estimate communications. The subcommittee is scheduled to present their recommendation to the Executive Committee on which law firm to hire for the independent examination on April 14, 2017. The Board of Directors will then receive an update at its meeting on April 14, 2017.

Discussion

On March 14, 2017, the subcommittee, consisting of Vice Chair Terry Sinnott, City of San Diego Council President Myrtle Cole, and Poway Mayor Steve Vaus released a Request for Proposals to solicit services from qualified law firms with documented experience and expertise to perform an independent examination to ascertain the facts of who knew what and when leading up to the vote on Measure A. A press release was also sent out announcing the request for proposals.

Specifically, the scope of work requests the outside law firm to perform an independent examination of the files, documents, emails, and all other communications related to the error in the forecasting model and determine which individuals knew that the revenue estimate was overstated, when those individuals gained that knowledge, who that information was shared with, and if it was not shared with decision makers, why.

As required by SANDAG Board Policy No. 016: Procurement of Services, an independent cost estimate was prepared resulting in an estimated expenditure of $100,000 over a three-month period, with an option to extend the contract for an additional six months. Factors that were considered in developing the estimate included historical use of private law firm services, the expected level of effort, and terms of the agreement.
Seven proposals were received and are included as Attachment 2. Summaries of overall evaluation results are included as Attachment 1. The Executive Committee recommends a contract award to the highest ranked proposal, Hueston Hennigan LLP in an amount not to exceed $125,000. The difference of $25,000 between the independent cost estimate and the contract award can be attributed to efforts related to interviews and developing the final report that the law firm proposed as necessary in order to conduct a thorough review.

**Next Steps**

If the Executive Committee recommendation is approved, it also is recommended that the Board of Directors authorize the Vice Chair to execute a contract award with the approved law firm.

TERRY SINNOTT  
Vice Chair, SANDAG Board of Directors

Attachments:  
1. Summary of Overall Evaluation Results  
2. Proposals in Order of Ranking

Key Staff Contact: Laura Coté, (619) 699-6947, laura.cote@sandag.org
SUMMARY OF OVERALL EVALUATION RESULTS

Proposals were evaluated by the subcommittee based on the criteria and the assigned weights listed below.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Point Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Qualifications and Experience</td>
<td>25</td>
</tr>
<tr>
<td>Relevant experience, qualifications, and credentials of the firm and firm’s personnel related to the types of services described in the Scope of Work</td>
<td></td>
</tr>
<tr>
<td>2. References</td>
<td>20</td>
</tr>
<tr>
<td>Feedback on performance from current or previous clients, relevance of experience, and responsiveness of references provided</td>
<td></td>
</tr>
<tr>
<td>3. Technical Approach</td>
<td>20</td>
</tr>
<tr>
<td>Approach to providing the services and deliverables described in the Scope of Work, and the ability to meet the schedule provided in the RFP</td>
<td></td>
</tr>
<tr>
<td>4. Price</td>
<td>10</td>
</tr>
<tr>
<td>Proposal price submitted</td>
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</tr>
<tr>
<td>5. Sample Contract</td>
<td>15</td>
</tr>
<tr>
<td>Reasonableness of proposed terms and conditions</td>
<td></td>
</tr>
<tr>
<td>6. Proposal</td>
<td>10</td>
</tr>
<tr>
<td>Overall clarity, thoroughness, and quality of proposal materials</td>
<td></td>
</tr>
<tr>
<td>Total Points</td>
<td>100</td>
</tr>
</tbody>
</table>

Following are the subcommittees’ rankings of the firms based on the evaluation of the proposals received:

1. Hueston Hennigan LLP
2. Dinsmore & Shohl LLP
3. Lounsbery Ferguson Altona & Peak LLP
4. Higgs Fletcher & Mack LLP
5. McNamara Benjamin LLP
6. The Rose Group
7. Kilpatrick Townsend LLP
March 24, 2017

VIA E-MAIL

Ramona Edwards
Senior Contracts and Procurement Analyst
SANDAG
401 B Street, Suite 800
San Diego, CA 92101

Dear Ms. Edwards:

Section 1: Executive Summary

SOLICITATION TITLE: INDEPENDENT EXAMINATION OF MEASURE A COMMUNICATIONS

On behalf of Hueston Hennigan LLP, I am pleased to submit this proposal to provide independent examination services for the San Diego Association of Governments (SANDAG). Hueston Hennigan LLP is uniquely suited for this particular investigation because (1) our firm has nationally-recognized expertise in conducting the nation's most sensitive investigations, (2) our attorneys have a long history of both prosecuting and defending allegations of public corruption, (3) we have successfully conducted many investigations for local and county governments that have resulted in public reports and presentations, and (4) we have particular expertise in actuarial forecasting, which underlies the allegations of omissions and possible cover up.

As a former public servant, I am keenly aware of the importance of expeditiously addressing cases and issues that directly and broadly affect the public. Since concluding my work as a lead investigator and trial lawyer on the Enron Task Force, I have sought public interest/public impact work at discounted rates as part of my effort to continue to serve my community. Because almost all such work is extremely time-sensitive, I seek to focus effort and resources to meet project goals within an expedited time frame. In this instance, I believe all work on this matter can and should be concluded within a three-month period.

Our proposed team will include three partners with more than 50 years of combined investigation experience. As set forth in our detailed proposal, we will apply our "best practices" approach to the investigation, which will include multiple levels of document review, two lead investigators involved on every interview, and a published report designed not only to reflect the work defined in the proposal, but also to anticipate public questions and concerns.
For representations of public entities, our firm charges steeply discounted rates. Employing a blended, discounted rate approach that we have used for the County of San Bernardino, the City of Santa Monica, the Navajo Nation, the University of California and other government entities, we are prepared to offer a blended discounted rate of $545 per hour for all attorneys working on the matter. This rate is less than half of my standard, undiscounted rate. We anticipate completion of the project within the estimated budget provided by SANDAG.

Sincerely,

[Signature]

John Hueston, Partner
Hueston Hennigan LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Email: jhueston@hueston.com
Direct: (949) 226-6740
Fax: (888) 775-0898

***
Section 2: Qualifications and Experience

A. Pertinent Background: Hueston Hennigan LLP

Hueston Hennigan LLP has been recognized as one of the top 10 litigation boutiques in the United States. Our attorneys are lauded for their investigations skills, and our deep experience in complex litigation issues includes actuarial forecasting and expertise directly applicable to SANDAG’s proposed investigation.

Hueston Hennigan’s White Collar Defense and Investigations attorneys are among the nation’s foremost, and Hueston Hennigan is ranked by U.S. News & World Report/Best Lawyers as a Tier 1 Metropolitan White Collar firm. Chambers & Partners recognized Co-Chairs Brian Hennigan and John Hueston as “Leaders in their field” for white collar defense and investigations in 2016, and The Recorder awarded Hueston Hennigan “Best White Collar Department” in California for 2016. Also, this same department won recognition as one of the three best white collar and investigations departments in the United States two years ago.

Our attorneys represent clients facing government investigations and criminal and civil enforcement actions in state and federal courts, and before regulatory agencies, across the United States. Drawing on our reputations as creative problem solvers, our attorneys handle virtually every type of investigation and white collar case. We also have extensive experience conducting internal investigations and formulating corporate compliance programs.

We propose Mr. Hueston as the Lead Investigator. Mr. Hueston brings over 25 years of experience in investigating and remediating municipal and local government issues as well as broad experience in diagnosing and remedying governance problems for a range of public entities and Fortune 500 companies. As a Division Chief and Assistant U.S. Attorney in Los Angeles and Orange counties, Mr. Hueston led a series of successful investigations of municipal corruption in Santa Ana, Anaheim, Carson, Long Beach, Gardena and several other cities. In each instance, his investigation uncovered breakdowns in good governance practices. In several cases, he provided analysis and recommendations for new guidelines and the adoption of best practices. Mr. Hueston served as the Public Corruption Coordinator for the U.S. Attorney’s Office for the Central District of California, a leadership position over corruption cases in seven counties and over 19 million citizens that comprise the Central District.

In 2003, the Enron Task Force conducted a national search for lawyers to help lead the investigation into potential criminal conduct by former Enron CEOs Jeff Skilling and Kenneth Lay. The Los Angeles U.S. Attorney’s office nominated Mr. Hueston to serve as a lead trial lawyer. For the next three years, Mr. Hueston investigated one of the most complex financial frauds ever attempted. His service culminated with a lead role in the successful, four-month trial of Skilling and Lay. After the trial, Mr. Hueston was invited to national conferences and to boardrooms to speak about corporate “best practices” and how to conduct an effective internal investigation.

Since 2006, Mr. Hueston has devoted a substantial part of his private practice to internal investigations and counseling for best governance practices. For example, in 2009 he served as Independent Counsel for the County of San Bernardino in order to investigate whether the County Assessor should be removed from office. He conducted a thorough investigation of county
employees and third-party witnesses. Through the investigation, Mr. Hueston was quickly able to establish that the Assessor should be removed from office. The Board of Supervisors then authorized an expansion of his investigation. At the conclusion of his work, Mr. Hueston presented a 33-page, published report, which detailed broad misconduct by several elected officials and municipal contractors. Mr. Hueston’s findings served as the basis for criminal prosecutions subsequently pursued by the District Attorney. This report is attached as Exhibit 1 to the Proposal.

Mr. Hueston has also been asked to conduct investigations for county and local governments, law enforcement agencies, state universities (including UCLA and UC Irvine), and a broad array of private and publicly traded companies. In each instance, Mr. Hueston was asked to evaluate allegations of impropriety and assess existing controls and practices. Each investigation concluded with written recommendations for improving compliance protocols and instituting a variety of applicable best practices.

Most recently, the City of Santa Monica selected Hueston Hennigan LLP last year in an RFP process that considered more than 10 law firms. Mr. Hueston was charged with investigation of allegations of a retaliatory firing and an analysis of whether and to what degree the City of Santa Monica should improve its governance practices. Mr. Hueston completed the investigation under budget and on time. Mr. Hueston presented the report to the Council and public. The published report and recommendations for changes in governance was adopted by the City Council. A copy of the report is attached as Exhibit 2 to the Proposal.

B. Proposed Lead Team Members

Mr. Hueston will serve as Lead Investigator. As Lead Investigator, Mr. Hueston will develop the interview list, conduct interviews, review key documents, edit and finalize the report as well as make any required public reports and presentations. Mr. Hueston is a former lead prosecutor for the Enron trial of Kenneth Lay and Jeffrey Skilling. He has been repeatedly recognized as a leading “Band 1” white collar attorney by Chambers USA, where he has been described as “hard-driving, insightful and aggressive.”

Brian Hennigan will serve as a Deputy Lead Investigator and work directly with Mr. Hueston in the critical interview process of the investigation. Mr. Hennigan has been repeatedly listed as a “Band 1” white collar attorney in Chambers USA, where he has been lauded as “perhaps number-one when you're thinking strategy and relationships in the [U.S. Attorney's Office] and in the community,” and “a terrific attorney because of his great ability to communicate with judges and juries.” Mr. Hennigan has also been named a Los Angeles White Collar Lawyer of the Year by The Best Lawyers in America.

Alex Romain will serve as a Deputy Lead Investigator with primary oversight responsibility for document collection and analysis, and preparation of the written report. Mr. Romain is a leading national trial lawyer with more than 17 years' experience in investigations and white-collar criminal defense. Mr. Romain previously was a litigation partner for 10 years at Williams & Connolly LLP, in Washington, D.C. Mr. Romain was a member of the trial team that exonerated the late U.S. Senator Ted Stevens, playing a key role in pursuing the exculpatory evidence that ultimately led to the Senator's victory. The American Lawyer has described his team's work on
the case as "one of the best criminal defense performances in memory, resulting in a heightened scrutiny of prosecutors that will affect the Justice Department for years to come."

Importantly for this matter, Mr. Romain is also the lead trial lawyer representing a leading global professional services company in an ongoing $200 million actuarial malpractice lawsuit. The issues involved in that suit are closely analogous to those underlying this investigation: issues with the accuracy of revenue forecasting and the nature of the forecasting errors and whether they should have been detected at the time.

The biographies of each of the proposed lead team members are attached as Exhibit 3 to the Proposal.
Section 3: References

1. Jean-Rene Basle, Esq.
   
   County Counsel, County of San Bernardino
   385 N. Arrowhead Ave., 4th Floor
   San Bernardino, CA 92415-0140
   Email: jbasle@cc.sbccounty.gov
   Telephone: (909) 387-5455

   Description of Services: Performance of numerous independent investigations, including allegations of corruption in the Office of Assessor, allegations of criminal interference by the Sheriff’s Department, and allegations of malfeasance by the Child Welfare Department. Published report of findings and recommendations, presented to public and handled media issues.

2. Rick Cole
   
   City Manager, City of Santa Monica
   1685 Main Street
   Santa Monica, CA 90401
   Email: rick.cole@smgov.net
   Telephone: (310) 458-8301

   Description of Services: Performed independent investigation of alleged improper termination, analyzed governance issues, published report of findings and recommendations, presented to the public and handled media inquiries.

3. Diane Geocaris, Esq.
   
   Chief Campus Counsel, University of California, Irvine
   510 Aldrich Hall
   University of California, Irvine
   Irvine, CA 92697
   Email: dgeocar@uci.edu
   Telephone: (949) 824-2880

   Description of Services: Performed independent investigation of LCI Medical Center liver transplant program, prepared report of investigation and negotiated an end to investigations by regulatory authorities.
4. **Amanda A. Scandlen, Esq.**

   Associate General Counsel, Corporate Litigation
   Willis Towers Watson
   901 N. Glebe Road
   Arlington, VA 22203
   Email: amanda.scandlen@willistowerswatson.com
   Telephone: (703) 258-7609

   **Description of Services:** Representation of Willis Towers Watson in an ongoing $200 million actuarial malpractice lawsuit.

5. **Rachel Nosowsky, Esq.**

   Deputy General Counsel
   Health Law & Medical Center Services
   University of California
   1111 Franklin St., 8th Fl.
   Oakland, CA 94607
   Email: Rachel.Nosowsky@ucop.edu
   Telephone: (510) 987-9407

   **Description of Services:** Performed multiple and separate independent investigations addressing alleged health care fraud at UC San Diego, UCLA, UCI, and UC San Francisco. Prepared and presented reports of findings.

***
Section 4: Technical Approach

The scope of work calls for an independent examination of the files, documents, emails, and all other communications related to the error in the forecasting model. The investigation is charged with determining which individuals knew that the revenue estimate was overstated, when those individuals gained that knowledge, who that information was shared with, and if it was not shared with senior staff, why. The investigation will conclude with a written report and public presentation. The contract specifies that this work should be completed within three months, with a possible six-month extension.

The first stage of the investigation is to collect and review pertinent documents. In order to understand the nature of the issues raised, we will first review the critical news reports, the staff report describing the forecasting error, and any published responses by the Board. To prepare for comprehensive interviews and to ensure that we have a complete evidentiary record, we will then collect and review staff and board member emails, meeting minutes, board reports, relevant office files and documents that reflect possible pertinent meetings such as calendar appointments. An experienced attorney will conduct the initial review to determine relevant documents. Key documents will then be reviewed again by one of the lead investigation team members. These key documents will serve as the basis for developing a timeline and framework for interviews. Our plan is to complete this work within two weeks of our engagement.

The second primary stage is determining interviewees and conducting interviews. From the timeline and evidentiary leads derived from document review, the lead investigators will meet to determine the list and order of interviewees. Based on our experience, the order of interviewees is often critical to uncovered relevant information which may be presented or explored with a subsequent and higher-level interviewee. To ensure a strong record, our practice is to involve two lead investigators in each interview, with one interviewer assigned to take comprehensive notes. After concluding our initial set of interviews, the lead investigators will determine follow up interviews based on new and/or conflicting information derived from the initial set of interviews. Our plan is to complete the interview stage within two weeks of completion of document review.

The third stage involves the drafting and completion of a comprehensive written report. The report will be a self-contained document that is designed to answer all anticipated public questions about the nature and extent of the investigation, the facts uncovered, and conclusions and recommendations. Exhibits 1 and 2 to this proposal are prior reports that we have prepared that reflect the approach and report methodology that we will apply to the SANDAG investigation. We plan to complete and submit the report within two weeks after concluding our interview process.

The timeline of work set forth above will permit circulation of a completed report approximately 6 weeks after commencement of the investigation. We would then recommend circulation of the report approximately one week before a planned public presentation. Mr. Hueston would present a summary of the report in PowerPoint form in a public forum, reserving time for questions from the public and the media.
As we have done in our other profile representations that attract media interest, we would work with SANDAG in advance of the publication of our report to create statements to summarize the report as well as responses to anticipated media questions. Based on the prepared statements, Mr. Hueston would also engage directly with the media as necessary after publication of the report.

Based on the anticipated number of emails and the presently defined scope of the engagement, we are confident that the investigation can be completed within the desired three-month timeline.
Section 5: Cost Proposal

<table>
<thead>
<tr>
<th>Task #</th>
<th>Task Description</th>
<th>Individual &amp; Title</th>
<th># of Hours</th>
<th>Discounted Hourly Rate</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Review files, documents, emails and other communications regarding scope of work.</td>
<td>Alex Romain, Partner (secondary review)</td>
<td>5</td>
<td>$545 blended rate</td>
<td>$16,350</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Assisting associate (initial/ screening)</td>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Develop interview list and conduct interviews. Estimated Interviews: 20</td>
<td>Brian Hennigan, Partner</td>
<td>32</td>
<td>$545 blended rate</td>
<td>$34,880</td>
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<tr>
<td></td>
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<td>John Hueston, Partner</td>
<td>32</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>Develop conclusions based on investigation results.</td>
<td>John Hueston, Partner</td>
<td>5</td>
<td>$545 blended rate</td>
<td>$2,725</td>
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<tr>
<td>4</td>
<td>Prepare a written report regarding conclusions.</td>
<td>John Hueston, Partner</td>
<td>10</td>
<td>$545 blended rate</td>
<td>$21,800</td>
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<td></td>
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<td>Assisting Associate</td>
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<tr>
<td>5</td>
<td>Public Reports and Presentations</td>
<td>John Hueston, Partner</td>
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<td>$545 blended rate</td>
<td>$2,180</td>
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<td>6</td>
<td>Additional review and follow up services as requested by the Board. Estimated Not</td>
<td>John Hueston, Partner</td>
<td>0-80</td>
<td>$545 blended rate</td>
<td>$0-$43,600</td>
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<td>to Exceed Hours: 80</td>
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<tr>
<td>7</td>
<td>Other direct/indirect costs Costs and travel time will not be charged</td>
<td>Costs and travel time will not be charged</td>
<td>no charge</td>
<td>$0</td>
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</table>

Total Proposal Price with Mandatory Tasks: $77,935

Total Proposal Price with Possible Additional Review and Tasks (no additional work) to $121,635 (80 added hours)
Section 6: Required Submittal Documents

CERTIFICATIONS

The Proposer certifies that

(A) It has ☑ has not
(Choose One)

participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor).

(B) The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal; or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
(D) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(E) The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

(F) Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Do not have a proposed debarment pending;
- Have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years; and
- Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:
Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 24, 2017, at Newport Beach, CA.

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<th>Name of Firm:</th>
<th>Hueston Hennigan LLP</th>
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<td>Printed Name:</td>
<td>John C. Hueston</td>
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CONFLICT OF INTEREST STATEMENT

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity's interest are, or may be, adverse to the Board's interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

X    I have no conflict of interest to report.

___ I have the following potential conflict of interest to report:
I hereby certify that the information set forth above is true and complete to the best of my knowledge.

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Section 7: Sample Contract

Please see attached our proposed contract identifying all terms and conditions (Exhibit 4).
EXHIBIT 1

(County of San Bernardino Report)
From: John Hueston, Irell & Manella LLP – Special Counsel
To: San Bernardino Board of Supervisors
Date: April 28, 2009
Re: Investigation of County Assessor Bill Postmus – Report of Findings

CONFIDENTIAL: ATTORNEY-CLIENT
PRIVILEGED COMMUNICATION
AND ATTORNEY WORK PRODUCT

I. Introduction

A. Executive Summary

Bill Postmus went to the Assessor’s Office intending to develop a political operation and, with the assistance of a small group of employees, succeeded in doing so. The predictable result was a personal political operation fully funded by San Bernardino taxpayers.

A small group of individuals in the County Assessor’s Office, led by Mr. Postmus and Mr. Aleman, engaged in blatant misconduct and abused County resources. Among other things, individuals received jobs for which they were unqualified, submitted timecards for more hours than were actually worked, and engaged in inappropriate activities on the rare occasion they appeared at work. Although it is difficult to quantify the cost of these abuses, the number clearly exceeds hundreds of thousands of dollars.

Much of the misconduct is legally actionable, and we recommend civil litigation to recoup some of the money improperly taken from the County. Proposed defendants are Bill Postmus, Adam Aleman, Greg Eyler, Rex Gutierrez, and Mike Richman. Other potential defendants are Ted Lehrer and Jim Erwin. Action against other personnel is not recommended at this time.

B. The Investigation

On January 22, 2009, the San Bernardino County Board of Supervisors (the “Board”) moved to appoint special independent counsel to investigate the allegations against County Assessor Bill Postmus. If, after conducting a full investigation, special counsel deemed removal of Mr. Postmus appropriate, special counsel would recommend removal to the Board and prosecute the matter in a special hearing before the Board, sitting in a quasi-judicial role. On advice of County Counsel, the Board appointed John Hueston of Irell & Manella LLP (collectively, “Irell”) to serve as special counsel.
Between January 28, 2009 and February 5, 2009, Irell conducted ten interviews of current and former employees of the Assessor's Office, prepared a procedural framework by which to conduct its investigation and collected documents and records for review. Irell intended to conduct approximately ten more interviews, review all documents in its possession and, if necessary, prosecute removal.

However, on February 5, 2009, Irell was informed that Mr. Postmus intended to resign his office effective 12:00 p.m. on February 13, 2009. Irell was instructed to complete summaries for the ten completed interviews, but to suspend any further investigation pending Mr. Postmus' resignation and reassessment by the Board. As of February 8, 2009, Irell's work product included a procedural due process plan, an investigation plan, and ten interview summaries. On February 12, 2009, County Counsel informed Irell to prepare a report of its findings to date.

The Board then directed Irell to resume and complete its investigation into misconduct in the Assessor's Office.

From March 12, 2009 to April 28, 2009, Irell conducted seventeen additional interviews and reviewed thousands of documents including emails, purchase orders and calendar entries. Two additional witnesses, Adam Aleman and William Postmus, declined to be interviewed.

We should note at the outset that, while reviewing emails normally yields significant information, such was not the case in this investigation. Significantly, Mr. Postmus and his allies were adept at the e-discovery process and were familiar with the County's public records policy. Mr. Postmus and others utilized the Blackberry messenger process, whereby they could communicate and bypass the County servers. In dozens of emails between employees of the Assessor's Office, Postmus and others avoided substantive messages and merely exchanged Blackberry pin numbers, which are necessary for Blackberry messenger communication. Many witnesses testified that the messenger process was utilized to avoid record retention.

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1 Nine of the witnesses were, at the time of their interview, employees of the County. The tenth witness was no longer employed by the County but spoke to us voluntarily.

2 Two interviews were follow-ups on earlier interviews. Of the remaining fifteen, eleven were, at the time of their interview, employees of the County. Three were former employees of the County and spoke to us voluntarily. One never worked for the County and spoke to us voluntarily.

3 We also fielded many calls and emails from purported whistleblowers. Most of the issues raised by the whistleblowers were beyond the scope of our investigation. However, we received one letter containing many allegations, some of which are squarely within the scope of our investigation. The whistleblower alleged, among other things, that Mr. Postmus was involved in a broad pay-to-play scheme involving San Bernardino land deals and assistance with planning and assessment issues. Our receipt of this letter on April 22, 2009, precludes exhaustive inquiry for purposes of this investigation. Recommended civil litigation, however, may permit additional investigation of these issues.
C. Findings

The Assessor’s Office was plagued by serious, rampant misconduct. Most misconduct fit one of the following three categories: problems with personnel, including erratic attendance and minimal Assessor-related duties and responsibilities; broad abuse of County resources; and extensive political activity conducted by employees of the Assessor’s Office while on County time. While some of the issues overlap, they are categorized so as to develop a comprehensive, clear narrative of what went wrong in the Assessor’s Office. Misconduct not fitting one of the three categories – including a discussion of Mr. Postmus’ involvement and drug use, the inappropriate hiring and firing of employees, and retaliatory actions taken against grand jury witnesses – are discussed in another section.

II. Uncovered Misconduct

A. Personnel Issues

The Assessor’s Office employed over 200 people. Most of these employees have been with the Assessor’s Office prior to Mr. Postmus’ election and continued to conduct legitimate Assessor-related work during and after his administration. Many are career employees and honorable public servants.

Some joined the Assessor’s Office after Mr. Postmus took over. Many of these individuals had prior dealings or connections with Mr. Postmus or his top lieutenants and were hired, in some cases, to fill positions for which they did not qualify and which were not Assessor-related. Many of these executive positions were created by Mr. Postmus with Board approval at the end of 2006, when Mr. Postmus was Chairman of the Board and also Assessor-elect.

Some of these individuals collected County paychecks and either did not appear at work regularly or, when they did appear, performed little Assessor-related work. Although it is very difficult to quantify with precision how much money these employees cost the taxpayers of San Bernardino County, the number clearly is in the hundreds of thousands of dollars. Some of the problematic individuals include the following:

1. Adam Aleman

Adam Aleman was appointed assistant assessor for support, one of two assistant assessor positions, shortly after Mr. Postmus became Assessor. Mr. Postmus knew Mr. Aleman from many years of working together in Mr. Postmus’ Board office and in the San Bernardino Republican Party. Various witnesses described Mr. Aleman as Mr. Postmus’ political point person.

At the time of Mr. Aleman’s appointment to the position of Assistant Assessor, at least two people complained to Mr. Postmus that Mr. Aleman, who was in his early-to-mid 20’s when appointed, was too young, inexperienced and unqualified to hold the high position of assistant assessor. Mr. Postmus was undeterred and Mr. Aleman was appointed his top lieutenant. Many employees were unhappy with Mr. Aleman’s appointment because he was viewed, among other things, as an abusive supervisor. He cursed a lot, slammed doors and broke things. When Sheila Raines, special assistant to the Assessor who was
brought over from Mr. Postmus' staff with the Board, was notified that Mr. Aleman was her immediate supervisor, she sought another position but found nothing. Others were uncomfortable with such a young, inexperienced person getting that appointment. Chief Appraiser Dan Harp said Mr. Aleman came to the office without a clear understanding of the responsibilities of the Assessor's Office.

Mr. Postmus was absent from the Assessor's Office for days or weeks at a time, and Mr. Aleman ran the Assessor's Office in his absence. Mr. Aleman's annual salary started in the $120,000 range.

Mr. Aleman was abusive of County resources in several ways. First, although he collected full-time pay, his work schedule was described consistently as less than full-time. His schedule was described as late arrivals, long lunches, and early exits. Mr. Aleman was quite lax about employment in the Assessor's Office. In fact, when Ted Lehrer, former communications officer in the Assessor's Office, was offered a position by Mr. Aleman, the Assessor's Office was described by Mr. Aleman as a place where Mr. Lehrer could "come and go as [he] please[d]."

Second, according to Mr. Lehrer, Mr. Aleman opined that if Mr. Aleman took his County laptop on vacation, he could perform some work and get paid for traveling.

Second, his primary duties and responsibilities were not Assessor-related. Mr. Aleman oversaw the executive staff and, as described by several witnesses, created a full-time political operation with little to no Assessor-related duties. Mr. Lehrer said much of his and others' time was spent on political work as directed by Mr. Aleman. Bob Smith, former facilities/safety manager in the Assessor's Office, said Mr. Aleman was blatant about doing political work, as politics - not Assessor work - was his forte. Other witnesses corroborated this sentiment, saying Mr. Aleman focused mostly on political work and did little or no Assessor-related work. As detailed below, Mr. Aleman spearheaded a political operation including (1) editing a political website named redcounty.com, (2) directing County employees to assist with political fundraisers, and (3) providing political support to various local and national candidates. Jim Erwin, former assistant assessor for operations, observed campaign contributions unrelated to the Assessor in Mr. Aleman's office.

Third, Mr. Aleman routinely signed off on timecards and authorized paying employees for more hours than the employees actually worked. Numerous witnesses described Mr. Aleman's knowledge of the partial schedules of executive staff employees at the time he authorized pay for full-time schedules.

Fourth, Mr. Aleman was highly involved in authorizing and pushing for the so-called "Richman Contract," which will be discussed below. For example, Rachel Anolin, a fiscal clerk in the Assessor's Office, said Mr. Aleman contacted her several times regarding Mr. Richman's delayed payments. Mr. Aleman inquired as to various holdups and wanted payment processed more quickly for a consultant whom he understood would perform almost no work on behalf of the Assessor's Office.

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4 The political work will be detailed below.
Fifth, Mr. Aleman was at least partially responsible for initiating and developing the Assessor’s Office Annual Report. The report, which is discussed below, cost the County enormous resources and was unrelated to legitimate Assessor work.

Sixth, Mr. Aleman was reimbursed $8,280 by the Assessor’s Office for undergraduate tuition-related expenses. This reimbursement may have violated County policy insofar as Mr. Aleman’s courses were not towards an advanced degree.

Seventh, Mr. Aleman caused the County to purchase subscriptions for internet domain names. These domain names were likely not used for County business; otherwise, there would have been no need to purchase subscriptions above what the County already owned.

An anecdote recounted by Ms. Anolin sums up Mr. Aleman’s attitude to County resources. Ms. Anolin was to schedule an out-of-town conference for a number of employees including Mr. Aleman. For various reasons, scheduling was delayed and, as a result, the accommodations were abnormally expensive. When informed of the higher expense, Mr. Aleman’s response was: “Oh well, it’s just County money.” Mr. Aleman had blatant disregard for County resources. Indeed, Wanda Nowicki, former executive secretary to Mr. Aleman and Mr. Erwin, said Mr. Aleman and Mr. Postmus ordered DIRECTV satellites for their offices after they knew the Assessor’s Office was being investigated for improper spending.

In June 2008, Mr. Aleman was arrested and charged with, among other things, preparing and offering false evidence. It is alleged that Mr. Aleman falsified records submitted to the grand jury in response to a subpoena for records relating to Mike Richman’s work in the Assessor’s Office. Mr. Richman received a consulting contract by the Assessor’s Office for $49,200. Mr. Aleman, witnesses have said, was concerned that the grand jury was investigating Mr. Richman’s work and, as a result, Mr. Aleman tried to increase Mr. Richman’s stature in the Assessor’s Office. One way he did so was by instructing Wanda Nowicki to change minutes of meetings that occurred months earlier and which had been previously approved by Mr. Aleman. The change was meant to increase the apparent involvement of Mr. Richman by listing him as responsible for certain tasks and responsibilities. At least four witnesses have confirmed the allegations against Mr. Aleman, and Mr. Aleman reportedly admitted to changing the content of meeting minutes.5

In sum, Mr. Aleman worked partial hours, devoted most of his time to unauthorized political activities, and abused County resources.

2. Jim Erwin

Jim Erwin was assistant assessor for operations from January 2007 until November 2007. In November 2007, Mr. Erwin had a disagreement with Mr. Postmus, left the

5 Mr. Aleman is also alleged to have destroyed the hard drive of a County-owned laptop when working in Mr. Postmus’ Board office. Because that allegation is not within the scope of our investigation, it is not addressed in this report.
Assessor’s Office and entered into a settlement agreement related to his employment providing six months salary.

According to Ted Lehrer, Mr. Erwin engaged in political activities while in the Assessor’s Office. Mr. Lehrer said that, while Mr. Erwin was assistant assessor, he also was a leader in Neil Derry’s campaign to become the Third District Board Supervisor. According to Mr. Lehrer, Mr. Erwin spent at least one hour every day, on County time, discussing Mr. Derry’s campaign with Mike Richman—who, in addition to his position in the Assessor’s Office, was a paid consultant of Mr. Derry’s campaign. Mr. Lehrer said Mr. Erwin had Mr. Aleman write positive information about Mr. Derry on Mr. Aleman’s political websites. This occurred in late August to October 2007, with emphasis on September. Bob Smith made similar observations. Mr. Smith said Mr. Erwin talked politics with Mr. Postmus, especially around the time of the Derry campaign. Mr. Smith said Mr. Erwin and Mr. Postmus discussed ways for Mr. Derry to win his election.

Mr. Lehrer added that Mr. Erwin’s disagreement with Mr. Postmus in late 2007 related to Mr. Postmus’ lack of involvement with Mr. Derry’s campaign. According to Mr. Lehrer, Mr. Postmus previously promised Mr. Derry and Mr. Erwin that he would assist Mr. Derry’s campaign, but Mr. Erwin felt Mr. Postmus did not live up to this promise. Sheila Raines confirmed this part of Mr. Lehrer’s testimony—she said Mr. Erwin’s fight with Mr. Postmus prior to Mr. Erwin’s leaving the Assessor’s Office related to Mr. Postmus’ lack of support for Mr. Derry. Ms. Raines said Mr. Postmus decided to flip and support Dennis Hansberger, Mr. Derry’s opponent in the race, which angered Mr. Erwin. Mr. Smith said that shortly after Mr. Erwin left the Assessor’s Office Mr. Postmus reversed and supported Mr. Hansberger. Regardless of whether Mr. Postmus’ decision to support Mr. Hansberger came before or after Mr. Erwin left the Assessor’s Office, clearly Mr. Erwin and Mr. Postmus had issues involving Neil Derry’s campaign. Jeff Burum, a San Bernardino resident, said Mr. Erwin’s problems with Mr. Postmus were broader than the Derry campaign. Mr. Burum said Mr. Erwin and Mr. Postmus had clashing personalities. Although Mr. Burum did not think Mr. Erwin left the Assessor’s Office due to Mr. Postmus’ lack of support for Mr. Derry, Mr. Burum did say Mr. Postmus withdrew his support for Mr. Derry after Mr. Postmus’ and Mr. Erwin’s issues intensified. Mr. Derry was elected to the Board and appointed Mr. Erwin his chief-of-staff.

Mr. Lehrer also said Mr. Erwin focused much energy and time on union politics and other local races, and strongly disliked Supervisor Paul Biane.

Many witnesses, however, described Mr. Erwin as one of the very few executive employees who appeared at work on a regular basis and attempted to pursue work related to the Assessor’s Office.

3. Greg Eyler

Greg Eyler has known Mr. Postmus since 2002, when they met in a Riverside restaurant managed by Mr. Eyler and visited by Mr. Postmus. Since that time Mr. Eyler has held various positions working for or under Mr. Postmus, including stints at the San Bernardino Republican Party and in Mr. Postmus’ office at the Board, where, according to
two witnesses, Mr. Eyler was paid but did not show up even once. When Mr. Postmus became Assessor, Mr. Eyler was appointed Taxpayer Advocate.

Most witnesses described Mr. Eyler’s attendance at the Assessor’s Office as sparse at best. He was described as coming and going as he pleased. Mr. Eyler worked significantly fewer hours than he was scheduled to work at the Assessor’s Office. As a full-time employee, Mr. Eyler was required to fulfill forty hours of service, from 8:00 a.m. to 5:00 p.m., Monday through Friday. Many witnesses said he did not satisfy that requirement once. Three witnesses said he was never in the office at 8:00 a.m. Four additional witnesses said Mr. Eyler worked a maximum of twenty hours per week. Most witnesses said they rarely saw him in the office. Several witnesses expressed surprise at hearing that he declared forty hours on his timecards.

Mr. Eyler often submitted, and was paid for, timecards declaring forty hours of service. The timecards were approved by his supervisors, including Mr. Aleman.

Not only was Mr. Eyler submitting inaccurate timecards and in the office for fewer hours than was required of him, but, witnesses have said, Mr. Eyler did no work even when present in the office. Sheila Raines described Mr. Eyler’s rare office time as exclusively social. She said Mr. Eyler walked around the office with coffee and socialized. When asked to do something, Mr. Eyler’s response was, “Give it to Talli [Simmons, the other Taxpayer Advocate],” or “Take a message.” Several witnesses said Mr. Eyler would go into his office, close the door, and sneak out of the area through a backdoor so no one knew he was gone.

Mr. Eyler was responsible for handling email inquiries from taxpayers. Dennis Draeger, who was appointed assistant assessor in November 2008 and has been serving as interim Assessor since Mr. Postmus’ resignation, sometimes saw a backlog of such inquiries, meaning that Mr. Eyler was doing little or nothing. Mr. Draeger explained that handling those emails was not a full-time daily responsibility, since Mr. Draeger personally handled a whole week’s worth of emails in half a day. When Mr. Eyler chose to answer taxpayer emails, he did so in an unprofessional manner. According to Sally Hill, Chief of Assessment Services, Mr. Eyler exhibited no knowledge of the issues, nor any interest in helping anyone, and instead referred people elsewhere.

Many witnesses said Mr. Eyler was a full-time student and attended classes while on the clock at the Assessor’s Office. Several witnesses said he often performed personal errands for Mr. Postmus, such as retrieving new cell phones for him, delivering mail, and getting his cars serviced. Sheila Raines said Mr. Eyler once returned to the office during working hours and declared that he and Mr. Postmus had taken in a movie.

According to Jim Erwin, when Mr. Postmus was approached about Mr. Eyler’s attendance, Mr. Postmus’ instructions were to leave Mr. Eyler alone and to continue approving the timecards. When people asked Mr. Eyler about his hours, he claimed to have a special arrangement with Mr. Postmus. According to several witnesses, Mr. Eyler and Mr. Postmus were romantically involved, and therefore Mr. Eyler was allowed carte blanche license in his position.
Eventually, and after many complaints, Mr. Eyler’s hours were reduced to twenty-seven or twenty-four hours per week. Mr. Erwin stated that at one point Mr. Postmus arbitrarily raised Mr. Eyler’s hours to allow him to earn more money because, Mr. Postmus said, “Greg needs this money to make his budget work.”

In addition, Mr. Eyler received a $1,000 reimbursement for tuition-related expenses to attend undergraduate courses.

Two witnesses described an incident in September 2007 when Mr. Eyler came to work drunk. These witnesses said alcohol could be smelled on his breath and he was clearly inebriated. Two other witnesses said they did not smell alcohol on his breath, and a third witness was unsure. Sheila Raines said that, although she did not notice Mr. Eyler’s breath on this occasion, she smelled alcohol on Mr. Eyler’s breath regularly because, she figured, he drank beer at lunch. Mr. Erwin sent Mr. Eyler home the day of the alcohol incident. When Mr. Postmus discovered that Mr. Eyler was expelled from the office, he was upset with Mr. Erwin and admonished him that if he had an issue with Mr. Eyler, it was to be taken up directly with Mr. Postmus.

Mr. Eyler was interviewed and asked about each of the above allegations. He denied the following: regularly working less than the required hours, though he admitted that on some occasions perhaps he did not work exactly forty hours in a week; attending school while scheduled for forty hours in the Assessor’s Office; and ever coming to work drunk. In addition, Mr. Eyler said he had no knowledge of Mr. Postmus’ drug use. He also said he did no political work in the Assessor’s Office and could not recall anyone else doing political work. Mr. Eyler also denied a romantic relationship with Mr. Postmus.

4. **Ted Lehrer**

Ted Lehrer has known Mr. Postmus since 2000 and Mr. Aleman since 2003. In 2003, Mr. Lehrer encouraged Mr. Aleman to work for an up-and-coming member of the San Bernardino Board of Supervisors. That member was Mr. Postmus. As a result of this connection, Mr. Aleman rose in political ranks, eventually becoming assistant assessor under Mr. Postmus. Shortly after Mr. Postmus became Assessor, Mr. Aleman contacted Mr. Lehrer and offered him a “surprise.” Mr. Lehrer, whom we interviewed, said Mr. Aleman offered him a communications position in the Assessor’s Office with an annual salary of $66,000. This amount was more than twice as much as Mr. Lehrer had earned in his prior job. According to Mr. Lehrer, Mr. Aleman offered him the position to show appreciation for the connection Mr. Lehrer made between Mr. Postmus and Mr. Aleman. Mr. Lehrer believes the position was created for him, though he was never told this. Mr. Lehrer initially declined the offer and remained in his then-current position, but in August 2007 he accepted Mr. Aleman’s offer, which was held open for Mr. Lehrer. On his first day in the Assessor’s Office, Mr. Lehrer was informed that his salary was raised to $73,000. Mr. Lehrer claimed he still did not know why he unilaterally received a 10% pay raise before starting work.

According to various witnesses, Mr. Lehrer’s work attendance was erratic and less than the requisite forty hours. Two witnesses said he worked six to six-and-a-half hours a day. Another witness, Sheila Raines, said it was more like three to four hours a day, not including two hour lunch breaks. Talli Simmons, who, along with Greg Eyler, was a
taxpayer advocate, said Mr. Lehrer arrived at 10:00 or 11:00 a.m. everyday. Sally Hill said he was not an eight-to-five guy and sometimes did not show up at all. Dennis Draeger took it upon himself to keep Mr. Lehrer on track. Mr. Draeger said it was very hard to make Mr. Lehrer arrive on time and stay all day. Mr. Draeger added that Mr. Lehrer had little to do and disappeared if not watched. Mr. Lehrer, Mr. Draeger said, often claimed to have been doing work for Mr. Postmus from outside the office, but Mr. Draeger was skeptical about whether Mr. Lehrer was actually doing so each time he said he was. Mr. Lehrer’s payroll data revealed that he almost always declared forty hours of service.

As communications officer Mr. Lehrer was responsible for issuing press releases. The Assessor’s Office, it seems, issued less than twenty-five such releases over Mr. Lehrer’s entire tenure.

In addition, Mr. Lehrer was highly involved in Mr. Aleman’s political operation. Mr. Lehrer admitted that he spent at minimum ten to twenty hours per week, on County time, doing political work. The political work included writing content for political websites; assisting on various political campaigns for local, state and national candidates; and attending and promoting political fundraisers for local candidates. Mr. Lehrer described the executive staff of the Assessor’s Office as Mr. Aleman’s political operation and said any Assessor-related work was incidental to political activities.

5. Rex Gutierrez

Rex Gutierrez was hired in March 2007 by the Assessor’s Office to serve as an intergovernmental relations officer. In addition to working in the Assessor’s Office, Mr. Gutierrez has been since 2002 a member of the Rancho Cucamonga City Council. Mr. Gutierrez, whom we interviewed, was paid an annual stipend of $20K for his work on the City Council. Hence, Mr. Gutierrez said, he needed a day job.

Josh White, former special assistant to Mr. Aleman, said Mr. Gutierrez was hired at the urging of Jeffrey Burum. According to Mr. White, Mr. Gutierrez was known in the office as a “Burum hire” and was hired to supplement his low-paying, but influential, position on the City Council.

We found support for this assertion in Mr. Gutierrez’s emails and in an interview with Mr. Burum. Mr. Gutierrez’s position in the Assessor’s Office was eliminated, but he was allowed to stay on for a while longer. On October 7, 2008 Mr. Postmus sent an email to Michelle Mix, a payroll specialist in the Assessor’s Office, and cc’d Harlow Cameron and Mr. Gutierrez. The subject line was “HR.” The emails states, “Pls [sic] be advised that Rex Gutierrez is going to stay on our office payroll for one add’l week. Thanks — BP[.]” By October 2008 Mr. Gutierrez had been looking for, but had yet to receive, a position elsewhere in the County, so his only job (aside from the City Council stipend) was with the Assessor’s Office. On October 10, 2008 Mr. Gutierrez sent an email to Jeffrey Burum with the subject line “Hey!” The email states the following: “Jeff: I need you to prevail upon Bill P. to extend my position for up to 3 weeks. HR is taking quite a while reviewing everything. I believe I am OVER qualified for the ECD Specialist I position. I deserve a shot because I’m the best candidate. Could you give Bill a call?”
Mr. Burum agreed to be interviewed and was asked about his relationship with Mr. Gutierrez. Mr. Burum said he was a consistent supporter of Mr. Gutierrez, beginning in the mid-1990’s. Mr. Burum recalled twice intervening on behalf of Mr. Gutierrez’s employment with the Assessor’s Office. Mr. Burum contacted Jim Erwin soon after Mr. Erwin assumed his position with the Assessor’s Office. Mr. Burum asked Mr. Erwin whether the office had any positions for someone like Mr. Gutierrez. According to Mr. Burum, Mr. Erwin said Mr. Gutierrez should print a résumé and come interview. Shortly thereafter, Mr. Gutierrez was hired.

Later, when Mr. Gutierrez’s position was being eliminated, Mr. Burum again intervened on his behalf. Mr. Burum recalled the above email. He said Mr. Gutierrez had applied for another position with economic development and asked Mr. Burum if he would support Mr. Gutierrez in staying on for a little longer with the Assessor’s Office. So Mr. Burum contacted Mr. Postmus. Mr. Burum did not recall Mr. Postmus making any specific commitments during that conversation. Mr. Burum made his case for Mr. Gutierrez, but Mr. Postmus said he needed the position eliminated. Ultimately, Mr. Gutierrez’s position was extended until December 2008, nearly three months after the October 2008 email.

Harlow Cameron, who was chief appraiser until serving one year as assistant assessor for operations from November 2007 until his retirement in November 2008, said he was told to extend Mr. Gutierrez’s stay on payroll by Matt Brown, chief-of-staff to Supervisor Paul Biane. Mr. Cameron said Mr. Brown made these comments in a meeting attended by Mr. Biane, Mr. Brown and Mr. Cameron.

In sum, Mr. Gutierrez’s position was eliminated in the summer of 2008, and yet his stay on the Assessor’s Office payroll continued for nearly six more months.

While Mr. Gutierrez was employed by the Assessor’s Office, many witnesses described his office attendance as irregular. Sometimes he came to work, and sometimes not. According to Ted Lehrer, there were times when Mr. Postmus or Mr. Aleman spent days trying to get a hold of Mr. Gutierrez, but were unable. Mr. Lehrer said Mr. Postmus and Mr. Aleman would get frustrated, but did nothing about it, and Mr. Gutierrez did not explain his whereabouts or absences. Mr. White said Mr. Gutierrez regularly came to work at 11:00 a.m. Many other witnesses said Mr. Gutierrez was in and out of the office all day. Ms. Hill described Mr. Gutierrez’s work schedule as follows: for the first 3-6 months, he was in from around 9:00 a.m. until the early afternoon; as time went on he came in later, took longer lunches, and left earlier. Eventually, Ms. Hill said, he was in the office for 10-15 hours per week. 15-20 hours, Ms. Hill added, would be a generous assessment. This trend was confirmed by Rachel Anolin, who heard that once he figured out what was going on in the office, Mr. Gutierrez stopped coming in as often and for as long.

A review of some of Mr. Gutierrez’s payroll data revealed that Mr. Gutierrez regularly declared forty hours of service.

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6 Aside from this conversation, Mr. Burum said he likely had many non-work related conversations with Mr. Postmus about Mr. Gutierrez, as Mr. Postmus and Mr. Gutierrez were friends.
Witnesses stated that when Mr. Gutierrez did show up for work, he spent the vast majority of his time on activities unrelated to the Assessor’s Office, including City Council work, political activities, and social conversations. For example, he often called city officials and fellow councilmen to discuss city business and could often be heard on his cell phone saying, “Hi, this is Rex Gutierrez, City Councilman for Rancho Cucamonga.” Some also claimed he spent significant time on political work. Mr. White recalled Mr. Gutierrez filling out campaign disclosure forms from his desk in the Assessor’s Office. Mr. Lhrcr, echoing Ms. Anolin’s observation about Mr. Gutierrez figuring things out, said that once Mr. Gutierrez saw others tending to political work, Mr. Gutierrez began tending to his own political needs.

Various witnesses said Mr. Gutierrez’s devoting time to non-Assessor work was blatant. In fact, Ms. Anolin said she warned Mr. Gutierrez that he could get himself, Mr. Postmus and the Assessor’s Office in trouble for what he was doing. This did not stop him, Ms. Anolin said. Ms. Hill said she never saw Mr. Gutierrez perform one task necessary to the mission of the Assessor’s Office. She added that in 2007 less than 10% of his time was spent on Assessor-related activities; in 2008 she said it was more like 0% of his time. Instead, Ms. Hill said, he could be heard having excessive personal conversations and having discussions regarding Rancho Cucamonga business.

Mr. Gutierrez’s work habits were so irregular that he was labeled with the nickname “Intergalactic Officer.” This tongue-in-cheek nickname, witnesses said, captured his convoluted title and how obscure and irrelevant his activities were within the context of the Assessor’s Office. Mark Mosher, manager of IS and administrative services, said no one knew what Mr. Gutierrez did. Sally Hill said the nickname may have preceded Mr. Gutierrez and stemmed from the irrelevance of Mr. Gutierrez and his position.

When Mr. Gutierrez was hired in March 2007, his annual salary was $59,883.20. He immediately received a 10.3% raise and received two other raises exceeding 5% over the next six months. By September 2007 his annual salary was $71,448. Mr. Mosher said three raises of 5% or more within a six month period seemed extraordinary. He could not recall anyone receiving such raises. It is unclear why Mr. Gutierrez received such preferential treatment.

As discussed above, Mr. Gutierrez’s position was deleted, and yet Mr. Gutierrez stayed on for a few more months. When Dennis Draeger was appointed assistant assessor in November 2008, he inquired as to Mr. Gutierrez’s employment. He had not seen very much of Mr. Gutierrez and did not know what he did for the office. Mr. Draeger concluded that Mr. Gutierrez was serving no function and had to be removed from the Assessor’s Office’s payroll, so he had Mr. Gutierrez sign or acknowledge that he would resign his position effective December 2008 or January 2009. Mr. Draeger said he saw Mr. Gutierrez in the office maybe once between November 2008 and when Mr. Gutierrez left his post.

Mr. Gutierrez submitted to an interview. He said he got the job at the Assessor’s Office through the normal interview process and, consistent with Mr. Burrell’s recollection, said his main contact was Jim Erwin. Mr. Gutierrez said he received one raise as part of the normal process of completing the probationary period of employment. Another raise, he said, was given because he asked for it after he reviewed his tasks and concluded that he was
worth more than he was being paid. Mr. Gutierrez also discussed in great detail many of the assignments he claimed to have completed while in the Assessor’s Office. In his interview he provided various documents listing his work product, very little of which included written material, he said. Significantly, he admitted that there were times he had no work and added that on some occasions – though he called them rare occasions – he took phone calls unrelated to Assessor work. He admitted attending political fundraisers, but said it occurred at lunchtimes. He also said that he asked employees of the Assessor’s Office to volunteer at his own fundraisers. He said he may have reviewed personal campaign forms during working hours at the Assessor’s Office, but denied filling out such forms while at work. Mr. Gutierrez also said he was asked to do political work, including drafting entries for redcounty.com and assisting Mitt Romney’s campaign. He claimed that he declined to perform work for redcounty.com and said his work for the Romney campaign occurred on non-Assessor time. Mr. Gutierrez also said he was asked, and agreed, to contribute money to Political Action Committees (PAC) run by Mr. Postmus and by Mr. Erwin. He felt pressured to make the contributions given his employment, he said.

Mr. Gutierrez conceded that he engaged in political work “a little bit.” He also said all the tasks outlined in his interview did not require forty hours of work week after week after week. He claimed that although he may not have been precise with his timekeeping, “it balanced out” over time.

Mr. Gutierrez is still employed by the County.

6. Mike Richman

Mike Richman is a political consultant in San Bernardino County. When Mr. Postmus was chairman of the San Bernardino Republican Party, the Party hired Mr. Richman to do consulting work. In March 2007, Mr. Richman was hired by the Assessor’s Office as a consultant. According to Ted Lehrer, during the few months beginning in March 2007, Mr. Richman worked concurrently at the Republican Party and at the Assessor’s Office. In early summer 2007 Mr. Richman lost his position with the Republican Party and was given a consulting contract with the Assessor’s Office. This contract, known as the “Richman Contract,” will be discussed in more detail below. Mr. Richman was hired, in part at least, to assist on the annual report.

According to numerous witnesses, Mr. Richman’s attendance in the office was sporadic. Mr. Richman, it should be noted, was an independent contractor, not a regular employee. So his hour requirement may not have been the same as for other employees. In any event, four witnesses said he was around 4-5 hours for one day a week.

The executive staff of the Assessor’s Office held weekly meetings to discuss, among other things, progress on the annual report, which was Mr. Richman’s primary responsibility. According to numerous witnesses, Mr. Richman rarely attended these meetings and, when he did attend, contributed nothing of substance to the conversation. Bob Smith, who was with the Assessor’s Office only for a few months, said Mr. Richman was at the meetings to track Mr. Postmus’ schedule and for the political angle of things, not for Assessor work. Many witnesses said Mr. Richman did little or no work for the annual report: four witnesses said he contributed nothing to the annual report; Mr. Lehrer said his
total contribution to the annual report was less than one hour of work; and Sheila Raines said Mr. Richman was tasked with setting up meetings for the annual report, but did not do so. Ms. Raines said it took Mr. Richman one year to set-up one single meeting.

Mr. Richman was available for consultation on press releases and community outreach, Josh White said. Mr. Richman did some of this work, but 90% of the work he performed was not County-related, Mr. White added. This was supported by at least three other witnesses who said Mr. Richman was often on his cell phone doing political work. Mr. Smith said he would be surprised if Mr. Richman spent even 10% of his time on legitimate Assessor-related work.

Mr. Lehrer said Mr. Richman was retained as a political consultant by campaigns while he worked in the Assessor’s Office and spent significant time working on those campaigns. One of those campaigns was that of Neil Derry. Mr. Lehrer said that, when Mr. Richman was supposed to be working on the annual report, he was strategizing for the Derry campaign instead. Mr. Lehrer added that 90% of Mr. Richman’s day was spent on political activities. Others said he was disruptive in the office, constantly walking around humming, singing and drumming on things.

At least three witnesses said Mr. Richman was blatant and open about doing political work from the Assessor’s Office.

Bob Smith related similar observations and described a typical Richman workday as captured on tape. Mr. Smith said he accidentally left a tape recorder in his desk in an office he shared with Mr. Richman. The tape recorder ran for its entire duration and captured many of Mr. Richman’s conversations. The conversations were all political in nature and included discussion about Michelle Steel, a member of the California Board of Equalization, and other candidates. Not for one second of the tape, Mr. Smith said, could Mr. Richman be heard discussing anything related to Assessor work. Mr. Richman was hired for political purposes and it was just accepted, Mr. Smith added. That tape was turned over to the grand jury and the DA’s office. We requested, but did not receive, a copy.

Dennis Draeger said that after the time period for Mr. Richman’s purchase order expired, Mr. Richman submitted time sheets for more money. Mr. Draeger instructed that Mr. Richman not be paid anything more.

We attempted to speak with Mr. Richman. However, his attorney refused our request for an interview.

7. Josh White

Josh White was hired in the summer of 2007 as an executive secretary. According to two witnesses, this position, it was agreed, would be left open to save $30,000 for the budget. Nevertheless, Mr. Aleman decided to hire Mr. White to assist on the annual report. According to two witnesses and Mr. White, Mr. White did contribute content towards the annual report. But, Mr. Lehrer said, Mr. White’s role was to serve as Mr. Aleman’s assistant.
The allegations involving Mr. White were twofold. First, witnesses complained that he did not complete the requisite forty hour workweeks. These witnesses said he came to work later and later as his tenure progressed, and took long lunches with Mr. Aleman, Mr. Lehrer, Mr. Gutierrez and Mr. Richman. Sally Hill said she was not sure what constituted Mr. White’s work responsibilities. But, she said, it seemed like Mr. White worked for Mr. Aleman, meaning that Mr. Aleman directed Mr. White’s day-to-day activities and tasks.

Second, Mr. White was accused of doing political work on County time, including updating content onto political websites and sending email blasts from political websites to County employees at their County email addresses. Mr. White confirmed these allegations. Mr. White said that on his first day of work Mr. Aleman instructed him to send daily emails from a political website. Mr. White complied. According to Mr. Lehrer, Mr. White was hired, in part, to help with the political website.

Mr. White resigned his position in the Assessor’s Office in April 2008. According to Mr. White, he resigned as an act of conscience and because he wanted to distance himself from the criminal allegations and investigation surrounding the Assessor’s Office.

B. Misuse of County Funds

The Assessor’s Office engaged in various activities that unnecessarily cost the taxpayers of San Bernardino County an inordinate amount of money. As discussed above, some of these activities included the hiring of, and paying salaries to, employees that were unnecessary, deceptively worked inadequate hours and/or performed little to no Assessor-related work. Unfortunately, funds used to pay these employee salaries were not the only County funds misused by the Assessor’s Office. There were at least six other instances of such misconduct:

1. The Richman Contract

As discussed above, Mr. Richman was a political consultant who was hired by the San Bernardino Republican Party and by the Assessor’s Office. Later, his position with the San Bernardino Republican Party was terminated. At around the same time, Mr. Richman was given a $49,200 consulting contract by the Assessor’s Office. Originally, his consulting contract was valued at $37,000. However, according to two witnesses, this number was increased once Mr. Richman lost his position with the local Republican Party because Mr. Aleman and Mr. Postmus wanted to get Mr. Richman more money to make up for the lost income. Mr. Erwin described the Richman Contract as compensation to take care of a buddy. He heard Mr. Aleman say, “We need to get Mike more money.”

The contract was initially valued at $37,000. After Mr. Richman’s position with the Republican Party was terminated, the contract was raised to $49,992. This number was crossed out and the contract was re-valued at $49,200. San Bernardino County has a policy whereby contracts over $50,000 must be approved by the Board. Numerous witnesses heard Mr. Aleman explain the rationale behind the contract’s value — Mr. Aleman explained that the number was set in order to achieve the maximum contract value without needing Board approval, i.e. to circumvent Board approval. Mr. Lehrer was asked why Mr. Aleman and Mr. Postmus did not first seek Board approval and, only if the Board rejected the contract,
re-value the contract at less than $50,000. He said Mr. Aleman considered this option but decided against it because it would have created public relations difficulty.

Jim Lindley, who at the time was in the purchasing department, was contacted by Mr. Aleman about getting a contract with Mr. Richman for $75K. Mr. Lindley said the Board would need to approve the contract. Mr. Aleman was unhappy and concerned that the Board would not approve a contract with a political consultant. Mr. Lindley said the Assessor’s Office did not go through the RFP process and did not hire a media consultant — Mr. Richman’s supposed purpose — from the County approved list. Also, Mark Mosher said the so-called Richman Contract was not actually a contract. Rather, it was a purchase order (PO). The reason for using the PO process, Mr. Mosher said, was because it offered the path of least resistance for hiring Mr. Richman. In other words, it was the easiest way to get him the money.

Even after the contract had expired Mr. Richman was trying to get more money. Dennis Draeger said that, when he joined the Assessor’s Office in November 2008, he heard that Mr. Richman submitted timecards for which he sought payment. Mr. Draeger instructed that no payment be made.

The grand jury investigated the Richman Contract and Mr. Richman’s activities in the Assessor’s Office. They issued subpoenas and elicited sworn testimony. According to three witnesses, Mr. Aleman worried that the grand jury was targeting Mr. Richman, so he sought to enhance Mr. Richman’s status and perceived accomplishments in the office. Mr. Aleman ordered Ted Lehrer to produce a binder describing all of Mr. Richman’s duties and responsibilities. The binder was delivered to the grand jury. Mr. Lehrer said he did not intend to deceive anyone and that the binder was honest but flattering. In addition, as mentioned above, Mr. Aleman instructed Wanda Nowicki to change minutes of meetings so as to include Mr. Richman in more activities. Ms. Nowicki said the original minutes were approved by Mr. Aleman, but months later, when the grand jury sought those minutes, Mr. Aleman had her alter the minutes to make it seem as though Mr. Richman did more work than he actually performed.

Mr. Richman declined through an attorney to grant an interview.

2. Annual Report

Prior to Mr. Postmus becoming Assessor, the Assessor’s Office did not produce an annual report. When Mr. Postmus became Assessor, Mr. Aleman suggested that the office produce an annual report to enhance the Assessor’s image and publicity. According Mr. Lehrer, the annual report was a glossy package no one was expected to read, but which was put together so that recipients knew about the office and about Mr. Postmus. At least six employees — including Adam Aleman, Ted Lehrer, Rex Gutierrez, Mike Richman, Josh White and, for a few weeks, Wanda Nowicki — worked on the annual report. Parts of it, according to several witnesses, were also outsourced. Two witnesses said printing cost over $30,000 and, after receiving bids from various firms, the job was given to Kent Beiber, an alleged friend of Mike Richman and a connected Republican. Many witnesses described the annual report as unnecessary for the mission and operation of the Assessor’s Office and as serving primarily to increase the political profile of Mr. Postmus. It is unclear exactly how
much money the annual report cost the County, but, given payroll dedicated to the annual report and the cost of printing, the figure likely exceeded $100,000.

3. **Unnecessary Personnel**

According to Michelle Mix, who has served in the Assessor’s Office prior to Mr. Postmus’ taking over, the prior Assessor had an executive staff of four – himself, an assistant and two secretaries. When Mr. Postmus took over, this number increased to ten or twelve. Many of the positions were created by the Board in December 2006 when Mr. Postmus was on the Board and, at the same time, was Assessor-elect. Andrew Lamberto, head of HR for the County, said Mr. Postmus wanted Mr. Lamberto to create positions for the Assessor’s Office that never existed before. Mr. Lamberto thought it was odd that Mr. Postmus insisted on establishing novel positions before joining the office or recognizing a need. Mr. Lamberto found it equally puzzling that Mr. Postmus insisted on keeping then-Assessor Don Williamson out of the loop. The folks who filled the newly-created positions caused many of the problems that later plagued the Assessor’s Office.

Mark Mosher also shed some light on the new positions. Mr. Mosher said Mr. Postmus contacted him prior to becoming Assessor and inquired into whether the Assessor’s Office needed new positions. Mr. Mosher requested line employees. Instead, Mr. Mosher said, Mr. Postmus created executive positions, none of which were mentioned as necessary or requested by Mr. Mosher. Sally Hill said everyone was uncomfortable when the executive positions were filled because those individuals had no work to do.

Further, according to many witnesses, people were hired in excess and with little to do, often with overlapping responsibilities. Echoing a common sentiment, Rachel Anolin said the executive staff was of no value to the Assessor’s Office and their presence made no sense. For example, two witnesses said there was no need for Josh White, as all the administrative duties he was to assume were already being handled by others. Mr. Erwin said the budget was exhausted that year on unnecessary spending. Warda Nowicki said Mr. Aleman and Mr. Postmus were constantly hiring and looking for more ways to spend money.

Harlow Cameron said that in his thirty-five years of experience, the Assessor’s Office never had, nor did it need, the positions created by Mr. Postmus.

Not only were many more positions created, but many of these individuals did little or no essential Assessor-related work. As outlined above, many of these individuals came late (i.e., 10:00 or 11:00 a.m.), worked few hours, and were involved in an extensive political operation. None were described by even one witness as performing important Assessor-related work.

In addition, most of those hired had long relationships with Mr. Postmus or Mr. Aleman. Thus, many hires may have been acts of cronynism or political payback.

Finally, many members of the executive staff were given higher-than-average salaries. For example, Mr. Lehrer earned less than $40,000 in a position immediately prior to his employment with the Assessor’s Office. When he joined the Assessor’s Office, he was under the impression that his salary was $66,000 plus benefits. On his very first day he
found out that, for reasons unknown to him, his salary was raised to $73,000 plus benefits. Mr. Aleman earned over $120,000 per year.

4. *Scott Becker Contract*

Mr. Becker was a longtime friend of Mr. Postmus. According to Mr. Erwin, Mr. Becker did some work for Mr. Postmus when Mr. Postmus was on the Board, including electrical work for Mr. Postmus’ home. After taking over as Assessor, Mr. Postmus wanted to replace all official framed photographs of himself. The facilities department could have performed this task for Mr. Postmus at no additional charge to the County, so Sheila Raines contacted them. However, according to three witnesses, Mr. Postmus insisted on hiring Mr. Becker to do this work for the Assessor’s Office. According to two witnesses, the original contract value was even changed to a higher number at the direction of Mr. Aleman. Rachel Anolin said there may even have been two purchase orders. Ms. Raines said that the job entailed hanging fourteen pictures and that the amount Mr. Becker was paid was “irresponsible,” especially considering the County had people to do this work. Ms. Raines even offered to do it for free, but Mr. Postmus refused.

A review of County records revealed that on March 28, 2007 Mr. Becker was paid $299.45 and on October 30, 2007 he was paid an additional $1,135.18, bringing his total payments for 2007 to $1,434.63. Per one of Mr. Becker’s invoices, the 2007 work performed for the Assessor’s Office included hanging framed photographs of Mr. Postmus (plus reimbursements for mileage and materials).

We attempted to interview Mr. Becker. He was contacted on March 31, 2009 by an assistant in County Counsel’s office. His interview was scheduled for 2:00 p.m. on April 1, 2009. At 1:45 a.m. on April 1, Mr. Becker left a voicemail for the assistant who contacted him. Mr. Becker sounded angry, used numerous expletives, said he would not appear for his interview, and warned that if anyone showed up at his property he would shoot their heads off with a 12 gauge shotgun. The matter was referred to the San Bernardino County Sheriff’s Department. Mr. Becker did not show up for his interview and no further contact had been made.

5. *Tuition Reimbursements*

There were at least two discretionary tuition reimbursements that potentially violated County policy: Mr. Aleman received $8,280 to complete his undergraduate degree, and Mr. Eyler receiving $1,000 to complete his. Mr. Eyler admitted receiving $1,000 for undergraduate courses and said Mr. Postmus knew about his reimbursements. Rachel Anolin said Mr. Eyler inquired with her about the maximum amount of tuition reimbursement he could receive. Soon as Ms. Anolin provided the maximum amount, Mr. Eyler asked how he could receive more. Ms. Anolin said he could not; Mr. Eyler asked what if a supervisor approved the payment. Eventually Mr. Eyler sought and received such approval from Mr. Aleman.

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*As a side, in 2006 Mr. Becker was paid a total of $937.25 for “picture hanging,” “paint touch-up” and to “re-finish [a] computer stand [and other office furniture].” All the work was performed for then-First District Board Supervisor Bill Postmus.*
Mr. Erwin said he saw the expense forms for Mr. Aleman's tuition reimbursement and confronted Mr. Postmus about it. Mr. Postmus said he was the Assessor and could pay for everything if he wanted it that way.

6. **Misuse of County Equipment**

San Bernardino County adopted a cell phone allowance program. Several witnesses indicated that Mr. Postmus and Mr. Aleman abused this policy by breaking their cell phones and charging new ones to the County. Equipment purchase records will be reviewed if litigation is pursued. Wanda Nowicki said Mr. Aleman broke a number of phones by throwing the phones against the wall in his office in a fit of rage. Multiple witnesses also described the executive staff as frequently using their County-subsidized cell phones and blackberries for political activities during working hours at the Assessor's Office. Indeed, Dennis Draeger said the Assessor's Office is still searching for a laptop issued to Mr. Aleman and is still waiting for Mr. Eyler and Mr. Lehrer to pay large phone bills. Mr. Lehrer's bill is in the $1,600-$1,900 range, Mr. Draeger said.

C. **Political Activity in the Assessor's Office**

Most witnesses were knowledgeable about political activities in the Assessor's Office and described an extensive political operation conducted by Mr. Aleman and including Ted Lehrer, Rex Gutierrez, Mike Richman and Josh White. Multiple witnesses described these individuals as conducting a political operation primarily, with Assessor work being ancillary.

We uncovered hundreds of politically-oriented emails just in the small sample of emails to which we had access. Mr. Postmus, Mr. Aleman and others received daily emails from political blogs, commentators and campaigns. Often times these emails were circulated and discussed. Employees often used email to make specific requests of a political nature, such as requests to transfer campaign money, to obtain political proxies, or to discuss upcoming political events. Although email traffic reflected comprehensive political work unrelated to the mission of the Assessor's Office, witnesses described significant political activities including the following:

1. **Redcounty.com**

Redcounty.com is a website dedicated to "grassroots politics from the center-right," as described by the site. Individuals in the Assessor's Office engaged in two types of activities involving the website: content input and email blasting. Bob Smith said activities on the site were predominant in the Assessor's Office and an everyday thing. He added that it was constantly discussed.

Mr. Lehrer described Mr. Aleman as an editor of the website. Mr. Lehrer admitted that, upon joining the Assessor's Office, Mr. Aleman instructed him to regularly input content onto the site. Mr. Lehrer said Mr. Aleman wanted positive information written about people loyal to Mr. Aleman and negative information about people Mr. Aleman did not like. Mr. Aleman thought, according to Mr. Lehrer, that if he wrote nice pieces about possible rivals to his potential 2010 bid for office, he could later convince those people not
to run against him. Mr. Gutierrez said he too was asked to draft materials for the site, though he refused the request.

The purpose of the site, according to Mr. Lehrer and others, was to raise the public profiles of certain individuals and to harm those of others. Mr. Lehrer spent ten to fifteen, sometimes as many as twenty hours per week on the website. Although he spent some personal time working on the website, most of the work occurred on County time and from various computers in the Assessor’s Office. Mr. Lehrer said there were times when he and Mr. Aleman sat and inputted information together. Mr. Postmus was aware of what was going on, as Mr. Lehrer and Mr. Aleman sometimes informed Mr. Postmus of plans for the website and Mr. Postmus encouraged them to “keep it up.”

In addition, Mr. Aleman had Josh White put together daily mailings and the “Daily News Roll,” a collection of newspaper clippings from the region. The “Daily News Roll,” and everything else Josh White collected, was sent daily to thousands of people, including County employees at their County email addresses. Mark Uffer, County Administrative Officer, called to complain that County email addresses were receiving political emails. As a result, Mr. White said, Mr. Aleman had Mr. Uffer’s name removed from the list. Mr. White said that was Mr. Aleman’s general practice—when someone complained, remove their name from the list, but leave everyone else’s. Mr. Erwin said he complained to Mr. Postmus about the emails, and Mr. Postmus said he could do whatever he wanted because he was the elected official and because the emails were legal.

Mark Mosher said Mr. Aleman had him purchase, with County money, tools for the site, including a device for mass emailing and for hiding the sender of an email.

2. Political Fundraisers

Two witnesses recalled being asked by Mr. Aleman to assist, on County time, at fundraisers for local politicians. The first is Wanda Nowicki. She was asked—but perceived it as more of an “obligation”—to work at political fundraisers for Mr. Postmus, Rex Gutierrez and perhaps Steve Poizner. Ms. Nowicki was unsure about the Poizner fundraiser but was certain about the other two. She said there were at least two fundraisers for Mr. Postmus. She worked the doors at the fundraisers, giving tickets to and collecting money from those attending. She said Mr. Postmus saw her at the fundraisers. Ms. Nowicki felt Mr. Aleman had her work at Mr. Gutierrez’s fundraiser so Mr. Aleman could get closer with Mr. Gutierrez. Ms. Nowicki said the fundraisers occurred during working hours, and she received no compensation other than her paycheck at the Assessor’s Office—that is, she was paid by the County to work at political fundraisers.

The second employee was Ted Lehrer. Mr. Lehrer said he drafted invitations, promoted and attended fundraisers for Mr. Postmus and his political allies. At the fundraisers, Mr. Postmus instructed Mr. Lehrer to find wealthy donors, get their contact information and give the information to Mr. Aleman for input into a database. Mr. Lehrer said most, if not all, of his work on fundraisers was done on County time.

Mr. Gutierrez said he attended lunchtime fundraisers for various politicians and held a fundraiser for himself on one occasion. Some employees of the Assessor’s Office attended
Mr. Gutiérrez’s fundraiser. At the request of Mr. Gutiérrez, Talli Simmons worked the tables at the event. The fundraiser lasted 2-3 hours, Mr. Gutiérrez said.

3. Assistance for Mittelfelt Campaign

Mr. Lehrer said he was asked by Mr. Aleman to help the Mittelfelt campaign in various ways. Mr. Lehrer wrote letters to editors, wrote blog entries, walked precincts, and drove Mr. Postmus to meet with constituents and to strategy sessions with Mr. Mittelfelt. Mr. Lehrer heard Mr. Aleman call Mr. Mittelfelt during working hours to tell Mr. Mittelfelt that certain tasks had been completed.

We interviewed Paula Nowicki (chief-of-staff to Mr. Mittelfelt until her recent retirement) and Michael Orme (formerly deputy chief-of-staff to Mr. Mittelfelt) about these allegations. Both disputed Mr. Lehrer’s characterization. Ms. Nowicki said she would be surprised to hear that people in the Assessor’s Office were actively campaigning for Mr. Mittelfelt. If they were, she added, they were doing it on their own and with no instruction from the campaign. Mr. Orme went even further. He said he was not aware of any help provided to the Mittelfelt campaign by Mr. Aleman. He further asserted that he never read emails from redcounty.com and never visited the site, even though it was an important Inland Empire political site and Mr. Orme and the campaign had been paying redcounty.com. Mr. Orme also said he had not spoken to Mr. Aleman since Mr. Postmus left the Board. However, an email exchange from March 2008 undercuts that assertion. On March 11, 2008 Mr. Orme emailed Mr. Aleman saying, “What’s your pin[?]” In response Mr. Aleman provided his Blackberry pin number, which is used for Blackberry pin messages, and asked Mr. Orme for Mr. Orme’s pin number. Because we had no access to Blackberry pin messages, we do not know what the two discussed.

One incident was discussed by numerous witnesses. According to Mr. Lehrer, Paula Nowicki, then-chief-of-staff to Mr. Mittelfelt, left a message for Mr. Aleman. Mr. Aleman returned the call but Ms. Nowicki was unavailable. The call was redirected to Michael Orme. Mr. Orme asked Mr. Aleman to pull property records for someone in the Vogler family; Rita Vogler was a political opponent of Mr. Mittelfelt. The property records were to be used as political ammunition against Ms. Vogler. Mr. Aleman called Josh White and Ted Lehrer into his office, and asked Mr. White to pull the records because, of the three, only Mr. White knew how to use the system. Mr. White felt uncomfortable pulling the records and refused. Mr. Aleman got angry and pushed him to do it, but Mr. White still declined. Mr. Aleman started yelling and said, “Fine, I’ll get it myself.” Mr. Lehrer and Mr. White confirmed this incident, though Mr. White was unsure whether the request was made by Michael Orme or David Zook, who was Mr. Mittelfelt’s communications director until his recent appointment to serve as chief-of-staff to Mr. Mittelfelt. Sheila Raines recalled the meeting in Mr. Aleman’s office and hearing Mr. Aleman yell at Mr. White and Mr. Lehrer, demanding that one of them get Mr. Aleman something. She was unsure what Mr. Aleman requested, however. Neither Mr. Lehrer nor Mr. White knew whether the property report was ever pulled.

Paula Nowicki, Michael Orme and David Zook were asked about the Vogler property report. Ms. Nowicki said a request to pull the Vogler property records was made and directed to the Assessor’s Office. However, she said the request was directed to Harlow
Cameron, not Adam Aleman (as Josh White and Ted Lehrer said). Ms. Nowicki also said she made the request while on vacation time from her job with Mr. Mitzelfelt’s Board office. The request was made for political purposes — the Voglers were attempting to paint Mr. Mitzelfelt as pro developer. The Mitzelfelt campaign wanted to show that the Voglers owned many properties. Eventually, Ms. Nowicki said, a complaint was lodged with the FPPC regarding inaccurate campaign disclosures by the Voglers relating to property ownership.

Mr. Orme said he was not involved with the request. He said Ms. Nowicki made the request while on vacation time and gave the reports to Mr. Orme. He added that Ms. Nowicki never mentioned where she got the reports or from whom, but that she did say she did it while on vacation time. Mr. Zook said he had no recollection about the reports and knew nothing about the request.

Harlow Cameron confirmed Ms. Nowicki’s and Mr. Orme’s account. He said Ms. Nowicki contacted him while on vacation time and requested the report, which Mr. Cameron provided. It bears noting that three separate witnesses volunteered the same unremarkable detail — that Ms. Nowicki said she made the request while on vacation time.

4. Mitt Romney Campaign

Mr. Lehrer was instructed by Mr. Aleman to write favorable content about Mr. Romney on redcounty.com and in letters signed by Mr. Postmus and published in local newspapers. Mr. Lehrer said this instruction definitely came from Mr. Postmus.

Mr. Lehrer also said he and others had to staff Romney headquarters in San Bernardino and were actively campaigning for Mr. Romney. According to Josh White, Mr. Aleman asked Mr. White to assist Tim Johnson, district director of Supervisor Paul Biane, run Mr. Romney’s campaign in the Inland Empire. Mr. White did this during business hours. Mr. White also designed templates for emails sent by the group — which named itself Inland Empire Volunteers for Romney — and signed by Tim Johnson.

Mr. Gutierrez said he was asked to assist the Romney effort, but refused to do so on vacation time. As a result, Mr. Gutierrez said, there were several hours “lost” from his County position while assisting the Romney campaign. In other words, he spent County time on the Romney effort. He added that, during this period “[H]is County job] was not [receiving] a fair eight hours a day,” but that he did not spend full days on the Romney effort.

We interviewed Tim Johnson about his involvement with Inland Empire Volunteers for Romney. Mr. Johnson said he volunteered to run the operation because it was an important area for Mr. Romney and Mr. Johnson figured he was the best person to handle it. Mr. Johnson also discussed the involvement of Bill Postmus, Adam Aleman, Rex Gutierrez, Ted Lehrer, Josh White and Jeffrey Burum.

Mr. Johnson said that, other than seeing Mr. Postmus’ name on certain emails, he did not recall Mr. Postmus doing very much for the effort. Clearly, Mr. Johnson said, Mr. Postmus was aware of what was going on and who was involved.
Mr. Aleman was “coordinating his troops,” Mr. Johnson said. Mr. Johnson planned a meeting for the Saturday prior to opening Inland Empire Volunteers for Romney headquarters. At the meeting Mr. Johnson planned to discuss who would be responsible for what tasks. One day prior to the meeting Mr. Johnson made phone calls to invite specific people to the meeting. Mr. Aleman was the only person Mr. Johnson recalled with certainty that he called. Mr. Aleman agreed to come, but said nothing about Mr. Lehrer, Mr. White and Mr. Gutiérrez – all of whom assisted the effort and, except for Mr. Gutiérrez, attended the Saturday meeting.

Mr. White assisted with getting the message out. He set up email templates, Mr. Johnson said. Mr. Johnson recalled that Mr. White was a technical guy and could do that type of work, so he was assigned that task. Mr. Lehrer assisted with drafting messages on behalf of the group. Mr. Johnson did not recall how many messages Mr. Lehrer drafted, but said it was more than one. The messages were approved by the group and then blasted out by Mr. White. Mr. Johnson did not know what email list they used, but said it probably was the redcounty.com list.

Mr. Gutiérrez came into the headquarters and helped out with various tasks, made and received phone calls and recruited volunteers, Mr. Johnson said. Mr. Johnson did not know when Mr. Gutiérrez made or took phone calls, though he assumed at least some of the times it happened during the day because Mr. Gutiérrez disseminated his cell phone number. Mr. Johnson said that, of the two week period, Mr. Gutiérrez was in the Romney office most evenings and about three mornings. Mr. Johnson said he never asked the Assessor’s Office employees on what time they were doing their Romney work – “That’s their job. They showed up, and I asked them to help and that was it,” Mr. Johnson said.

Jeffrey Burum assisted Mr. Romney’s efforts in the Inland Empire, Mr. Johnson said. Mr. Burum helped get phones for Mr. Johnson’s operation and was one of the main individuals recruiting support for Mr. Romney from Inland Empire officials and donors. Mr. Johnson said that, when he could not get a return call from the official Romney campaign, Mr. Burum handled it.

Mr. Burum said Mr. Postmus and Mr. Biane were influential Republicans in the area, so Mr. Burum reached out to both of them on behalf of Mr. Romney. Mr. Burum recalled that Mr. Postmus expressed a desire to involve Mr. Aleman, though Mr. Burum said Mr. Aleman ultimately did little to assist the Romney campaign.

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8 He said he may have also called Brian Johsz of Supervisor Gary Ovitt’s office.

9 Two others also attended: Brian Johsz and another volunteer whose name Mr. Johnson did not recall.

10 When asked, Mr. Johnson said he assumed all the volunteers were supporting Mr. Romney because volunteers tend to be political supporters or else they would not volunteer. Interestingly, however, Mr. Lehrer said he personally was not supporting Mr. Romney. It seems, then, that Mr. Lehrer (and others, perhaps) was asked or instructed to assist the Romney effort and did not do so on his own choosing.
Collectively, the evidence indicates that Mr. Postmus offered the services of his County-subsidized political team to assist the Romney campaign. Several of his employees indicated that they were pressured to do so by Mr. Postmus and were asked to contribute time during normal working hours at the Assessor's Office.

5. **Shawn Steel and Michelle Steel Campaigns**

Mr. Richman was a political consultant hired by various politicians. One such client was Shawn Steele, a candidate for the Board of the Republican National Committee. The election was in the last week of February 2008. Mr. Lehrer said he spent much of February collecting support for Mr. Steele. Mr. White said he spent significant time picking up proxies for Mr. Steele's campaign. Both were acting at the urging of Mr. Aleman and Mr. Richman.

Shawn Steel is married to Michelle Steel, another of Mr. Richman's political clients. In 2006 Ms. Steel was a candidate for the California Board of Equalization. Ms. Steel's name came up in numerous interviews. In addition to her connection to Mr. Richman, Ms. Steel was also closely aligned with Mr. Postmus. The two supported each other in recent elections. As a result, Bob Smith said, Ms. Steel was constantly discussed in political conversations and strategy sessions at the Assessor's Office.

6. **Other Personnel Activity**

As alluded to above, some members of the executive staff engaged in political activities while on County time. Mr. Aleman, for example, increased his profile and political stature through activities on political websites. In addition, he instructed members of the Assessor's Office to work at campaign events and to assist political candidates with various obligations. He held strategy discussions with other political operatives and, Mr. Lehrer said, met with prospective and actual candidates to strategize ways to win and increase his visibility. Mr. Aleman also seemed to have approached many Assessor issues from a political angle. Sally Hill said that during one meeting Mr. Aleman got excited about an issue, referred to taxpayers as constituents, and said the issue would be very good politically. Ms. Hill said these statements made the career employees very uncomfortable. She added that "constituents" was political jargon, not Assessor jargon. Ms. Hill said she never felt as much political influence in the Assessor's Office as she did that day.

When Rex Gutierrez was present in the Assessor's Office, he was no different. According to two witnesses, not only did Mr. Gutierrez perform Rancho Cucamonga work while on County time, he also partook in political activity. He attended fundraisers for himself and others, filled out campaign forms from his desk at the Assessor's Office, made phone calls regarding city politics, and had strategy discussions with other members of the Assessor's Office. By the end of 2007 Mr. Gutierrez was focusing almost exclusively on politics, according to Mr. Lehrer. Mr. Lehrer said that, once Mr. Gutierrez saw others working on political matters, he did the same.

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11 In fact, Mr. Richman currently serves as Ms. Steel's chief-of-staff and reportedly earns close to $125K per year.
Mike Richman was also involved in politicking from the Assessor’s Office. According to two witnesses, Mr. Richman walked around the office discussing political campaigns and strategy on his cell phone. Mr. Lehrer said Mr. Richman, a political consultant, had clients while working at the Assessor’s Office. One client, Shawn Steele, was running for the Board of the Republican National Committee. According to Mr. Lehrer, Mr. Richman spent almost all of February 2008 collecting support for Mr. Steele. In addition, Mr. Richman was a paid consultant of the Derry campaign and, according to Mr. Lehrer, spent significant time strategizing and discussing ways for Mr. Derry to win. Both Mr. Lehrer and Josh White said 90% of Mr. Richman’s time was spent on politics.

Ted Lehrer edited content for recounty.com, arranged and attended political fundraisers, strategized for various politicians, and did various other political tasks at the direction of Mr. Aleman. Mr. Lehrer described the Assessor’s Office, including his duties and responsibilities, as a full-time political operation where Assessor work was secondary or incidental.

Josh White was assigned the task of disseminating daily political emails to County employees at their County email addresses. He did this from his desk at the Assessor’s Office and on County time. He also assisted with Mitt Romney’s campaign, Mr. Steele’s campaign for the Republican National Committee, and any other political work Mr. Aleman needed done. Because Mr. White was hired to do work already being done by others, one can safely assume he was hired to expand Mr. Aleman’s political operation.

Dob Hunter, who was intergovernmental relations officer until being fired in March 2007, saw and heard people going into Greg Eyler’s office to discuss issues relating to the Republican Central Committee and a political newsletter. Mr. Hunter said that, soon as they noticed he was around, they started closing the door to Mr. Eyler’s office.

A quote from Mr. Mosher captured how employees seemed to feel. Mr. Mosher said members of the executive staff were constantly in meetings behind closed doors, and he asked the following rhetorical question: “They don’t know what we do, so what’s the likelihood that they’re doing something business related?”

7. Other Political Activity

Various witnesses described other miscellaneous political activity that occurred in the Assessor’s Office and on County time, including the following: strategizing with various candidates as requested or as the need arose; working with Mike Richman on helping candidates find placement for mailings; working with Mr. Richman on trying to find press opportunities for Steve Poizner; recruiting candidates to run for the local Republican Party’s governing body; helping candidates for city clerk, including Joseph Turner, who was a friend of Mr. Aleman and Mr. Postmus; and searching for press opportunities for candidates, so Mr. Postmus could collect favors from these candidates down the road.

D. Bill Postmus

1. Involvement in Misconduct
At the outset of the investigation it was unclear to what extent Mr. Postmus could be connected to some of the misconduct because he was absent from the office so often and, in all likelihood, did not give directions in the presence of others. As our picture of the Assessor’s Office became clearer, it was evident that Mr. Postmus not only was aware of improper activities, but also directed the activities and, perhaps, deliberately hid his involvement by putting others at the forefront.

As would be expected, some witnesses were unsure whether Mr. Postmus was involved in much of the misconduct because he was rarely heard directing activities, though these witnesses assumed that he, like any manager, knew what was happening and was behind it.

On some occasions, Mr. Postmus’ involvement was clear. For example, Ted Lehrer said Mr. Postmus knew about and encouraged activities on RedCounty.com. Jim Lindley said that when Mr. Aleman contacted him about the Assessor’s Office hiring Mike Richman, Mr. Aleman said he had to get it done because Mr. Postmus instructed him to do so and because Mr. Postmus wanted it done. On another occasion, Mr. Lindley was contacted by one of Mr. Postmus’ lieutenants and was asked to hire Gerry O’Reilly into Mr. Lindley’s department – that too, Mr. Lindley said, came from Mr. Postmus. Bob Smith heard Mr. Postmus give specific instructions on several occasions, including some covert tasks to Mr. Aleman and Mr. Richman. Clearly Mr. Postmus was running the show, witnesses said.

In addition to specific instances of clear direction, there were also general circumstances clarifying that Mr. Postmus was quite involved. On several occasions Mr. Smith was conversing with Mr. Postmus, when Mr. Postmus closed the door and started discussing political matters at the Assessor’s Office. Dan Harp observed that Mr. Postmus held meetings with operations staff and then additional meetings with executive staff. “You don’t have to be an MBA to figure out that that did not make sense,” Mr. Harp said. He added that double meetings seemed redundant, so the executive staff and Mr. Postmus had to have been discussing non-operations matters.

Further, Mr. Postmus’ personality and modus operandi suggest that he deliberately obscured his involvement. Several witnesses said Mr. Postmus sought “plausible deniability” in everything he did and deliberately sought to act through intermediaries. For example, several witnesses said Mr. Postmus always had Mr. Aleman do his dirty work for him. Jim Lindley said it was “vintage” Bill Postmus to put someone else between himself and the improper act.

2. Drug Use

Some of Mr. Postmus’ employees thought something may have been wrong with Mr. Postmus, but did not suspect drugs. They said he seemed lazy, disinterested or tired. Others thought, based on his appearance, he may have had a drug problem. Many described him as always very hyperactive. Various instances clarify that Mr. Postmus is and has been battling a drug addiction.

On March 12, 2007, according to Jim Erwin, Mr. Postmus was scheduled to appear at a noon fundraiser for Brad Mitzelfelt and deliver introductory remarks. Mr. Postmus did
not show up. Mr. Erwin wondered about Mr. Postmus’ whereabouts, so someone was sent to Mr. Postmus’ home. Mr. Postmus later showed up at the event and Mr. Erwin, who had previously served as a sheriff and was trained as a narcotics expert, said Mr. Postmus appeared “stoned.” Mr. Postmus’ pupils were dilated, he was stuttering and his hair was messed up. Mr. Erwin said, “Bill looked like he fell off a park bench.” People were asking, “What’s wrong with Bill? Is he stoned again?” Mr. Erwin said Mr. Postmus was scheduled to meet with two businessmen at the March 12 fundraiser, but left without meeting them. Mr. Aleman was sent to get Mr. Postmus and bring him to the meeting.

After this incident Mr. Erwin, Mr. Aleman and Bob Smith met Mr. Postmus outside his house. Mr. Erwin demanded that Mr. Postmus attend rehab immediately. Mr. Postmus complied, collected some belongings and attended a facility for two weeks. Bob Smith said he took Mr. Postmus to rehab twice, including the March occasion. The first time was in 2005 or 2006 – Mr. Smith did not recall the exact date, but said it happened during some type of disaster in San Bernardino when Mr. Postmus was missing and could not be located.

After the March 2007 rehab stint, Mr. Erwin said Mr. Postmus seemed better. He was coming to work and gained weight. But in the summer of 2007, Mr. Erwin noticed that Mr. Postmus had very bad breath, which Mr. Erwin associated with drug use. In September 2007, Mr. Postmus began looking disheveled again, so Mr. Erwin sent Mr. Aleman to search Mr. Postmus’ apartment. Mr. Aleman did not find drugs but did find canisters of DVD cleaners. Mr. Erwin associated the canisters with bad breath and thought Mr. Postmus was “huffing” the chemicals in the canisters. Mr. Erwin compared this to snorting glue.

Mr. Smith said Mr. Postmus’ drug use was evident inside and outside the Assessor’s Office. Mr. Smith added that, even after the interventions, Mr. Postmus seemed to continue heading down the path to self-destruction.

There was another disturbing incident in mid-2008. According to Sheila Raines, Mr. Postmus came in to the office looking blue with white foam around his mouth. One of his arms was not moving and he was dry heaving and convulsing. Ms. Raines walked Mr. Postmus to his office where he laid down for a nap on his couch. He later woke up and went to lunch with his Pastor, who Ms. Raines, due to her concern for Mr. Postmus, summoned to the Assessor’s Office. After returning from lunch, Mr. Postmus was taken by Ted Lehrer to a press interview. The interview was with a reporter from “The Sun.” The reporter recorded the interview and put the audio recording on the internet. According to Ms. Raines, the article contained information about Mr. Postmus hiccupping and dry heaving, and Mr. Postmus did not sound good on the tape. Describing the situation, Ms. Raines said, “It was bad.”

In July 2008 Mr. Postmus took a ten week medical leave of absence and entered a rehab facility. Mr. Postmus, according to several witnesses, is suffering from an addiction to methamphetamines.

Mr. Lehrer said that on January 6, 2009, the day Mr. Postmus appeared before the Board to discuss his drug problem, Mr. Postmus contacted him to borrow $100 at 9:00 p.m. Mr. Postmus said he needed the money so he could repay a debt owed to a schoolteacher. Mr. Lehrer was summoned to Mr. Postmus’ house, where he handed the cash to Mr.
Postmus that night. Mr. Lehrer concluded that Mr. Postmus needed the money to purchase more drugs.

On January 15, 2009 Mr. Postmus was arrested at his home for possession of methamphetamines and drug paraphernalia.

E. Other Misconduct

1. Changing Employees' Status to Unclassified

In December 2006 the Board, at the direction of then-Chairman and Assessor-elect Postmus, changed the status of some employees in the Assessor's Office from classified to unclassified (i.e., protected to unprotected). The change was to be prospective, such that it applied to new employees and old employees were grandfathered in. The reasons for the change, according to Mr. Erwin, were to foster loyalty to Mr. Postmus and to replace career employees with friends of Mr. Postmus.

Sally Hill held a position whose status was changed. She, together with other managers, met with Mr. Postmus prior to his taking over the Assessor's Office to discuss the change. Despite being grandfathered into classified status, Ms. Hill was concerned about the change because it meant managers served at the whim of the Assessor and could be terminated whenever the Assessor felt like it. Mr. Postmus told Ms. Hill and the managers that the change was all about loyalty. Mr. Postmus said he valued and wanted to foster loyalty among his employees. Andrew Lamberto confirmed Mr. Erwin's and Ms. Hill's observations. Mr. Lamberto said Mr. Postmus knew he had complete control over unclassified positions and, therefore, wanted to change the status of some current positions and insisted that all newly created positions also be unclassified. Other witnesses also sensed Mr. Postmus' emphasis on loyalty.

Further, Mr. Erwin said that, once Mr. Postmus became Assessor, Mr. Aleman and Mr. Postmus planned to move a 60-year-old career employee, Sylvia Cooper, to an at will position so they could fire her and bring in others. It is does not appear that this plan was carried out.

2. Bob Hunter Firing

Bob Hunter worked for Mr. Postmus when Mr. Postmus was on the Board. When Mr. Postmus became Assessor, he intended to bring Mr. Hunter to the Assessor's Office. According to Ms. Raines, early in 2007 Paula Nowicki, who later was appointed chief-of-staff to Supervisor Brad Mitzelfelt, told Mr. Postmus that Mr. Hunter intended to run against Mr. Mitzelfelt. In light of this, Ms. Raines said, Ms. Nowicki urged Mr. Postmus to fire Mr. Hunter.

By the time Mr. Postmus had this conversation with Ms. Nowicki, he had publicly announced his staff and Mr. Hunter could not be let go immediately. So, according to Ms. Raines, Mr. Hunter was terminated during Mr. Postmus' first week as Assessor. Ms. Raines said Mr. Hunter was fired for one reason: by planning to run against Mr. Mitzelfelt, Mr. Hunter was being politically disloyal. Mark Mosher confirmed part of Ms. Raines' account. Mr. Mosher said Mr. Hunter’s termination had something to do with Mr. Hunter’s
application for the First District Supervisor’s seat. Mr. Mosher said Mr. Postmus favored Mr. Mitzelfelt for the seat and was unhappy by Mr. Hunter’s application.

Ms. Nowicki was asked about Mr. Hunter’s termination. She said she never told Mr. Postmus to fire Mr. Hunter, but added that Mr. Hunter’s application for Mr. Postmus’ vacated seat may have been part of the reason he was fired. Ms. Nowicki also mentioned being puzzled by Mr. Hunter’s being hired in the first place, given the difficult history Mr. Postmus had with Mr. Hunter.

We interviewed Mr. Hunter and discussed with him the circumstances surrounding his termination. Prior to Mr. Postmus’ running for Assessor, Mr. Postmus hired Mr. Hunter to join Mr. Postmus’ staff with the Board. Mr. Hunter’s hiring surprised some, including Mr. Mitzelfelt and Ms. Nowicki, because Mr. Hunter previously had a falling out with Mr. Postmus. Mr. Hunter said his relationship with Mr. Mitzelfelt was strained from the beginning.

Some time after Mr. Hunter joined Mr. Postmus’ staff, Mr. Postmus announced his intentions to run for Assessor. After Mr. Postmus won that election, Mr. Hunter was brought over to the Assessor’s Office. By the time Mr. Hunter was brought over, he had submitted papers and applied for the recently-vacated seat. Mr. Hunter received Blackberry pin messages from Mr. Postmus questioning why Mr. Hunter submitted his name. Mr. Hunter said Mr. Postmus’ messages included, “Why are you doing this?” and “This is not what you want to do.” Mr. Hunter interpreted the messages to mean that Mr. Postmus was planning to take some adverse action against him. Because Mr. Postmus already brought Mr. Hunter to the Assessor’s Office, however, Mr. Hunter could not be fired immediately. Instead, Mr. Hunter said he was isolated. Mr. Postmus did not speak to him, did not tell him about his start date, and did not inform him of his job description or duties and responsibilities. Mr. Hunter felt ostracized. Around March 2007, Mr. Erwin walked into Mr. Hunter’s office and said Mr. Postmus wanted Mr. Hunter fired. Mr. Erwin never explained the reasons, and Mr. Hunter was given no explanation for his release.

Mr. Hunter mentioned that Jim Lindley had a similar experience surrounding Mr. Postmus’ vacated seat. We spoke to Mr. Lindley. Mr. Lindley also sought appointment to the vacated seat. When he did so, Mr. Postmus went “ballistic,” Mr. Lindley said. Mr. Lindley was accused of being disloyal for going against the “Postmus organization.” Mr. Lindley received pin messages from Mr. Postmus, who questioned why he submitted his name, said he was being disloyal and even threatened that “things can happen.” Mr. Lindley said it got back to him that one of Mr. Postmus’ staff members said Mr. Lindley better be careful or else he could lose his job with the County. Mr. Lindley said the staff member was Michael Orme, with whom he has since established a good working relationship. Mr. Lindley was disturbed by the treatment he received.

3. Scott Becker Property Appraisal

As discussed above, Mr. Becker was a friend of Mr. Postmus. According to Jim Erwin, in September or October 2007 Mr. Becker contacted the Assessor’s Office and demanded a lower assessment value on his property, but would not let anyone from the Assessor’s Office onto the property. The appraisers—who, according to Mr. Erwin, were
Rhonda Pfeiffer (principal appraiser, real property) and Dan Harp (then-principal appraiser, real property; later promoted to chief appraiser) – refused Mr. Becker’s request. Mr. Becker again requested a lower assessment and mentioned his relationship with Mr. Postmus. According to Mr. Erwin, the appraisers went to Mr. Postmus and he returned Mr. Becker’s file to them. The appraisers then went to Mr. Erwin and complained that Mr. Postmus’ friend wanted help on his assessment. Mr. Erwin said he discussed the matter with Mr. Postmus, and Mr. Postmus got angry that the appraisers went to Mr. Erwin. Given Mr. Postmus’ reaction and comments he made suggesting the appraisers should have known Mr. Becker was Mr. Postmus’ friend, Mr. Erwin believed Mr. Postmus wanted the appraisers to lower the valuation on the property.

We interviewed Rhonda Pfeiffer and Dan Harp. Ms. Pfeiffer was contacted by Mr. Becker about his assessment. Because he allowed no one on the property, Ms. Pfeiffer said nothing could be done. About one year later Mr. Postmus gave her Mr. Becker’s file and explained that Mr. Becker was having a problem and asked her to look into it. Ms. Pfeiffer said Mr. Postmus never pressured her to change an assessment value, though she recalled no other time Mr. Postmus personally asked her to look into a property appraisal. Ms. Pfeiffer contacted Mr. Becker. He was rude and Ms. Pfeiffer got upset, so she discussed the matter with Mr. Erwin. She said nothing happened after that, and Mr. Becker’s property value remains unchanged to this day.

Mr. Harp said he never spoke to Scott Becker.

4. **Influencing New Hires**

In addition to the executive staff discussed above, Mr. Postmus intervened on at least two occasions in decisions to hire line employees in the Assessor’s Office. Mark Mosher described Mr. Postmus as “heavily suggest[ing]” that certain individuals be hired even though better-qualified candidates were available.

a. **Mark Sheppard**

Dan Harp said the Assessor’s Office interviewed six people for an appraisal technician position in the Twin Peaks district office. Mark Sheppard was one of the six candidates, and was ranked fifth or sixth. Mr. Harp said Mr. Sheppard was not going to be hired, because his prior experiences did not qualify him for the position. Then, Mr. Harp said, Harlow Cameron called and said Mr. Postmus instructed that Mr. Sheppard be hired. Mr. Cameron, whom we interviewed, recalled making the phone call and said he was directed to do so by Mr. Postmus. Neither Mr. Harp nor Mr. Cameron knew why Mr. Postmus intervened in favor of Mr. Sheppard. One possible reason is Mr. Sheppard’s association with a former California politician named Jim Brulic, with whom Mr. Postmus may have been associated. Mr. Harp said Mr. Sheppard previously worked for Mr. Brulic and emphasized that association on his resume and in his interview.

Dennis Drager said that, just before resigning his position, Mr. Postmus asked that Mr. Sheppard be transferred to the main office. Mr. Postmus said he wanted Mr. Sheppard around in case he needed any public relations assistance, which was considered Mr. Sheppard’s strong suit. Mr. Drager said the transfer was made, though not because Mr.
Postmus requested it, but because Mr. Sheppard was, by coincidence, to be imminently transferred to the main office. Mr. Sheppard is still employed in the Assessor’s Office.

b. Gerry O’Reilly

Mr. O’Reilly’s hire was different from, and perhaps more egregious than, the hiring of Mr. Sheppard. Mr. O’Reilly was not a candidate for any position, nor was any position looking to hire him. Rather, Mr. Postmus approached Dan Harp and instructed him to find a position in which to place Mr. O’Reilly, i.e. to create a position in order to give Mr. O’Reilly a job. Mr. Harp, together with a few others, helped scrape together money from the budget and created a temporary position for Mr. O’Reilly. Mr. O’Reilly was paid $50,000 to $60,000 per year with no benefits, Mr. Harp said. Dennis Draeger said Mr. O’Reilly’s salary about equaled the salary for an auditor/appraiser position (including benefits). Various witnesses said Mr. O’Reilly’s employment diverted resources from other legitimate needs.

Prior to Mr. O’Reilly’s hire being finalized, Mr. Harp went to Mr. Postmus to protest the hire. Mr. Postmus interrupted Mr. Harp and said, “I did not ask for your opinion.” Mr. Harp wanted, but was not permitted, to relay a story about Mr. O’Reilly’s previous employment stint with the Assessor’s Office, which included misbehavior by Mr. O’Reilly.

Several witnesses described a political basis for the hiring of Mr. O’Reilly. Gerry O’Reilly’s brother, Patrick O’Reilly, owns and operates a public relations firm in Riverside. Patrick O’Reilly has been described as a well-connected individual.12

Gerry O’Reilly is still employed in the Assessor’s Office and still occupies the temporary position created for him.

5. Retaliation Against Wanda Nowicki

Wanda Nowicki, a former executive secretary to Mr. Aleman, witnessed much of the misconduct and was allegedly asked by Mr. Aleman to change meeting minutes submitted to the grand jury. Hence, her testimony to the grand jury and DA was important. Ms. Nowicki provided information critical of some Assessor’s Office employees, including the information that ultimately led to Mr. Aleman’s arrest and resignation. Ms. Nowicki even wore a wire to the Assessor’s Office at the request of the DA. During that time period Ms. Nowicki, whom we interviewed, felt uncomfortable with her continued employment at the Assessor’s Office. She felt as though Mr. Postmus and others hated her for blowing the whistle and were plotting a way to retaliate, which eventually happened. She was transferred to the Victorville office.

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12 Jim Lindley said that, when he was purchasing director, people in the Assessor’s Office contacted him and asked whether he could hire Gerry O’Reilly into the purchasing department. Mr. Lindley had no budget room and did not hire Mr. O’Reilly.
Paula Nowicki, Wanda Nowicki's mother-in-law, heard that Mr. Postmus and Mr. Aleman said they wanted to fire Wanda, Wanda was not a team player, and she should have omitted some information from her testimony. Mr. Postmus reportedly wanted Wanda fired or moved. Paula also heard that Mr. Postmus contacted Andrew Lamberto to remove Wanda, but Mr. Lamberto said there was no department with an opening for her. As a result, Paula said, Mr. Postmus moved her to the Victorville office and out of his sight. Paula heard that Mr. Aleman complained and said Wanda should have been moved to the Twentynine Palms office, a seemingly larger demotion and more cumbersome commute. Paula heard complaints from Wanda that Mr. Postmus sometimes sat and stared at her.

Mr. Lamberto said Wanda Nowicki called him to complain about trouble at work and about being told to omit certain information from her grand jury testimony. Mr. Lamberto instructed her to be honest to the grand jury and to contact him if a superior instructed her to do something contrary to instructions from the grand jury. Ms. Nowicki said she felt like an outcast and a potential victim for retaliatory actions. Mr. Lamberto informed her that she could not be retaliated against or written up for insubordination for not adhering to an order contrary to grand jury instructions.

Shortly after that conversation, Mr. Lamberto said, Mr. Postmus contacted him. Without providing reasons or details, Mr. Postmus said things with Ms. Nowicki were not working out and he wanted her moved out. Mr. Lamberto did not tell Mr. Postmus about his prior conversation with Ms. Nowicki. At first, Mr. Lamberto said, Mr. Postmus indicated that he intended to terminate Wanda. He then wanted to see if she could be moved to another department. Mr. Postmus wanted Mr. Lamberto to handle that move, but Mr. Lamberto said moves between departments are negotiated between department heads. Mr. Lamberto said that was the last time he heard from Mr. Postmus on the issue of Wanda's employment.

Wanda Nowicki provided damning information to the grand jury and the District Attorney about Mr. Postmus and others. As a result, they discussed and contemplated taking severe retaliatory actions against Wanda. Ultimately, Mr. Postmus decided on a more measured response and moved Ms. Nowicki to another location.

III. Potential Civil Causes of Action Against Problematic Personnel

A number of the abuses orchestrated by Mr. Postmus and members of his executive staff are legally actionable. For example, falsely declaring hours or content of work to inflate a County paycheck may constitute tortious conduct. Further, engaging in political activities from work while on County time violates the County's Personnel Rules and may constitute misappropriation of County resources.

Even if the County cannot fully recoup its losses, filing civil suits against corrupt employees sets a powerful precedent for all current and future County employees. Specifically, that the County will vigorously pursue those who violate the trust of the public by abusing their powers and funding personal political agendas with public funds.

A separate memorandum analyzing the merits of potential causes of action has been provided to County Counsel. The causes of action include, but are not limited to, civil
conspiracy, restitution, improper expenditure of public funds, negligent misrepresentation and intentional misrepresentation.

A. Potential Defendants

The list of potential defendants includes: Bill Postmus, Adam Aleman, Jim Erwin, Greg Eyler, Ted Lehrer, Rex Gutierrez, Mike Richman, Josh White and Scott Becker. Deciding whom to sue must take into account the applicable factual and legal elements, and may also take into consideration the egregiousness of that individual's circumstances and their truthfulness when speaking to us. We recommend the following:

<table>
<thead>
<tr>
<th>Potential Defendant</th>
<th>Second Defendant</th>
<th>Third Defendant</th>
</tr>
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<tbody>
<tr>
<td>Bill Postmus</td>
<td>Ted Lehrer</td>
<td>Joshua White</td>
</tr>
<tr>
<td>Adam Aleman</td>
<td>Jim Erwin</td>
<td>Scott Becker</td>
</tr>
<tr>
<td>Greg Eyler</td>
<td></td>
<td></td>
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<tr>
<td>Rex Gutierrez</td>
<td></td>
<td></td>
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<tr>
<td>Mike Richman</td>
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</tbody>
</table>

Mr. Postmus and Mr. Aleman are most responsible for the misconduct in the Assessor’s Office. They condoned, authorized or directed much if not all of the conduct that wasted so much of the County's resources. It is difficult to imagine filing any suits without including the two primary offenders.

Mr. Eyler and Mr. Gutierrez ought to be sued. Their cases are egregious. Mr. Eyler and Mr. Gutierrez did little or no work and were constantly absent, and yet their timecards state the opposite. Furthermore, much of what Mr. Eyler and Mr. Gutierrez said in their interview was clearly untrue.

The Richman Contract may be most disturbing. Mr. Richman was given a contract for doing absolutely nothing. No one person knew what Mr. Richman did or was supposed to do for the Assessor’s Office. Mr. Postmus and some associates conspired to and executed a plan by which to defraud the County of $50,000.

Mr. Lehrer was implicated in much of the political operation run by Mr. Aleman. Two factors weigh against suing him, however. First, his work hours were not as egregiously deficient as some of the others. Second, Mr. Lehrer seemed sincere in his interview. Aside from implicating himself and describing his own misconduct, much of Mr. Lehrer’s testimony has been corroborated.

Mr. Erwin, by most accounts, was an adequate employee. Although he was implicated in some misconduct, most of his work seemed legitimate. Some witnesses said he even tried to rid the Assessor’s Office of some problems. Also, while it seems Mr. Erwin
was not entirely honest in his interview, most of his testimony was corroborated. On the other hand, Mr. Erwin was a high-level employee in an office with rampant corruption. Aside from his direct involvement, he bears some responsibility for not stopping the misbehavior.

Mr. White likely should not be sued. As an initial matter, Mr. White, who is 20 years old, had little discretion in his position and acted on the instructions of others. Mr. White was honest and forthright in his interview, and also exhibited remorse by voluntarily resigning his position in April 2008.

Although Mr. Becker’s name arose only in circumstances suggesting he too abused or attempted to abuse County resources, Mr. Postmus bears the responsibility for the money paid to Mr. Becker. Mr. Becker was hired to do work, which, by all accounts, he did. That his hiring was wholly unnecessary does not appear to be Mr. Becker’s responsibility.

IV. Conclusion

Two early moves demonstrate that Mr. Postmus went to the Assessor’s Office with intent to develop a political operation – creating the executive staff (which he did while Chairman of the Board), and appointing Mr. Aleman, his political point person, assistant assessor. The predictable result was a personal political operation fully funded by taxpayers.

A small group of individuals in the County Assessor’s Office, led by Mr. Postmus and Mr. Aleman, engaged in blatant misconduct and abused County resources. The individuals received jobs for which they were unqualified, submitted timecards for more hours than were actually worked, and engaged in inappropriate activities on the rare occasion they appeared at the office. It is difficult to quantify the cost of these abuses to the County. The grand jury analyzed the County Assessor’s budget in 2005-2006 and 2006-2007 and concluded that the budget increased by nearly $1.3M or 10.8%.

Equally damaging is the harm bestowed upon the hundreds of honorable employees of the Assessor’s Office, who, by their mere association, suffered besmirched reputations and countless disruptions and distractions while trying to perform their jobs.
EXHIBIT 2

(City of Santa Monica Report)
REPORT WITH REVIEW AND RECOMMENDATION
OF BEST PRACTICES
FOR THE CITY OF SANTA MONICA

By:     John C. Hueston

Dated:  April 18, 2016
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I. EXECUTIVE SUMMARY

On December 15, 2015, the Santa Monica City Council ("Council") authorized an independent review of recent events in the City of Santa Monica ("Santa Monica"). The events to be reviewed were: (1) the 2014 revocation of an employment offer made to Elizabeth Riel for the Communications and Affairs Officer Position; and (2) recent complaints that alleged violations of the City of Santa Monica Taxpayer Protection Amendment of 2000 ("the Oaks Initiative"). John C. Hueston was chosen by the Council to be the city’s outside advisor, along with members of my firm, Hueston Hennigan LLP. During the course of our review, we have interviewed 21 city and third-party individuals and reviewed relevant documents. I submit this report, which details my findings and recommendations for best practices.

A. THE REVOCATION OF ELIZABETH RIEL’S OFFER

1. Background.

In December 2013, Deputy City Manager for Special Projects Kate Vernez informed City Manager Rodney Gould that she intended to retire in 2014. Ms. Vernez’s responsibilities included communications and public affairs for Santa Monica and intergovernmental communications. Mr. Gould offered the Deputy City Manager position to Debbie Lee, who worked for Downtown Santa Monica, Inc. at the time. Ms. Lee declined the offer for personal reasons.

Mr. Gould then decided to create a new position, the Communications and Public Affairs Officer (the “Communications Position”), which would take on Ms. Vernez’s Santa Monica communications and public affairs responsibilities. Danielle Noble, who was serving as Assistant to the City Manager at the time, was promoted to Deputy City Manager and ultimately allocated responsibility for intergovernmental matters.

Mr. Gould instructed Director of Human Resources Donna Peter to begin a recruiting process to solicit applications for the Communications Position. The Department of Human Resources ("Human Resources") and members of the City Manager’s Office developed and posted a job listing for the Communications Position. The job listing did not mention political neutrality in the criteria for the Communications Position.

Over 200 people applied for the Communications Position. Assistant City Manager Elaine Polachek and Ms. Noble assembled an interview panel to evaluate the top tier candidates. Five individuals served on the interview panel, including three city employees, an employee of the City of Beverly Hills, and Debbie Lee. The interview panel posed pre-approved questions that had been developed by Santa Monica’s Human Resources Department and reviewed by the City Manager’s Office.

After meeting with the top tier candidates, the interview panel recommended Elizabeth Riel as their top choice for the Communications Position. In a debriefing meeting, the panelists told Mr. Gould and others that Ms. Riel had the best communication skills and the most relevant work experience of all of the interviewees. Some panelists remarked how Ms. Riel’s experience in Santa Monica and her knowledge of Santa Monica politics would be a boon in the Communications Position. One panelist thought that Ms. Riel’s most important distinguishing characteristic was her willingness and level of comfort working within the political atmosphere...
that exists in City Hall. That same panelist told Mr. Gould that, among all of the candidates who had been considered, Ms. Riel was by far and away the most comfortable in the political arena.

After interviewing Ms. Riel himself and having other members of the City Manager’s Office interview Ms. Riel, Mr. Gould offered her the Communications Position. Ms. Riel accepted the offer. Mr. Gould then informed the City Council of Ms. Riel’s hiring, and re-communicated her hiring to each councilmember individually. He also issued a press release announcing her hiring.

Several weeks later, then Mayor Pamela O’Connor sent Mr. Gould at least nine e-mails over a three-day period concerning Ms. Riel’s hiring. She informed Mr. Gould that Ms. Riel had previously participated in political activism in Santa Monica, and that Ms. Riel had advocated “slow-growth” policies. In connection with her activism, Ms. O’Connor said that Ms. Riel had even funded a political mailer sent by the Santa Monica Coalition for a Livable City (“SMCLC”) during the 2006 election that had attacked Ms. O’Connor. Ms. O’Connor said that she would be “extremely hesitant to work with Elizabeth Riel” and wished instead for “someone else [to be] assigned [for]...Mayoral things” or for Mr. Gould to “[j]ust give [Ms. O’Connor] the technical materials [she] need[s] when [she] need[s] them and [she’ll] do it [herself].”

Mr. Gould initially responded by asking Ms. O’Connor to “give [Ms. Riel] a chance to prove herself.” Undeterred, Ms. O’Connor repeated that she “do[es] not and will not trust [Ms. Riel].” Ms. O’Connor said that she felt like she was “being attacked from both outside City Hall and from within City Hall.” She then informed Mr. Gould that “[she] will be sharing this with others in the community and will be asking people for their opinion about [Ms. Riel] being in this position” and that “this is likely to become a news story in at least one local outlet next week.” After digesting Ms. O’Connor’s passionate feedback, Mr. Gould replied to Ms. O’Connor that he “may have to reverse course and rescind [Ms. Riel’s] offer.” He wrote that “[City Attorney] Marsha [Moutrie] and [Mr. Gould] have been discussing this option and [Ms. Moutrie] can help.” Mr. Gould also stated in this e-mail that “[Ms. Riel’s] hire is problematic given the way [Ms. Riel] and others may perceive it.” Ms. Moutrie conducted research and concluded that, if Ms. Riel’s offer was rescinded, Santa Monica would have a reasonable defense in a lawsuit.

Soon thereafter, Mr. Gould called Ms. Riel and confronted her about not disclosing her political activism, particularly her activities directed at City Council members. Mr. Gould recalled Ms. Riel offering three rationalizations for her silence on the issue, but Mr. Gould did not find any of them persuasive.

After his call with Ms. Riel, Mr. Gould told Ms. O’Connor that he planned to revoke Ms. Riel’s job offer because “she is perceived as aligned politically, which makes doing her job untenable” and “she failed to disclose her prior activism...[which] goes to trust and judgment.” Mr. Gould then asked Ms. Polacheck and Ms. Vernez to develop a public explanation for his decision to revoke Ms. Riel’s offer. During their back-and-forth on the matter, Ms. Polacheck wrote that they “can’t refer to political involvement or a perceived lack of neutrality.”

Four days after Ms. O’Connor’s initial e-mail to Mr. Gould, Mr. Gould informed Ms. Riel that he was revoking her offer for the Communications Position. The next day, Mr. Gould and
Ms. Polachek contacted and offered the Communications Position to Debbie Lee. Ms. Lee accepted the position. No interview process was conducted for Ms. Lee’s hiring.

During this time, multiple councilmembers contacted Mr. Gould via e-mail to request an explanation for the revocation of Ms. Riel’s offer. Mr. Gould declined to discuss the issue in detail, claiming that he could not do so because he did not want to “violate [Ms. Riel’s] privacy rights by airing it” and he needed to protect the “privacy and confidentiality of the hiring process.” Mr. Gould did not disclose the extent of his communications with Ms. O’Connor in any of his e-mail responses to councilmembers or in any subsequent conversations with them.

On June 5, 2014, Mr. Gould issued a press release describing his decision to revoke Ms. Riel’s employment offer. The press release focused on the importance of certain positions in city government to be apolitical. He thereby strongly implied that he revoked Ms. Riel’s offer because she was—at least in the past—a partisan in Santa Monica politics. Mr. Gould also wrote that he had consulted with “the City Attorney” throughout the process. Ms. Moutrie claims that while Mr. Gould did consult with her, he did not always follow her advice.

Ms. Riel sued Santa Monica and Mr. Gould for violating her First Amendment rights. After more than a year of litigation, Ms. Riel settled with Santa Monica for $710,000.

2. Recommendations for Best Practices.

In our opinion, there were several lapses in judgment in connection with the events described above, and those lapses had cascading consequences. Through our review of these facts, we offer the following findings and recommendations for best practices:

- Councilmembers should be expressly mindful of restrictions in the City Charter—specifically Article VI of the Santa Monica City Charter, Section 610—when communicating with the City Manager and should be cognizant of whether their comments on hiring could be perceived as a direct or indirect request to hire or fire a city employee. This recommendation is based on the finding during our review that Ms. O’Connor was not mindful of Section 610 during her conversations with Mr. Gould regarding Ms. Riel. Section 610 clearly prohibits city councilmembers from “order[ing] or request[ing] directly or indirectly the appointment of any person to an office or employment or the removal of any person.”

- The City Manager should instruct all city officials and employees to keep communications related to business issues on city systems and inform them of the requirements to do so in Administration Instruction II-4-10 dated May 7, 2007. This recommendation is based on the finding during our review that some city employees use personal e-mail accounts to conduct city business. That practice violates Administration Instruction II-4-10 dated May 7, 2007, defining inappropriate use to include “use of third party electronic mail system(s) for a City business purpose without prior authorization by the Chief Information Officer.”

- With room for limited exceptions, the City Manager should adopt a standard hiring process that publicly seeks applications for open at-will city positions and
employs an interview process to review top tier candidates. In exceptional circumstances where that process is not employed, the City Manager should be transparent about the reasons for bypassing the standard hiring process. This recommendation is based on the finding during our review that failure to solicit applications from the public for open positions or failure to use an interview panel to select the best candidate has created doubt in Santa Monica about the merits and qualifications of city employees and about the fairness of the process used to recruit them. Additionally, being selected by an interview panel provides employees with more confidence that they were the best choice for the position.

- To the extent possible, the City Manager should disclose equal information to all councilmembers. This recommendation is based on the finding during our review that Mr. Gould provided detailed explanations to Ms. O’Connor about his decision to revoke Ms. Riel’s offer, but he did not provide similar information to other councilmembers.

- Human Resources should proactively determine which at-will city positions require a form of “political neutrality” and then include it as a desired criterion in job listings for those positions. This recommendation is based on the finding that a City Manager could properly conclude that a form of political neutrality is a desirable characteristic for certain at-will positions. Unfortunately, that prerequisite was not communicated to applicants who wished to be considered for the Communications Position in 2014.

These facts, findings, and recommendations for best practices are discussed in greater detail in Section IV of this report.

B. THE OAKS INITIATIVE

In November 2000, Santa Monica adopted the City of Santa Monica Taxpayer Protection Amendment of 2000 (the “Oaks Initiative”) through a proposition vote. The Oaks Initiative prohibits public officials from receiving personal or campaign benefits from persons or entities after the official awards such persons or entities with a public benefit. Penalties for violating the Oaks Initiative include a criminal misdemeanor violation, and monetary and injunctive civil relief.

Public officials campaigned against the Oaks Initiative during the proposition vote, and were displeased with it after enactment. Officials, including City Attorney Moutrie, expressed concern with the constitutionality and enforceability of the Oaks Initiative. In fact, in June 2001, Santa Monica filed an action for declaratory relief and a petition for a writ of mandate against its City Clerk for non-enforcement of the Oaks Initiative. The complaint sought a judicial declaration regarding the constitutionality and legality of the Oaks Initiative. The state trial court dismissed the case as a non-justiciable controversy and the appellate court affirmed.

Since then, Santa Monica residents have filed two Oaks Initiative complaints with Ms. Moutrie’s office, one against Ms. O’Connor for improperly accepting contributions and another against Mr. Gould for improperly accepting employment from a city contractor after he retired as Santa Monica’s City Manager. Ms. Moutrie opted not to prosecute either alleged violation, citing
conflict of interest concerns because she had previously provided counsel to both Mr. Gould and Ms. O’Connor. The District Attorney and State Attorney General both declined to prosecute as well. Ms. Moutrie believed that she did not have a viable option to prosecute either complaint and so she declined to take action. Members of the community sued Mr. Gould in state court and reached a settlement to resolve the lawsuit. As part of the settlement, Mr. Gould resigning his position with the city contractor and agreeing to abide by Oaks Initiative restrictions. Ms. Moutrie does not currently have a clear policy on how to investigate or prosecute Oaks Initiative violations.

Based on our review of the provisions and history of the Oaks Initiative in Santa Monica and other California jurisdictions, our review of the structure of the City Attorney’s Office in Santa Monica, and our review of federal anti-corruption rules, we make the following findings and recommendations:

- **The Oaks Initiative serves important anti-corruption interests in Santa Monica.** To the extent that there are enforceability issues, interpretation issues, or legal infirmities with the Oaks Initiative, the law should be clarified or amended by the City Council and City Attorney’s Office. This recommendation is based on the finding during our review that the Oaks Initiative contains important prohibitions against corruptive actions and allows Santa Monica to penalize such actions without relying on the District Attorney or the State Attorney General.

- **The City Attorney’s Office should appoint an attorney in the Criminal Division to be responsible for prosecuting Oaks Initiative violations.** Alternatively, the City Attorney should hire a special prosecutor to assess and prosecute each Oaks Initiative complaint. This recommendation is based on the finding during our review that the Chief Deputy of the Criminal Division, Terry White, and others under his supervision do not have the same conflict of interest concerns as Ms. Moutrie. This is because the Criminal Division is already largely shielded from Ms. Moutrie’s influence for other policy reasons. If Ms. Moutrie still believes, however, that her hiring and firing power over Mr. White and his subordinates still taints the Criminal Division with her conflict of interest concerns, hiring a special prosecutor to assess and prosecute each Oaks Initiative violation would eliminate those concerns.

- **The City Attorney should approve clear guidelines for the implementation of the Oaks Initiative and the City Council should pass those guidelines by resolution.** This recommendation is based on the finding during our review that city officials are largely unaware of their obligations under the Oaks Initiative and have well-founded confusion about its enforcement by the City Attorney’s Office. We have submitted draft guidelines for consideration by the City Council.

- **The City Clerk should provide the list of projects subject to Oaks Initiative strictures in a more accessible format and without extraneous information.** This recommendation is based on the finding during our review that the current format of the report of relevant projects makes compliance with the Oaks Initiative excessively burdensome for councilmembers.
• The Oaks Initiative should be amended to solve reasonable concerns about the law’s apparent legal infirmities and to strengthen anti-corruption restrictions. This recommendation is based on the finding during our review that there are provisions of the Oaks Initiative that may be susceptible to legal and constitutional challenge. Those provisions should be amended in a way that retains their anti-corruptive goals while reducing doubts as to their enforceability. Our recommended amendments are attached as Exhibit B.

These facts, findings, and recommendations for best practices are discussed more in detail in Section V of this report.

II. OVERVIEW OF REVIEW PROCEDURES

A. SCOPE OF REVIEW

At the November 10, 2015, Council meeting, the Council selected John C. Hueston, of Hueston Hennigan LLP, to conduct an independent review of certain recent events in Santa Monica and write an independent report regarding best practices for Santa Monica. This selection was based on a September 29, 2015, Special Council Meeting where the Council agreed to hire an outside advisor who would have the authority to interview staff, elected officials, appointed officials, and third parties in order to develop an independent report to be presented at a public meeting. On December 8, 2015, John Hueston submitted a scope of review ("Scope of Review") for the Council’s consideration. At a Special Council Meeting on December 15, 2015, the Council authorized City Manager, Rick Cole, to negotiate and execute a Professional Services Agreement with Hueston Hennigan LLP in accordance with the proposed Scope of Review.

The Scope of Review stated that a review of issues including the Elizabeth Riel termination and the Oaks Initiative were necessary to determine the adequacy of existing governance protocols and the necessity for amendments and/or adoption of new practices. With respect to the Riel termination, the Scope of Review defined the review to include:

(1) Whether public official(s) improperly influenced the Riel termination;

(2) Whether the City Manager had an affirmative duty to warn or take steps to preclude potential use of political influence;

(3) Whether fair process was employed in the termination process; and

(4) Whether the City Attorney appropriately reported on the status of the Riel litigation and appropriately handled related referrals.

With respect to the Oaks Initiative, the Scope of Review defined the assessment to include:

(1) Alleged legal infirmities;

(2) Processing of reports of violations; and

(3) Issues related to enforcement including declared conflict concerns by the City Attorney.
B. WITNESSES INTERVIEWED

In connection with our review, we interviewed the following individuals (some of them more than once), either in person or by telephone:

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<thead>
<tr>
<th>Name</th>
<th>Current Title (in Santa Monica)</th>
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<tbody>
<tr>
<td>Andy Agle</td>
<td>Director of Housing and Economic Development</td>
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<tr>
<td>Rick Cole</td>
<td>City Manager</td>
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<tr>
<td>Gleam Davis</td>
<td>Councilmember</td>
</tr>
<tr>
<td>Cheryl Friedling</td>
<td>Deputy City Manager in Beverly Hills</td>
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<tr>
<td>Rodney Gould</td>
<td>Former City Manager</td>
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<tr>
<td>Sue Himmelrich</td>
<td>Councilmember</td>
</tr>
<tr>
<td>Robert Holbrook</td>
<td>Former Councilmember</td>
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<tr>
<td>Joseph Lawrence</td>
<td>Assistant City Attorney</td>
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<tr>
<td>Debbie Lee</td>
<td>Communications and Public Affairs Officer</td>
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<tr>
<td>Kevin McKeown</td>
<td>Councilmember</td>
</tr>
<tr>
<td>Marsha Moutrie</td>
<td>City Attorney</td>
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<tr>
<td>Danielle Noble</td>
<td>Deputy City Manager</td>
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<tr>
<td>Pamela O’Connor</td>
<td>Councilmember</td>
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<tr>
<td>Terry O’Day</td>
<td>Councilmember</td>
</tr>
<tr>
<td>Donna Peter</td>
<td>Director, Human Resources</td>
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<tr>
<td>Elaine Polachek</td>
<td>Assistant City Manager</td>
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<tr>
<td>Sandra Santiago</td>
<td>Office Manager, City Manager’s Office</td>
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<tr>
<td>Tony Vazquez</td>
<td>Mayor &amp; Councilmember</td>
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<tr>
<td>Kate Vernez</td>
<td>Former Deputy City Manager</td>
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<tr>
<td>Terry White</td>
<td>Chief Deputy City Attorney, Criminal Division</td>
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<tr>
<td>Ted Winterer</td>
<td>Mayor Pro Tempore &amp; Councilmember</td>
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Each witness participated in the interview process on a voluntary basis. Witnesses were free to decline to answer any question. ¹ We did not provide witnesses with proposed questions.

¹ Very rarely did a witness decline to answer a question. And none of these instances involved issues that would materially affect our findings or recommendations for best practices in this report.
prior to interview. Those witnesses who requested interview topics received only general information contained in the Scope of Review submitted to the Council.

C. WITNESSES DECLINING REQUEST FOR INTERVIEW

Two witnesses declined our request for an interview on the same terms offered to all other witnesses. These witnesses were:

- Elizabeth Riel

Elizabeth Riel was hired by Santa Monica for the Communications Position in May 2014. City Manager Rodney Gould revoked her offer later that month. We sought to interview Ms. Riel through her attorney, Steven J. Kaplan of the Law Offices of Steven J. Kaplan. Ms. Riel declined to participate in an uncompensated one-hour telephone call with us. She required: (1) full indemnification for the use of counsel in advance of and during the interview; (2) payment of consulting fees for all of the time she would spend on interview-related matters; and (3) reimbursement for travel and other interview-related expenses. Because we already had access to her 326-page deposition transcript addressing all aspects of her offer and subsequent revocation, we declined to pay the fees requested by her attorney in order to obtain likely cumulative information. Critical to our decision was the fact that the purpose of this review is not to investigate Ms. Riel’s termination. Rather, it is to make findings for the purpose of recommending best practices for governance of Santa Monica.\(^2\)

- Matthew Mornick

Matthew Mornick formerly worked in the City Manager’s Office in the role of Assistant to the City Manager. Mr. Mornick served on the interview panel that selected Elizabeth Riel and was a recipient of an e-mail regarding the revocation of Riel’s offer. Mr. Mornick declined an interview. All other members of the interview panel elected to submit to an interview.

D. MATERIALS REVIEWED

In addition to witness interviews, we collected and reviewed a broad range of materials during the course of our investigation, including the following:

- **Depositions from the Riel Case.** We examined the following deposition transcripts from the *Riel v. Santa Monica* matter: Elizabeth Riel, Kevin McKeown, Pamela O’Connor, and Rodney Gould.

- **Exhibits to Depositions.** We examined exhibits from the Riel matter depositions.

- **Pleadings and Decisions in the Riel Matter.** We reviewed the pleadings and all other relevant filings made in the *Riel v. Santa Monica* case to get a full picture of

\(^2\) In addition to Ms. Riel’s deposition, we reviewed the pleadings filed by Ms. Riel in the *Riel v. Santa Monica* litigation, Ms. Riel’s e-mails from the days after her termination produced in the litigation, and public statements Ms. Riel and her attorney made about her termination.
the allegations made by Ms. Riel and the defenses offered by Santa Monica and Rodney Gould.

- Oaks Initiative Complaints. We reviewed the Oaks Initiative complaints filed against Pamela O’Connor and Rodney Gould by City resident organizations. We also reviewed the responses to those complaints from the City Attorney’s Office and others.

- Relevant Documents from Other Jurisdictions. We reviewed municipal codes, amendments, and other documents from various California jurisdictions, including those that have passed ordinances similar to the Oaks Initiative.

- Other Materials. We reviewed pertinent news articles and commentary relating to the Riel case and Oaks Initiative issues, as well as documents sent to us by interviewees after our conversations with them and by members of the Santa Monica community.

III. BACKGROUND

The main Santa Monica city government institutions relevant to this review are the Santa Monica City Council, the City Manager’s Office, and the City Attorney’s Office. Santa Monica has a council-manager system of local government. In this system, all the legislative power in Santa Monica is concentrated in the elected Council—the Council sets the community’s goals, projects, and budget. The Council hires the City Manager, the City Attorney, and the City Clerk, and retains the ability to fire them at any time.

A. THE CITY COUNCIL

The Council is comprised of seven members who serve four-year terms. Elections are staggered and scheduled every two years. Councilmembers nominate and then vote for a Mayor and Mayor pro tempore without any formal citizen input; a Mayor will serve between one to two years depending on the vote of the Council. The Mayor presides at Council meetings, serves as a spokesperson for the town, and is the main city representative in intergovernmental relations. The Mayor pro tempore acts as a substitute mayor, fulfilling the Mayor’s responsibilities at events and official sessions. Both the Mayor and Mayor pro tempore meet with the City Manager before Council meetings to discuss procedural matters related to the agenda for the meeting.

B. THE CITY MANAGER’S OFFICE

The City Manager serves both the Council and the community. With respect to the community, the City Manager implements Santa Monica’s policies and responds to concerns from citizens. With respect to the Council, the City Manager prepares a budget for the Council’s consideration and serves as the Council’s chief advisor, including providing research and advice on policy proposals. The City Manager recruits, hires, and supervises city staff that help provide services in Santa Monica. Specifically, the City Manager hires staff for his office and many others, including the police chief, fire chief, public works director, and city librarian. Importantly, the City Manager is empowered to hire most of these employees on an at-will basis.
C. **THE CITY ATTORNEY’S OFFICE**

City Attorney Marsha Moutrie interacts daily with the City Manager’s Office and periodically with the Council. Both the City Manager and councilmembers consult with the City Attorney for counsel on legal issues. The City Attorney’s priorities in order are: (1) Council; (2) City Manager; and (3) Department Heads.

The City Attorney’s Office is comprised of three main divisions: (1) Criminal Law; (2) Municipal Law; and (3) Civil Liability. Ms. Moutrie works closely with the latter two divisions and has substantive oversight over cases in those divisions.

The Criminal Division is separate from the Municipal Law and Civil Liability Divisions. The separation permits the City Attorney’s Office to make decisions regarding criminal investigations and cases independent of the civil interests of Santa Monica. Although Ms. Moutrie technically provides oversight over the Criminal Division, in practice she has practically no involvement in the Criminal Division’s cases. Ms. Moutrie and Assistant City Attorney Joe Lawrence recalled only one case in the last 20 years where Ms. Moutrie was involved substantively in a criminal case, and that single case uniquely raised a First Amendment question.

D. **INTERVIEW PANELS**

Although not required to do so, the City Manager often uses an interview panel to hire at-will employees in Santa Monica. Typically, members of the City Manager’s Office and Human Resources select the members of the interview panel. An interview panel reviews candidates and approves some of them for subsequent interviews. The interview panel is not involved in identifying candidates; the panel reviews only those candidates initially selected by Human Resources. Interview panelists receive information about the position, class specification, and a copy of the recruiting brochure prior to the interview. The day of the interview, panelists review proposed interview questions and receive briefing regarding the qualifications of the desired candidate.

Immediately before each interview, the panelists will again review the candidate’s resume and additional application material. In order to ensure fair and consistent candidate interviews, panelists are instructed to refrain from departing from the scripted questions other than to ask

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3 The City Manager is not required to use an interview panel to hire at-will employees. Under Section 704 of the Santa Monica City Charter, the City Manager has the power to “[a]ppoint and remove, subject to the Civil Service provisions of this Charter, all department heads of the City except as otherwise provided by this Charter, and pass upon and approve all proposed appointments and removals of subordinate employees by department heads.” Section 1102 defines positions not subject to Civil Service, including the “City Manager and the entire staff of the immediate office.” While Human Resources provides consistent procedures for the selection of Civil Service positions—including the use of an interview panel—there are no similar procedures in place for the hiring of Section 1102 employees. Human Resources informed us that this is because the City Manager has the discretion under Section 704 to use any hiring procedure he wishes for those employees, as opposed to the hiring of Civil Service positions that are subject to strict regulations contained in the City Charter and Municipal Code.
follow-up questions. After the interview, the panelists score each candidate numerically. The scores are based only on the candidates’ application materials and interviews.

IV. THE REVOCATION OF ELIZABETH RIEL’S OFFER

In May 2014, then City Manager Rodney Gould hired Elizabeth Riel for the Communications Position in the City Manager’s Office. Mr. Gould revoked his offer to Ms. Riel later that month, citing various reasons for his decision. This section of the report analyzes questioned events regarding the revocation of the offer to Ms. Riel in order to suggest forward-looking best practices for Santa Monica.

A. SUMMARY OF FACTS REGARDING THE REVOCATION OF THE OFFER TO MS. RIEL


In December 2013, Kate Vernez—Deputy City Manager for Special Projects—informal City Manager Rodney Gould that she intended to retire in 2014. Mr. Gould and Assistant City Manager Elaine Polacheck asked Ms. Vernez for recommendations of potential replacements. Ms. Vernez recommended two individuals with whom she had worked with closely on various projects and whom she believed would be excellent replacements: Ms. Debbie Lee, who worked for Downtown Santa Monica, Inc., and Lisa Pinto, who served as District Director for Congressman Henry A. Waxman. Because Mr. Gould and Ms. Polacheck were more familiar with the work of Ms. Lee, they decided to contact Ms. Lee to probe her interest in the position.

Sometime later in December, Mr. Gould had coffee with Ms. Lee for about an hour. Mr. Gould and Ms. Lee discussed her background, her views of communications responsibilities for city government in Santa Monica, and duties and responsibilities of the Deputy City Manager position left vacant by Ms. Vernez’s retirement. Ms. Lee believes that she was offered the position of Deputy City Manager at this meeting. Ms. Lee declined the offer because she was the primary caregiver for a family member suffering from a severe medical issue and was therefore unable at that time to assume new employment.

2. Mr. Gould Subsequently Employs an Interview Panel to Determine a Replacement for Ms. Vernez.

Ms. Vernez’s responsibilities by January 2014 included both a communications element and an intergovernmental element. Mr. Gould desired to restructure the new position to emphasize communications. Accordingly, Mr. Gould created a new position: the Communications Position. Concurrently, Mr. Gould transferred the intergovernmental responsibilities of Ms. Vernez’s former role to a new Deputy City Manager position. In January 2014, Mr. Gould promoted then Assistant to the City Manager Danielle Noble to the newly created Deputy City Manager position.

Mr. Gould and Ms. Polacheck contacted Human Resources—including Director of Human Resources Donna Peter—to begin a process through which the city would solicit applications for the new Communications Position. Prior to publicly releasing the job listing, Ms. Polacheck again asked Ms. Lee if she was interested in the position. Ms. Lee again said that she was unable at that time to assume the responsibilities of the position and would not submit an application. Mr. Gould
said that they did not offer the position to Ms. Vernez’s other recommended replacement—Ms. Pinto—because neither Mr. Gould nor Ms. Polacheck had worked in a close enough capacity with Ms. Pinto to conclude if she would be a good fit in the role. They instead encouraged Ms. Pinto to submit an application through the Human Resources recruitment process, which she did.

Human Resources worked with members of the City Manager’s Office—including Ms. Polacheck, Ms. Noble, and Ms. Vernez—to develop a job listing for the position that listed a summary of the job, including minimum qualifications of the position. The City Manager’s Office conducted a final review of the job listing before publication.

3. **The Interview Panel and Members of the City Manager’s Office Unanimously Selected Elizabeth Riel.**

Over 200 applications were submitted in response to the job listing posted for the Communications Position. Human Resources took the lead on sifting through these applications and created a list of the top candidates. The City Manager’s Office examined the applications for the top candidates and further narrowed the list.

Ms. Polacheck and Ms. Noble assembled an interview panel to assess the candidates. Their stated desire was to create a panel which included a mix of individuals who could best identify the candidates with the right experience for the role, and individuals who could capably assess whether the candidates would be a “good fit” in the City Manager’s Office. The members who served on the interview panel and the stated reason for their selection is provided below:

- **Debbie Lee of Downtown Santa Monica, Inc.—**Ms. Lee worked closely with Ms. Vernez in her role and therefore might readily identify the best applicants;

- **Cheryl Friedling, Deputy City Manager in Beverly Hills—**Ms. Friedling served in a role very similar to the posted position;

- **Andy Agle, Director, Housing and Economic Development Administration in Santa Monica—**Mr. Agle had a lengthy work history with Santa Monica, had worked closely with Ms. Vernez, and would continue to work closely with whoever was chosen to replace her;

- **Sandra Santiago, Office Manager in the City Manager’s Office—**Ms. Santiago had worked in the City Manager’s Office for many years; she believed she served on the interview panel to help determine which applicants would be a proper fit for the Office; and

- **Matthew Mornick, Assistant to the City Manager—**Mr. Mornick worked with Ms. Vernez in the City Manager’s Office and could therefore assess a candidate’s fit for the position.

The interview panel interviewed approximately eight to ten candidates. Human Resources provided the interview panel with uniform questions to ask each of the applicants to keep interviews fair and equal. Members of the City Manager’s Office also helped develop these
questions. Interviewers were allowed to ask follow-up questions to interviewees’ answers. In addition, interviewers were given applicants’ resumes and cover letters to review immediately before the interviews—interviewers could also ask questions based on these application materials.

The interview panel submitted an unofficial ranking to Ms. Polacheck and Ms. Noble regarding the top three candidates they interviewed, with the number-one ranked candidate being Elizabeth Riel and number two being Lisa Pinto. The interview panel also debriefed Mr. Gould, Ms. Polacheck, Ms. Noble, and certain Human Resources employees, to discuss their rankings and the candidates generally.

Members of the interview panel had different recollections of why they chose Ms. Riel as the best candidate. One said that Ms. Riel was far and away the best candidate for the position because, based on the job description, Ms. Riel was the most qualified based on her vast communications experience. Others on the panel remarked that she had an impressive background with initiative, determination and an interest in local community issues.

One panelist who requested to remain anonymous specifically recalled that the panel asked each candidate about their comfort level with politics. This individual was disappointed in many of the candidates because they largely expressed being uncomfortable with politics—in fact, at least two of the candidates adamantly said “no” to being involved with politics and vowed they would remain disconnected from politics in the role. This was a deciding factor for this panelist because s/he believed that the Communications Position would require a high level of comfort in working in an environment with elected officials where constituent matters are involved. Elections occur frequently and, in this panelist’s opinion, staff therefore needed to be comfortable working in a highly charged political environment. The panelist believed that Ms. Riel was the only candidate who expressed confidently that she was comfortable working in a political environment. She mentioned that she had been involved with city politics in the past, worked for a city commissioner, and was active and interested in Santa Monica politics, though the panelist does not recall that Ms. Riel had been involved in campaigns for council members. This answer showed this panelist that Ms. Riel understood the nature of the position. This panel member specifically recalled mentioning to members of the City Manager’s Office and Human Resources in a debrief following the interview panel that Ms. Riel was comfortable in the political arena.

Mr. Gould himself conducted a follow-up interview with Ms. Riel. He recalls the conversation with Ms. Riel being very smooth, and comparatively better than interviews with the other two final candidates. He arranged for Ms. Riel to meet with Ms. Vemez, Ms. Polacheck, Ms. Noble, and the cable news staff that she may have worked with. All the members of his office attended a social gathering with Ms. Riel to assess her fit.

Mr. Gould offered Ms. Riel the position on May 2, 2014. Ms. Riel informed Mr. Gould that she needed time to consider his offer. Mr. Gould was surprised and disappointed. Others in the office were also surprised that she did not immediately accept the offer. Ms. Polacheck sent Mr. Gould an e-mail suggesting that they could contact their initial choice, Ms. Lee, if the offer to Ms. Riel was not successful.

Ms. Riel and Mr. Gould met for coffee, during which Ms. Riel requested a higher starting salary. Mr. Gould agreed and Ms. Riel accepted his offer. The City Manager’s Office issued a
press release announcing Ms. Riel’s hiring. Mr. Gould e-mailed the Council with news of Ms. Riel’s hiring and separately told councilmembers about Ms. Riel’s hiring during his regularly scheduled monthly meetings.

When Mr. Gould informed Councilmember Kevin McKeown about Riel’s hiring, Mr. McKeown claims that he disclosed to Mr. Gould that (1) Ms. Riel had been a supporter of his political campaigns in the past, (2) Ms. Riel’s picture was currently on his campaign website, and (3) Ms. Riel had actively worked on his campaign. Mr. McKeown recalled that Mr. Gould said that these disclosures were not a problem. Mr. Gould, in contrast, claims that Mr. McKeown told him only that he knew who Ms. Riel was and that Mr. McKeown had a picture of her on his website. Mr. Gould does not recall Mr. McKeown disclosing that Ms. Riel had worked on his campaign. Mr. Gould was not surprised that Ms. Riel would appear on Mr. McKeown’s website because Mr. McKeown used community organizations—one of which Ms. Riel led in the past—as his base of political support. Just being on Mr. McKeown’s website, therefore, was not a red flag to Mr. Gould that he felt necessitated him to investigate the matter further.

4. Ms. O’Connor’s E-mail Communications with Mr. Gould.

Between May 22, 2014, and May 24, 2014, then Mayor and current Councilmember Pamela O’Connor e-mailed Mr. Gould about Elizabeth Riel at least nine times:

May 22, 2014, 8:36 p.m.:
“I will be extremely hesitant to work with Elizabeth Riel especially during the campaign season. If I need support on Mayoral things I want someone else assigned. In past elections SMCLC has attacked me....”

May 22, 2014, 9:01 p.m.:
“Rod, You hired someone who has political ties with some Councilmembers (she and Ted were active in the RIFT campaign—likely Kevin also). And someone who has a no growth background—one does not sign SMCLC letters unknowingly! She may be a pleasant

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4 Exhibit 3—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 8:36 P.M. PST) (including a link to http://www.smgov.net/departments/council/agendas/2008/20080624/s2008062408-D-3.pdf). Ms. O’Connor included in this e-mail a link to a letter posted on Santa Monica’s website from Elizabeth Riel—among others including the Santa Monica Coalition for a Livable City (“SMCLC”)—who was listed on the letter as “Past President” of NOMA, the North of Montana Association. The letter requested that Maria Stewart, City Clerk, change the ballot description of RIFT, also known as Proposition T, a ballot initiative that sought to amend commercial development rules for the purpose of addressing traffic congestion. Ms. O’Connor opposed Proposition T and had been on the opposite side of Santa Monica development debates from SMCLC in the past. She therefore felt uncomfortable about working with Ms. Riel and sought to have someone else assigned to work she relied on from the City Manager’s Office. Mr. Gould forwarded Ms. O’Connor’s e-mail to Ms. Polacheck, writing “Oh boy.” E-mail from Rodney Gould, City Manager, Santa Monica, to Elaine Polacheck, Assistant City Manager, Santa Monica (May 22, 2014, 8:40 PST). Ms. Polacheck said that Mr. Gould forwarded this e-mail to her because Mr. Gould would routinely seek her advice on such issues.

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person--but you have put a no-growth activist in upper management at City Hall. Just give me the technical materials I need when I need them and I'll do it myself. Thanks! 5

May 22, 2014, 9:41 p.m.:  
"I don't think your background checking folks did much of a job. Riel even contributed money to attacks on me. See below. 'The mailer urges voters to 'tell Pam O'Connor and developers that Santa Monica is NOT for sale,' and concludes, 'It's our city. Let's take it back.' Among those bankrolling the coalition's mailer were SMCLC head Diana Gordon, Pier Restoration Corporation Chair Ellen Brennan, Elizabeth Riel and Victor Fresco, according to a campaign finance report filed with the City Clerk last week.' ..." 6

May 23, 2014, 2:36 p.m.:  
"Rod, I do not and will not trust her. I will not work with her not because she is a supporter of others but she attacked me directly by putting money onto a hit piece. There are very very few direct hit pieces done in Santa Monica and she was a leader in this effort. Then she is a supporter of Kevin. What confidence do I have that she is not going to elevate him and his position and be dismissive of me--as we go into a political season! This is a best practice of City a [sic] Managers!!! Hire people who are political enemies of people elected to your Council? I will be sharing this with others in the community and will be asking people for their opinion about her being in this position." 7

May 23, 2014, 2:50 p.m.:  
"I am still running even though I am being attacked from both outside City Hall and from within City Hall. And I am curious about Best Practices of City Management and if this is one of them. Always a learning experience!" 8

May 23, 2014, 4:57 p.m.:  
"I'm sure Kevin hasn't lost faith! And this is likely to become a news story in at least one local outlet next week. She is a public figure due to her political activity (not just political affiliation)." 9

May 24, 2014, 2:58 a.m.:  
"Just saw this. Just landed in Barcelona--think time difference is 9 hrs. Obviously email is working. We should be able to figure out a time. I would add that she had ample time

5 Exhibit 3—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 9:01 p.m. PST).
6 Exhibit 4—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 9:41 p.m. PST) (including a link to http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2006/October-2006/10_30_06_O’Connor_Targeted_by_Coalition.htm)
7 Exhibit 5—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 2:36 p.m. PST).
8 Exhibit 6—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 2:50 p.m. PST).
9 Exhibit 7—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 4:57 p.m. PST).
to have 1) apologized and 2) written a letter to the editor saying ‘in the past I may have been part of negative… but now think… can have strongly held positions on issues… but not demonize individuals…’ And as someone pointed out to me, as a communications expert she might have had a role in writing the hot [sic] piece on me. But now to put this aside and find hotel, and explore Barcelona. There is life beyond Santa Monica.”

May 24, 2014, 4:40 a.m.:
“Just to give you a flavor of the Measure T debate in 2008. She signed the SMCLC letter (at least one) supporting Measure T. And this is still at the core of the land use debates of today—with many of the same folks involved….”

May 24, 2014, 5:21 p.m.:
“And she was involved at a level of putting money into one side, being a public face for one side, and active at a level that got attention from the press….”

Multiple interviewees cautioned that context is important in order to understand Ms. O’Connor’s reaction to Ms. Riel’s hiring. They said that the role Ms. Vernez had assumed for Ms. O’Connor was akin to acting as “the Mayor’s aide.” Ms. Vernez helped Ms. O’Connor in many ways, including writing Ms. O’Connor’s speeches, doing mock interviews with her, and working with her on commissions in Santa Monica. In fact, at Ms. Vernez’s going away event, Ms. O’Connor said: “City Managers come and go” but Ms. Vernez was special. Ms. O’Connor was losing one of the closest people to her in city government and that person was being replaced by someone who had previously been, in Ms. O’Connor’s opinion, diametrically opposed to Ms. O’Connor’s political positions.

Mr. Gould and Ms. Polachek claimed that they were unaware of the extent of Ms. Riel’s past political involvement and so this information from Ms. O’Connor provided them with new information relevant to Mr. Gould’s decision to hire Ms. Riel.

Mr. Gould admitted in our interview with him, however, that some of Ms. O’Connor’s statements in the e-mails could be perceived as threats, including: (1) “I will be sharing this with others in the community and will be asking people for their opinion about her being in this position”; and (2) “And this is likely to become a news story in at least one local outlet next week.” Mr. Gould agreed that it was inappropriate for Ms. O’Connor to attempt to use pressure points on him to influence his decision-making. Mr. Gould said that in the five years that he served as City Manager, he never experienced anything like this—the incident was wholly unlike the general behavior of the Council or any individual on the Council.

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10 Exhibit 8—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 24, 2014, 2:58 A.M. PST).

11 Exhibit 9—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 24, 2014, 4:40 A.M. PST) (including seven links to newspaper articles from 2008).

12 Exhibit 9—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 24, 2014, 5:21 P.M. PST) (including a link [https://icma.org/Documents/Document/Document/100265] to ICMA Guidelines and referencing Section 7).
Nonetheless, Mr. Gould stated that he was unconcerned and unintimidated by Ms. O’Connor’s threats. He was unconcerned about Ms. Riel’s past activity becoming public because Ms. Riel was already known as a political activist to the approximately 300 people who were very involved in Santa Monica politics. He stated that he was unintimidated by Ms. O’Connor’s threats because there was so much political debate and speech in Santa Monica that one in his position eventually becomes numb to such speech.

Ms. O’Connor told us that she made these statements to Mr. Gould because she wanted to be “completely transparent” with him. When Ms. O’Connor said that she was going to “share[] this with others in the community,” she said she was referring to “letting folks know that Gould had hired someone from SMCLC.” She said that she doesn’t “typically run to the press” but will let them know of things that she feels they would be interested in. From Ms. O’Connor’s perspective, “SMCLC was working for the City Manager” and so she found this to be an interesting story. She talked to “Jorge of Outlook,” before leaving for her trip.13 She thought he would like the story and she said that she believed in “transparency.”

5. Mr. Gould’s Responses to Ms. O’Connor’s E-mails.

In his initial responses to Ms. O’Connor, Mr. Gould asked Ms. O’Connor to “give [Ms. Riel] a chance and wrote that “[h]e must allow her to begin work”:

“…I don’t know that Elizabeth is a member of this group and have heard her speak very respectfully of you and the issues for which you stand. She is a communications expert and will help the City with its messaging. I would call upon her to help with notes and slides for you as needed and would hope you would give her a chance to prove herself. Let’s discuss when you have a moment.”14

“Our background checks focus on previous performance, criminal and financial issues. Elizabeth has grown very tired of all the complaining around town and thinks SM is a superb city. She wants to put the development issues in better light. I am surprised by her earlier association and will discuss it with her. I ask that you keep an open mind and give her a chance.”15

“…Having made the job offer and it having been accepted, I am in a bit of pickle. I have a call into her and will address this head on with her. If she cannot serve all members of the City Council equally and without favor or if she cannot represent the policies of this City Council with professionalism, then I will rescind the job offer. If she insists that she can discharge the full duties of the position, then I must allow her to begin work. I will consult Marsha to be sure of my understanding here, but the civil service system was

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13 It appears that Ms. O’Connor was referring to Jorge Casuso, Publisher for the Santa Monica Lookout Newspaper. About, surfsantamonica.com (2014), http://www.santamonicalookout.com/ssm_site/2014--Contact_Us.html.

14 Exhibit 3—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 22, 2014, 8:46 P.M. PST).

15 Exhibit 4—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 23, 2014, 6:37 A.M. PST).
developed principally to protect candidates for municipal jobs and city employees from political influence. The Council can fire the City Manager at any time and for any reason. The employees under him/her have many protections as you know….”

E-mails between Mr. Gould and Ms. Polacheck also reflect this initial belief that Ms. Riel should be given a chance. Mr. Gould wrote that he “will speak with [Ms. Riel] today to be sure she can work with all members of the City Council and represent the City’s views professionally” but noted that he was “not at all sure [Ms. O’Connor] will give [Ms. Riel] a chance to prove herself.” Ms. Polacheck, noting first that it was a “trust issue for [Ms. O’Connor],” wrote that “[Ms. Riel] will have to try to establish trust with [Ms. O’Connor]. Ms. Polacheck also stated however that “when [Ms. O’Connor] sets her mind on someone, she tends to be immovable.” Mr. Gould replied, “Yes. That’s where we are.”

By the evening of May 23, 2014, however, Mr. Gould wrote in a reply to Ms. O’Connor’s May 23, 2014, 4:57 p.m. e-mail that he “may have to reverse course and rescind [Ms. Riel’s] offer.” The 4:57 p.m. e-mail contained the threat of a news story on Ms. Riel’s past political activity. He wrote that “[City Attorney] Marsha [Moutrie] and [Mr. Gould] have been discussing this option and [Ms. Moutrie] can help.” Mr. Gould also stated that “[Ms. Riel’s] hire is problematic given the way [Ms. O’Connor] and others may perceive it.”

Mr. Gould recalls that he contacted Ms. Moutrie for advice during this time and that she advised him that he had a legal right to rescind the offer. He recalls Ms. Moutrie specifically stating that the decision did not trample Ms. Riel’s First Amendment rights. According to Mr. Gould, Ms. Moutrie believed it was appropriate to rescind the offer and that waiting would only make things worse.

Ms. Moutrie similarly recalls Mr. Gould approaching her for advice during this time. She remembers Mr. Gould asking her, “Am I stuck with [Ms. Riel]?” Ms. Moutrie conducted legal

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16 Exhibit 6—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 23, 2014, 3:38 P.M. PST).

17 Exhibit 10—E-mail from Rodney Gould, City Manager, Santa Monica, to Elaine Polacheck, Assistant City Manager, Santa Monica (May 23, 2014, 7:30 A.M. PST).

18 Exhibit 10—E-mail from Elaine Polacheck, Assistant City Manager, Santa Monica to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 7:21 A.M. PST).

19 Exhibit 10—E-mail from Elaine Polacheck, Assistant City Manager, Santa Monica to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 7:37 A.M. PST).

20 Id.

21 Exhibit 10—E-mail from Rodney Gould, City Manager, Santa Monica, to Elaine Polacheck, Assistant City Manager, Santa Monica (May 23, 2014, 7:42 A.M. PST).

22 Exhibit 8—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 23, 2014, 5:40 P.M. PST).

23 Id.

24 Id.
research to try to find a case similar to this situation—where someone had accepted an offer but had not yet commenced employment—but was not successful in her search. Ms. Moutrie recalls telling Mr. Gould that Santa Monica would have a defense if Mr. Gould revoked Ms. Riel’s offer and Ms. Riel sued Santa Monica.23 Ms. Moutrie also told Mr. Gould that Ms. Riel should have informed him of this past involvement. Ms. Moutrie recollects that Mr. Gould began repeating this reasoning because, she believes, it gave Mr. Gould a pathway to absolve himself of any mistakes in the process. Her personal belief is that Ms. Riel was “arguably honest” in her resume and application for the position.

6. Mr. Gould Speaks with Ms. Riel.

Mr. Gould e-mailed Ms. Riel on the morning of May 23rd, asking to speak about a “small, gnarly issue.”26 Based on e-mail communications, it appears that Mr. Gould and Ms. Riel spoke at some point between 5:40 p.m. PST and 8:28 p.m. PST.

Mr. Gould stated that after he confronted her with the information gathered by Ms. O’Connor, Ms. Riel responded, “It’s true but I did not hide it from you.” Mr. Gould interpreted Ms. Riel as acknowledging that something might be wrong. Mr. Gould recalled that she then provided three rationalizations for not providing the information: (1) that her husband wrote the largest checks; (2) that it happened a long time ago; and (3) that it should not matter. Mr. Gould did not find any of these three reasons persuasive.27

Ms. Riel claimed that Mr. Gould called her in an “angry and accusatory tone.” From her perspective, he “berated” her and told her that they had “a very serious situation.” He complained that Ms. Riel “contributed to a hit piece” against Ms. O’Connor and that she wrote “anti-development” articles. He asked why she did not bring this up during the interview process. Ms. Riel said that she did not have anything to hide and that her application disclosed that she was the president of NOMA and a writer for the Santa Monica Daily Press. She stated that she was a “professional” and would be “happy to meet and talk with anyone.” According to Ms. Riel, Mr. Gould said that she was very “sophisticated” and it troubled him that she either forgot about her past political activity or deliberately concealed it from him. She said that he ended the conversation by stating that he was going to “think about it” and she should too. Ms. Riel did not recall mentioning during this call that her husband wrote the largest checks to SMCLC.

23 Ms. Moutrie speculated that the city had three grounds to stand on: (1) the policymaker defense (Ms. Riel would be in a policy position and therefore could be terminated on the will of the City Manager); (2) Ms. Riel had not started her employment yet; and (3) there was a failure to disclose by Ms. Riel during the interview process.

26 E-mail from Rodney Gould, City Manager, Santa Monica, to Elizabeth Riel (May 23, 2014, 1:22 p.m. PST).

27 The first response did not convince Mr. Gould. As to the second, Mr. Gould said that the people Ms. Riel supported were still on the City Council. Timing was irrelevant to Mr. Gould because according to Mr. Gould, “four to six years is not a very long time in Santa Monica.” Finally, with respect to the rationalization that it did not matter, Mr. Gould stated that this determination was his to make, not Ms. Riel’s.
7. Mr. Gould Continues to Respond to Ms. O’Connor and Seeks Advice on How to Explain Ms. Riel’s Termination.

Subsequent to his conversation with Ms. Riel, Mr. Gould sent multiple e-mails to Ms. O’Connor expressing that he would resolve the issue by rescinding Ms. Riel’s job offer:

“Am moving toward a decision to retract the job offer based on a conversation with [Riel] that was less than helpful.”

“...I am moving to solve this before your return....”

“Pam, You are correct that she backed some Councilmembers and actively opposed others and publicly supported one side of the development debate. She says that was 6-8 years ago, but the players and debate are the same. So, she is perceived as aligned politically, which makes doing her job untenable. Further, she failed to disclose her prior activism. That goes to trust and judgement. Her explanations were not persuasive. So I must withdraw the job offer. I will consult with Marsha to make certain that I do it in a way that does not create liability for the City....”

Mr. Gould e-mailed Ms. Polachek and Ms. Vernez on May 25 to seek advice on “what to say about this turn of events.” He suggested that he could not just say “It’s a personal matter” or that “Upon further consideration, it has been determined that the job fit is not optimal.” Ms. Polachek wrote that they “can’t refer to political involvement or a perceived lack of neutrality” and so they should instead say that they needed to find a candidate closer to the “background, experience, and attributes” of Ms. Vernez. Mr. Gould responded, “Better!” Ms. Vernez suggested that they come to an agreement with Ms. Riel to say that they mutually parted ways, but

28 Exhibit 5—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 23, 2014, 8:28 P.M. PST).

29 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 24, 2014, 12:39 P.M. PST).

30 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 24, 2014, 7:07 P.M. PST).

31 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Elaine Polachek, Assistant City Manager, Santa Monica & Kate Vernez, Deputy City Manager for Special Projects, Santa Monica (May 25, 2014, 9:07 A.M. PST).

32 Id.

33 Exhibit 9—E-mail from Elaine Polachek, Assistant City Manager, Santa Monica, to Rodney Gould, City Manager, Santa Monica & Kate Vernez, Deputy City Manager for Special Projects, Santa Monica (May 25, 2014, 9:10 A.M. PST).

34 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Elaine Polachek, Assistant City Manager, Santa Monica & Kate Vernez, Deputy City Manager for Special Projects, Santa Monica (May 25, 2014, 11:08 A.M. PST).
Ms. Vernez also expressed that she was alternatively supportive of the wider skill set explanation.\textsuperscript{35}

Mr. Gould stated that he and his team were trying to determine an acceptable way to publicly announce the termination. Even though Mr. Gould was revoking the offer based on a combination of a lack of trust and a lack of neutrality, he stated that he and his team wanted to minimize any harm to Ms. Riel publicly or personally. They also did not want to commit libel.

8. Mr. Gould Informs Ms. Riel of Her Termination and Hires Ms. Lee.

On Monday, May 26, 2014, Mr. Gould called Ms. Riel and left her a voicemail requesting that she return his call when she had time. Ms. Riel called back promptly. Mr. Gould told her that he thought more about the situation and did not see a way forward for her hiring. Although her political activities took place six to eight years ago, he recalls explaining that the same city council members were involved in Santa Monica politics, the same interest group was involved in Santa Monica politics, and the same general matters were at issue in Santa Monica politics. Mr. Gould claimed that Ms. Riel was viewed as aligned with some city council members and not others, which would compromise the City Manager’s Office’s need to remain neutral. Mr. Gould said that he wished that Ms. Riel had disclosed her past activity during the interview process but since she did not, he must terminate her. He asked her to agree to release a joint press release saying that they were mutually stepping back from the hiring. Ms. Riel said she needed time to process Mr. Gould’s remarks. We are not aware of any further communication between the two.

On May 27, Mr. Gould and Ms. Polachek called Ms. Lee and offered her the Communications Position. Ms. Lee told them that not much had changed in her family situation but she would get back to them about it.

On May 28, Ms. Lee called Mr. Gould and expressed her intention of accepting the offer for the position. Ms. Lee explained that she spoke with her family and they told her not to turn down such a great opportunity a second time. On June 2nd, Ms. Lee met with Mr. Gould at his office. Mr. Gould presented her with the employment contract and asked her to sign it immediately. She did so. Mr. Gould informed her that he planned to issue a press release about her hiring at 4:00 p.m. that same day. Ms. Lee expressed that she was surprised at and uncomfortable with the pace at which Mr. Gould finalized her hiring and issued the press release.

Mr. Gould and Ms. Polachek stated that they chose to bypass a formal interview process because it was time-intensive and they needed a replacement for Ms. Vernez prior to her departure in July. They did not approach any of the other candidates recommended by the interview panel because they first wanted to inquire about Ms. Lee’s interest in the position—Ms. Lee was their first choice for the position in December 2013 and therefore their immediate inclination was to hire her if she was willing.

\textsuperscript{35} \textbf{Exhibit 9}—E-mail from Kate Vernez, Deputy City Manager for Special Projects, Santa Monica, to Elaine Polachek, Assistant City Manager, Santa Monica & Rodney Gould, City Manager, Santa Monica (May 25, 2014, 6:12 P.M. PST).

During the week of May 26, 2014, multiple news outlets covered the revocation of Ms. Riel’s offer. Mr. Gould expressed to Ms. Moutrie that he had to say something, especially because the volume of e-mails the city had received in relation to the revocation of Ms. Riel’s offer was the largest number of e-mails he had ever received on one issue. Ms. Moutrie advised him not to write anything but said that it was impossible to stop him. Mr. Gould wrote a press release that Ms. Moutrie and others attempted to temper. The press release was issued on June 5, 2014.36

Writing in the press release that withdrawing Ms. Riel’s offer was a personnel matter and therefore involved privacy rights, Mr. Gould largely focused on the necessity of certain positions in city government to be apolitical and implied that he revoked Ms. Riel’s offer because she was partisan or had a strong history of partisan politics.37 Mr. Gould also wrote that he consulted with, among others, “the City Attorney” throughout the process.38 Ms. Moutrie informed us that while Mr. Gould did consult with her, he did not always follow her advice.39

10. Disclosures to Other Councilmembers Regarding the Reasons for the Riel Termination.

Multiple councilmembers requested more details about Mr. Gould’s decision to revoke Ms. Riel’s offer. Councilmember Ted Winterer e-mailed Mr. Gould, writing that he “hope[d] [Mr. Gould’s] decision had nothing to with [Ms. Riel] having exercised her First Amendment Rights” and linked to a Lookout article about the rescinded offer.40 Mr. Gould replied and said that “[t]he article is based on speculation,” Mr. Gould’s “decision is sound,” and he will not “violate [Riel’s] privacy rights by airing it.”41

In response to Councilmember Kevin McKeown’s written inquiry, Mr. Gould told Mr. McKeown that he preferred to speak about this issue at their regular Monday meeting.42 Mr. Gould said that there were several factors that prompted his decision and while he could not discuss all of them because of “privacy and the confidentiality of the hiring process,” he could

37 Id.
38 Id.
39 Ms. Moutrie provided one such example of Mr. Gould not following her advice. She stated that she counseled Mr. Gould not to issue the press release because such a release could jeopardize Santa Monica vis-à-vis a potential lawsuit by Ms. Riel. Nevertheless, Mr. Gould issued the press release.
40 E-mail from Ted Winterer, Councilmember, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 28, 2014, 8:38 p.m. PST).
41 E-mail from Rodney Gould, City Manager, Santa Monica, to Ted Winterer, Councilmember, Santa Monica (May 29, 2014, 4:13 a.m. PST).
42 E-mail from Rodney Gould, City Manager, Santa Monica, to Kevin McKeown, Councilmember, Santa Monica (May 29, 2014, 5:59 p.m. PST).
provide Mr. McKeown with a better sense of why it was the right decision on Monday.\textsuperscript{43} In the Monday meeting, Mr. McKeown claims that Mr. Gould declined to provide details because Mr. Gould did not want to violate Ms. Riel’s “privacy rights.”

Many of the councilmembers we spoke with expressed that they did not feel that the extent of Ms. O’Connor’s communications to Mr. Gould was fully disclosed to them by Mr. Gould or Ms. O’Connor. Their knowledge of Ms. O’Connor’s involvement was limited to her public comments, including when she stated to the \textit{Santa Monica Daily Press} that she had not asked Gould to revoke Ms. Riel’s offer but “might have commented on my experience with her.”\textsuperscript{44} She added, “But I can’t tell the city manager what to do.”\textsuperscript{45} Mr. McKeown claims that he did not know the extent to which Ms. O’Connor put pressure on Mr. Gould until his deposition, and other councilmembers similarly expressed surprise, after public release of the e-mails, at the level of Ms. O’Connor’s contact with Mr. Gould.

When we asked Ms. O’Connor whether she volunteered the existence or substance of her communications with Mr. Gould to the Council, she said “No, why would I?” She claimed that no one asked her about her e-mails and so there was no reason to inform the Council. Her understanding was that Mr. Gould and Ms. Moutrie knew of the e-mails and so it was their obligation to bring it to the attention of the Council. She also said that transparency was not paramount in this situation because the city was being sued—or at least there were threats of lawsuit—and so her belief based on her experience was that the best practice was to not speak about issues that could jeopardize Santa Monica’s legal standing in potential litigation.

\textbf{B. FINDINGS AND RECOMMENDATIONS FOR BEST PRACTICES}

The events associated with Elizabeth Riel’s offer and revocation present numerous opportunities for Santa Monica city government to improve its internal processes. This section details key issues presented by Santa Monica residents and then sets forth findings and recommendations in connection with each of these issues.

\textbf{1. Issue: Improper Councilmember Influence on the City Manager.}

Under Article VI of the Santa Monica City Charter, Section 610, councilmembers are prohibited from directly or indirectly ordering or requesting the removal of a person from employment under the discretion of the City Manager.\textsuperscript{46} Many members of the Santa Monica community have questioned whether Ms. O’Connor improperly attempted to influence Mr. Gould

\textsuperscript{43} Id.

\textsuperscript{44} David Mark Simpson, Council to evaluate Gould over rescinded job offer, Santa Monica Daily Press (June 5, 2014), available at \url{http://smdp.com/council-evaluate-gould-rescinded-job-offer/135061}.

\textsuperscript{45} Id.

\textsuperscript{46} “Neither the City Council nor any of its members shall order or request directly or indirectly the appointment of any person to an office or employment or the removal of any person therefrom, by the City Manager, or by any of the department heads in the administrative service of the City.” The Charter of the City of Santa Monica, Article VI, Section 610.
into revoking Ms. Riel’s offer through her series of emails to him from May 22nd through May 24th, 2014.

a) Findings

Ms. O’Connor claims that she e-mailed Mr. Gould to notify him (1) of articles relating to Ms. Riel, (2) of her desire for a substitute for Riel, and (3) of her willingness to assume communications work herself if no substitute was available. It is difficult to square this claim of a narrow purpose with the substance, tone, and number of e-mails that she sent to Mr. Gould over a 3-day period leading to Mr. Gould’s decision to terminate Ms. Riel.

In support of Ms. O’Connor’s account, she in fact states in her first two e-mails that she “want[s] someone else assigned” or for Mr. Gould to just “give [her] the technical materials [she] needs and she’ll do it [herself].” She also cites Ms. Riel’s involvement in the RIFT campaign in these initial two e-mails. However, in her third e-mail to Mr. Gould, Ms. O’Connor appears to connect Ms. Riel to a mailer that urged voters to vote against Ms. O’Connor and that she perceived to be “attacks on [her].”

After this discovery, Ms. O’Connor begins making what we find to be thinly veiled threats to Mr. Gould. In one email, she says that she “will be sharing this with others in the community and will be asking people for their opinion about [Ms. Riel] being in this position,” in another e-mail, she states that “this is likely to become a news story in at least one local outlet next week.” She chastises Mr. Gould for hiring “political enemies” of hers to serve in City Hall and broadly asserts that she is “being attacked from both outside City Hall and from within City Hall.” Only after Mr. Gould informs her that he is leaning toward revoking Ms. Riel’s offer does Ms. O’Connor drop her aggressive tone.

If Ms. O’Connor’s intention was merely to inform Mr. Gould of Ms. Riel’s past and of her wish to work with someone other than Ms. Riel, her first two e-mails were sufficient. The

47 Exhibit 3—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 8:36 P.M. PST). See supra section IV.A.4 for more detail regarding all the e-mails referred to in this section.

48 Exhibit 3—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 9:01 P.M. PST).

49 Exhibit 4—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 22, 2014, 9:41 P.M. PST).

50 Exhibit 5—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 2:36 P.M. PST).

51 Exhibit 7—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 4:57 P.M. PST).

52 Exhibit 5—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 2:36 P.M. PST).

53 Exhibit 6—E-mail from Pamela O’Connor, Mayor, Santa Monica, to Rodney Gould, City Manager, Santa Monica (May 23, 2014, 2:50 P.M. PST).
statements about “sharing this with others in the community and...for their opinion about [Ms. Riel] being in this position” and a “likely...news story in at least one local outlet next week” are not limited to the scope that Ms. O’Connor claims that her e-mails were within. In fact, these can only be described as threats meant to influence Mr. Gould. Indeed, Mr. Gould admitted to us that he interpreted these statements to be threats. The fact that Ms. O’Connor’s tone changed so significantly from her e-mails before and after Mr. Gould told her that he was leaning toward revoking Riel’s offer is further evidence that her intention behind sending the e-mails was in fact to pressure Gould into replacing Riel.

Ms. O’Connor stated to us that these were not threats but rather just Ms. O’Connor fully disclosing to Mr. Gould that she would be leaking the story to a reporter. Based on her tone in these e-mails, we do not find credible her explanation that the disclosure was purely for the sake of full disclosure.

While there was no direct request in any of Ms. O’Connor’s e-mails to fire Ms. Riel, the City Charter explicitly prohibits city council members from making an indirect request to the City Manager to remove any person. The inclusion of “indirect” efforts to exert influence is critically important: if the City Charter banned merely express threats and requests, it would be easily circumvented.

In the context of nine emails sent to Mr. Gould at all hours of the day from May 22nd through 24th, we find that Ms. O’Connor’s thinly veiled threats that she would be “sharing this with others in the community” and suggesting that Mr. Gould’s hiring decision constituted an “attack[] from both outside City Hall and from within City Hall” was intended to pressure Mr. Gould into reversing his hiring decision. As such, it qualifies as at least an “indirect...request” for the removal of Ms. Riel.

An elected councilmember violates the City Charter provision regardless of whether a City Manager admits to being influenced. That said, it is difficult to believe that the tone of Ms. O’Connor’s e-mails and her threats were not a material factor in Mr. Gould’s decision. Mr. Gould claimed to us that he was unimpressed by Ms. O’Connor’s threats because there is so much political debate and speech in Santa Monica that a person in his position becomes numb to such speech. But this claim is inconsistent with Mr. Gould’s contemporaneous responses to Ms. O’Connor. He writes in one e-mail that he is “depressed over this” and writes in another that if “[Ms. O’Connor] and the Council have lost confidence in [him] as a result of this hiring decision,...[he] will tender [his] resignation.” As Ms. O’Connor’s tone in her e-mails gets more aggressive, Mr. Gould’s views shift from giving Ms. Riel a chance to prove that she can be objective to concluding that he can let her go because of non-disclosure relating to past political activity. These statements are not indicative of someone unaffected or unintimidated by Ms. O’Connor’s statements.

At best, Ms. O’Connor showed bad judgment in wording her e-mails in a way that had the foreseeable potential of influencing the City Manager’s hiring decision. At worst, Ms. O’Connor consciously and intentionally attempted to influence the City Manager’s hiring decision. In either case, Ms. O’Connor showed a failure to understand the limitations of her role as a councilmember in Santa Monica city government.
b) Recommendation for Best Practices

The best practice for city councilmembers is to be expressly mindful of restrictions in the City Charter—specifically Article VI of the Santa Monica City Charter, Section 610—when communicating with the City Manager about hiring decisions or when communicating with administrators who report to the City Manager regarding substantive issues. With respect to hiring decisions, councilmembers should adopt a best practice to be cautionary and sensitive to whether their comments on hires could be perceived as an indirect request or instruction to the City Manager. This is not to prohibit councilmembers from providing useful information to the City Manager, but councilmembers should be careful about providing commentary that could be interpreted as intending to influence the City Manager’s decision. If there are any questions about whether a communication could be perceived as an indirect request, our recommended best practice is to review the proposed communication with the City Attorney beforehand. In certain situations, it may be better for the City Attorney to provide helpful information to the City Manager rather than a councilmember.

2. Issue: Use of Personal E-mail by City Officials.

On May 28, 2014, Elaine Polachek sent an e-mail to Danielle Noble and Matthew Mornick titled “Elizabeth” from her personal e-mail account to their personal e-mail accounts.\(^\text{54}\) In this e-mail, Ms. Polachek wrote that Mr. Gould revoked Ms. Riel’s offer and that Debbie Lee accepted the offer for the Communications Position.\(^\text{55}\) Ms. Polachek also wrote, “Want to keep this on our personal email not work.”\(^\text{56}\) There were eight subsequent e-mails about the issue—mostly innocuous—in the e-mail chain.

Ms. Polachek said that she sent this e-mail to their personal account because they were both on vacation and so she was e-mailing them on their personal account. She wanted to make sure they were not caught off guard when they got back to work. Ms. Polachek said she may have said to keep it on their personal accounts because it was a sensitive issue. Ms. Polachek admits that she regrets using personal e-mail to send this message and regrets writing, “Want to keep this on our personal email not work.”

Ms. Noble did not know why Ms. Polachek wanted to keep this communication on personal e-mail. She volunteered that members of the City Manager’s Office have a tendency to use personal e-mail for work when on vacation because they do not want to check their work e-mail during their vacation time. She believed that Ms. Polachek knew of this tendency and therefore sent this e-mail to their personal accounts.

\(^{54}\) E-mail from Elaine Polachek, Assistant City Manager, Santa Monica, to Darielle Noble, Deputy City Manager, Santa Monica & Matthew Mornick, Assistant to the City Manager, Santa Monica (May 28, 2014, 8:50 P.M. PST).

\(^{55}\) Id.

\(^{56}\) Id.
Section H-7 of Administrative Instruction II-4-10 lists the “[u]se of third party electronic mail system(s) for a City business purpose without prior authorization by the Chief Information officer” as “Inappropriate Use.” Most of the individuals we interviewed were not aware of any e-mail policy for city employees and expressed surprise that there was an official Human Resources policy governing the use of personal e-mail for official city business.

a) Findings

We find that Ms. Polachek had no intent to deceive or conceal material information by her instruction to use personal email to discuss the Riel termination. Although her explanation that she was using personal email because of the vacation status of other employees is undermined by the fact that she further requested that such communications remain “on our personal email,” she did not attempt to conceal the emails and produced them upon request.

Yet the fact that Ms. Polachek wrote “Want to keep this on our personal email not work” reflects a lapse in judgment. Indeed, Ms. Polachek admitted in her interview with us that she regrets writing this expressed desire to stay on personal e-mail. Even if city officials are not trying to hide anything in their e-mails, an explicit request to keep communications about matters related to an event at work on personal e-mail rather than work e-mail has an aura of impropriety of which the community is rightfully suspicious.

Moreover, the fact that an Administrative Instruction posted on the Santa Monica Human Resources website explicitly prohibits use of personal e-mail for work-related matters further reasonably causes concern among the community that city employees engaged in cover-up efforts through the improper use of personal e-mail.

b) Recommendation for Best Practices

Administrative Instruction II-4-10 dated May 7, 2007, section H-7 defines inappropriate use as including “Use of third party electronic mail system(s) for a City business purpose without prior authorization by the Chief Information Officer.” One of the reasons for such a policy is to ensure consistent recordkeeping, retention and production of documents and communications relating to city business. Citizens are particularly concerned with responsiveness to public records requests if key records and communications are not on city servers and databases. Currently, in response to a California Public Records Act request, the City Attorney’s Office searches the city e-mail of relevant employees but relies on those employees to disclose whether there are any relevant e-mails on their personal e-mail accounts. In order to avoid the rare but problematic situation where an employee fails to disclose that they had responsive city business documents on their personal account, the best practice is to retain all relevant communications on city systems.

57 Administrative Instruction II-4-10, Employee Access, Use, Retention and Destruction of Electronic Mail, City of Santa Monica (May 7, 2007).

58 Administrative Instruction II-4-10 can be found on the Santa Monica Human Resources website, Administrative Instructions, Santa Monica Human Resources (2016), http://www.smgov.net/Departments/HR/Labor_Relations/Administrative_Instructions/Administrative_Instructions.aspx.
Almost all employees we interviewed had no understanding of the existing city e-mail policy. We specifically recommend that the City Manager instruct and train city employees to use the city e-mail system for all city business.

3. **Issue: Absence of a Process to Hire Ms. Lee.**

Members of the Santa Monica community have questioned the hiring of Ms. Lee for several reasons. First, because Mr. Gould selected her to serve on the initial interview panel, some members of the community believed Mr. Gould’s subsequent hire of Ms. Lee was a way for Mr. Gould to hire an insider that would not pose problems for him. Second, Ms. Lee never submitted a resume or application for the position, yet she was hired for the role. Third, she was offered the position the day after the revocation of Riel’s offer and signed a contract officially accepting the offer no more than a week after the revocation—this timing was extremely quick compared to applications being posted in February 2014 and Ms. Riel’s hiring in May 2014.

a) **Findings**

As an initial matter, the City Manager was not required under law to employ an interview panel process to select Ms. Vernez’s replacement. Mr. Gould and others proffered numerous facially reasonable bases for why Ms. Lee was appropriately hired without formal process: Ms. Lee’s familiarity with Ms. Vernez’s role, her experience in communications, and her knowledge of Santa Monica city government appeared to make her an ideal replacement for Ms. Vernez. Ms. Lee, however, did not accept because of extenuating family circumstances and therefore the City Manager’s Office put her on the interview panel instead to utilize her familiarity with Ms. Vernez’s position in a different way. When Ms. Riel was terminated, it was not unreasonable for Mr. Gould and Ms. Polachek to offer the position to Ms. Lee again—she was their first choice and her family situation could have changed in the five months that had passed. Indeed, Ms. Lee was in a place at the end of May 2014 to accept their offer.

Nonetheless, the community’s concerns could have and should have been foreseen by Mr. Gould and others when offering the position to Ms. Lee in May 2014 following the revocation of Ms. Riel’s offer. The complaints and press coverage resulting from the Riel matter should have put them on notice that hiring Ms. Riel’s replacement should be done carefully and thoughtfully with an eye to optics. Ideally, Mr. Gould should have employed another interview panel and requested that Ms. Lee apply and interview through that panel. In fact, Ms. Lee herself wishes that she had been selected through an interview panel process. Ms. Lee noted that use of an interview panel process validates the ultimate choice as a wholly merit-based selection.

In addition, the use of a formal application and interview process ensures that the City is aware of other previously unknown, superlative candidates. The hiring of Ms. Riel illustrates this point. Despite the fact that no one initially involved in the selection process for the position was aware of Ms. Riel’s qualifications, each remarked that Ms. Riel was an excellent fit for the position and most conceded that she was clearly the most qualified candidate. Without the interview process, the City Manager would not have known of or considered Ms. Riel for the position.

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59 See supra note 3.
Therefore, even if Mr. Gould believed that he had the best candidate for the role before utilizing an interview panel, the interview panel yielded an unexpected best candidate.

Although the stated urgency of finding someone to replace Ms. Vernez may have justified bypassing a formal selection process, at the very least, Mr. Gould should have disclosed his rationale to the community. Doing so likely would have increased the public’s confidence in the subsequent selection of Ms. Lee.

b) Recommendation for Best Practices

The best practice for hiring at-will employees is for the City Manager to adopt a policy to publicly seek applications for open positions and employ an interview process to review the best candidates that submitted applications, with limited exceptions. While the City Manager may have a person in mind for an open position, the best practice is to solicit applications from the greater public for the position because such a process inspires public confidence and the City Manager may be unaware of a possibly superior candidate.

Extemating circumstances in certain situations may justify bypassing the process. For example, if a current city official serves in an assistant role and has a superb reputation that would uniquely qualify him/her to take over the at-will position, employing a process may simply waste time and resources. In addition, a pressing time need may warrant a very limited process.

In such rare situations, the best practice is for the City Manager to provide a statement to the community describing the reasons for bypassing the interview process. Providing information to the community will help legitimize the hire and preemptively mitigate any concerns in the community about the role of merit in the hiring. Whether or not the City Manager made the right decision to bypass the process is then up for evaluation by the community and its elected city council members.

4. Issue: Communication Between the City Council and City Officials.

When speaking about potential violations of the City Charter with us, one councilmember stated that s/he had learned that another councilmember may have called a department head in order to substantively change an item on the city council agenda without notifying the City Council. The councilmember allegedly had a company call him/her and say that they wanted to submit a bid for a closed bid request—the councilmember contacted the department head who submitted the request and told him/her to take the item off the agenda. At no point was this communication forwarded to the City Manager’s Office. Another example offered by the councilmember was of an issue of police over-enforcement in Santa Monica. Multiple councilmembers—in response to complaints from the public—allegedly contacted the Police Commissioner directly without notifying the City Manager’s Office.

City Manager Rick Cole stated that in situations like the above, contact must first be made with the City Manager’s Office. Otherwise, these communications may be considered a violation of the City Charter. Mr. Cole said that such contact could be as simple as involving or copying someone from his office on the communication.
a) Findings

We could not find corroborating evidence supporting the claim that a councilmember called a department head in order to change an item on the city council agenda without notifying the City Council. But if it happened, such contact is a violation of the City Charter. The Santa Monica City Charter, Article VI, Section 610, states:

Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Councilmembers should not contact city administrators in order to effectuate a change in policy or administration. Merely seeking information about policies or administrative issues would not constitute a violation, unless inartfully phrased in a way that would provide the appearance of an order to subordinates of the City Manager.

b) Recommendation for Best Practices

Councilmembers should be mindful of the fact that the City Manager is responsible for substantive administrative matters and that they are prohibited from giving orders to administrators who report to the City Manager. The best practice therefore is for councilmembers to proactively determine whether their potential communication with administrators on a substantive issue could influence that administrators’ decision, and, if there is any chance of influence, copy the City Manager on e-mail communications and give advance notice to the City Manager’s Office of telephone communications. Abiding by this best practice will allow the City Manager to determine the proper line of communication and permit correction and guidance for any possible problematic communication.

5. Issue: Whether the City Manager and the City Attorney Treated Certain Councilmembers Differently.

Several councilmembers expressed to us in interviews that Mr. Gould and Ms. Moutrie did not fully disclose the contents of the communications between Mr. Gould and Ms. O’Connor after the revocation of Ms. Riel’s offer. Some expressed that they were especially upset because Mr. Gould cited “privacy” as the reason he could not discuss Ms. Riel’s termination in more detail with them, but then his e-mails with Ms. O’Connor showed extensive communications about Mr. Gould’s decision-making process. It is therefore important whether there was a variability in the treatment of councilmembers by the City Manager and City Attorney.

a) Findings

Mr. Gould claimed in communications with Kevin McKeown, Ted Winterer, and other councilmembers that he could not provide significant detail regarding his revocation of Ms. Riel’s
offer because of “privacy and confidentiality of the hiring process” and because he did not wish to “violate [Ms. Riel’s] privacy rights.” Yet in e-mail conversations with Ms. O’Connor that preceded these claims of privacy, Mr. Gould was fully transparent about why he was revoking Ms. Riel’s offer, referring to Ms. Riel’s “trust and judgment” as major factors in his decision. At no point in his e-mails with Ms. O’Connor did Mr. Gould refer to Ms. Riel’s hiring as a personnel matter that required privacy. In fact, even after hearing Ms. O’Connor’s multiple complaints about Ms. Riel over e-mail, Mr. Gould continued to request a phone conversation with Ms. O’Connor to discuss the situation further.

Mr. Gould claims that he provided information to Ms. O’Connor but not others because she had contacted him with complaints and so he was just providing information in response. We are not satisfied with this explanation because Mr. McKeown and Mr. Winterer contacted Mr. Gould for more information based on complaints as well and were told by Mr. Gould that he could not provide that information. Although Mr. McKeown and Mr. Winterer sent messages after the revocation of Ms. Riel’s offer while Ms. O’Connor e-mailed before the revocation, this is a distinction without a difference because Ms. Riel would have the same privacy considerations in each time period.

Mr. Gould also did not clarify with other councilmembers the nature and extent of Ms. O’Connor’s communications regarding the Riel hiring. Ms. O’Connor admits that she did not disclose the substance of her e-mails to Mr. Gould and does not contest that neither Mr. Gould nor Ms. Moutrie disclosed that Ms. O’Connor had extensive and detailed conversations with Mr. Gould about Ms. Riel. In fact, Ms. O’Connor stated that she believed it was Mr. Gould’s and Ms. Moutrie’s obligation to disclose such communications to the Council, not hers.

Complete information should have been provided to councilmembers upon request. Providing information selectively only served to raise suspicion within the Council about whether city officials were attempting to protect the Mayor in a reelection year. We found no evidence to support this suspicion but the appearance of same undermines the relationship between the City Manager and councilmembers.

b) Recommendation for Best Practices

Absent special circumstances requiring confidentiality, the best practice is for the City Manager to disclose information equally to all councilmembers. There is no provision in the City Charter that permits the City Manager to provide relevant information to some councilmembers but not others. In addition, on issues of general concern, there is no reason for the City Manager

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60 E-mail from Rodney Gould, City Manager, Santa Monica, to Kevin McKeown, Councilmember, Santa Monica (May 29, 2014, 5:59 p.m. PST).

61 E-mail from Rodney Gould, City Manager, Santa Monica, to Ted Winterer, Councilmember, Santa Monica (May 29, 2014, 4:13 a.m. PST).

62 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 24, 2014, 7:07 p.m. PST).

63 Exhibit 9—E-mail from Rodney Gould, City Manager, Santa Monica, to Pamela O’Connor, Mayor, Santa Monica (May 24, 2014, 12:39 p.m. PST).
to provide information to the Mayor but withhold it from other councilmembers. Treating all councilmembers as similarly as possible also creates trust with the Council and an appearance of fairness and impartiality that is important for the position of City Manager.

6. Issue: Whether “Political Neutrality” is a Proper Position Criterion.

Some community members have questioned whether “political neutrality” was merely pretext for Mr. Gould to revoke Ms. Riel’s offer or a proper characteristic that could be a disqualifying factor for the Communications Position. Others have asked whether Mr. Gould provided Ms. Riel with an adequate opportunity to rebut assumptions of political bias.

a) Findings

Mr. Gould ultimately terminated Ms. Riel for the stated reason of a lack of “political neutrality.” Almost every interviewee admitted that no candidate can truly be politically neutral. Every city employee harbors political leanings and opinions. Accordingly, the citation of such a reason to disqualify Ms. Riel raises significant concerns of a pretextual reason for her termination.

That said, there are several sensitive positions in Santa Monica city government that may require either a form of political neutrality or adequate assurances that prior political activity would not undermine the ability of the candidate to fully perform the duties and responsibilities called for by the position. Many witnesses cautioned that the Communications Position could be reasonably considered one such position. Due to her communications role for the city, Ms. Vernez worked closely with the Mayor and the Mayor pro tempore. She wrote speeches for the Mayor and provided information for the Mayor on critical issues. Thus, in order to be effective in that role, the Mayor needed to trust that Ms. Vernez would be giving her proper and reliable information. The employee in the Communications Position would—and indeed did—take over these responsibilities. Whether or not an individual in the City Manager’s Office should in effect be functioning as the Mayor’s aide is outside the scope of this issue—Ms. Vernez did so and therefore her replacement arguably required similar strengths and attributes for fulfillment of Ms. Vernez’s responsibilities.

The City Manager therefore could properly conclude that a form of political neutrality was a desirable characteristic in the ideal candidate for the Communications Position. A hire that he believed could not work with the Mayor or other councilmembers would arguably pose difficulties for the City Manager’s Office because a significant portion of this position required contact with and trust of the Mayor.

This is not to say that a lack of political neutrality is a disqualifying factor. The vast majority of the individuals we interviewed said that a political past would not automatically disqualify a candidate for this position. A full assessment of whether the person is able to put

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64 The one exception was Councilmember Pamela O’Connor. She stated that a political hire was not allowed by the ICMA Code of Ethics. We reviewed ICMA Code of Ethics and in particular Tenet 7, which advises that municipal staff “refrain from all political activities which undermine public confidence in professional administrators” and “refrain from participation in the election of the members of the employing legislative body.” ICMA Code of Ethics with Guidelines, International City/County Management Association (June 2015), available at https://icma.org/Documents/Document/Document/100263. Tenet 7
aside their past political opinions and act in an objective manner would be the proper course if politically neutrality is in question. Indeed, every member of the City Manager’s Office we interviewed stated that they are able to put aside their personal opinions on issues in Santa Monica in the context of their work for the city.

Such a full assessment should include a chance for the candidate to express whether they would be able to work within a form of political neutrality. In this instance, “political neutrality” was not listed as a job qualification. Moreover, Ms. Riel included in her resume mention of political activity which was not probed during the interview process. Finally, Mr. Gould did not appear to provide Ms. Riel with a meaningful opportunity to explain her past actions or provide assurances about remaining apolitical in the position. Whether or not Ms. Riel would be effective in the Communications Position should have been determined through a careful and thorough investigatory process, not through a rushed decision-making process over a long weekend that failed to gather all relevant information.

b) Recommendation for Best Practices

We believe that vetting candidates for “political neutrality” is fraught with practical and legal issues. At most, we recommend that candidates for sensitive positions be questioned about the nature and extent of their involvement in partisan political activity directly connected to elected officials with whom the candidates would be working. Each candidate so questioned should be afforded an opportunity to explain why their prior political work would not impede their ability to perform.

V. THE OAKS INITIATIVE

On November 7, 2000, the voters of Santa Monica adopted the Oaks Initiative. The Oaks Initiative prohibits a “public official” from receiving benefits from persons or entities after the “public official” votes to award, or exercises material discretion to award, such persons or entities with a “public benefit.” Violations of the Oaks Initiative can be pursued in both the criminal and civil contexts.

Many Santa Monica public servants spoke out against the Oaks Initiative before it was adopted in a proposition vote. City Council members campaigned against its passage and even authored the official ballot argument opposing it. City Attorney Marsha Moutrie expressed a host of concerns related to the constitutionality and enforceability of the Oaks Initiative. After the law was adopted over the objection of Santa Monica’s public servants, the city filed an action for declaratory relief and a writ of mandate against the City Clerk for non-enforcement of the Oaks Initiative. Specifically, Santa Monica’s complaint sought a judicial declaration as to whether the
counsels current municipal staff to act in an apolitical manner—nowhere in Tenet 7 or the ICMA Code of Ethics is there a restriction on hiring a candidate who was once politically involved.

65 Donna Peter told us that political neutrality should have been included in the job listing for the Communications Position. Ms. Peter suggested that the following positions should also include political neutrality in their listings: Director of Community Development/Planning; Assistant to the City Council; Department Directors; Director of Housing and Economic Development; City Manager; and Assistant City Manager.
Oaks Initiative "[was] or [was] not unconstitutional or otherwise illegal and unenforceable." The state trial court dismissed the case, finding that Santa Monica lacked standing and that its claim was not ripe. Since the case was dismissed, Santa Monica residents have filed two Oaks Initiative complaints. In both instances, the City Attorney chose not to prosecute the alleged violations, citing concerns related to conflicts of interest.

Part V provides background on the Oaks Initiative, conducts a survey of analogous anti-corruption laws in other municipalities, makes findings about the Oaks Initiative, and then provides guidance on best practices with respect to enforcement of the Oaks Initiative.

A. SANTA MONICA OAKS INITIATIVE

This section explores the key provisions and history of the Oaks Initiative in Santa Monica. After providing that background, it describes the two Oaks Initiative complaints that have been filed in Santa Monica since the law's passage.


The Oaks Initiative is incorporated as Article XXII of the Santa Monica City Charter. Section 2201 of the Oaks Initiative contains "Findings and declarations," which provide justification for the law's prohibitions. According to Section 2201, the Oaks Initiative protects the integrity of public decision-making and the public fisc by strictly regulating direct and indirect means and channels through which "public officials" and public contractors could exchange quid pro quos.

Section 2203 of the Oaks Initiative provides that a "public official" who has "exercised discretion" to approve and who has approved or voted to approve conveyance of a "public benefit" etc.

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66 Under Section 2202(d), the term "public official" includes "any elected or appointed public official acting in an official capacity."

67 The Oaks Initiative provides no guidance as to the meaning of this term.

68 Section 2202(a) defines "public benefit" to include "a contract, benefit, or arrangement between the City and any individual, corporation, firm, partnership, association, or other person or entity to: (1) provide personal services of a value in excess of $25,000 over any 12 month period; (2) sell or furnish any material, supplies or equipment to the City of a value in excess of $25,000 over any 12 month period; (3) buy or sell any real property to or from the City with a value in excess of $25,000, or lease any real property to or from the City with a value in excess of $25,000 over any 12 month period; (4) receive an award of a franchise to conduct any business activity in a territory in which no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds $50,000 in any 12 month period; (5) confer a land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property where such decision has a value in excess of $25,000; (6) confer a tax abatement, exception, or benefit not generally applicable of a value in excess of $5,000 in any 12 month period; or (7) receive cash or specie of a net value to the recipient in excess of $10,000 in any 12 month period."
to a "person[] or entit[y]"\textsuperscript{69} may not receive a "personal or campaign advantage"\textsuperscript{70} from such person or entity for a specified period of time.

Section 2204 imposes serious due diligence obligations on Santa Monica public officials. They are required to carefully monitor all public benefits that they approve and check those public benefits against the persons or entities who provide them with personal or campaign advantages. Improper personal or campaign advantages must be returned no later than ten days after receipt. In addition, public officials must provide, upon request, the names of all public benefit recipients.

In addition to public enforcement, the Oaks Initiative extends a private right of action to Santa Monica residents. A resident of the city may bring a civil action against a public official. If the resident's civil suit is successful, the public official must pay the resident his reasonable attorney's fees and costs. The resident also receives 10% of any civil penalty collected and the City's general fund receives the remaining 90%.

A "willful violation" of the Oaks Initiative may be prosecuted as a criminal misdemeanor. Other violations of the law are subject to civil penalties, including restitution of the personal or campaign advantage received, a civil penalty of up to five times the value of the personal or campaign advantage received, injunctive relief necessary to prevent present and future violations, and disqualification from future public office.

Section 2207 of the Oaks Initiative contains a severability clause. The severability clause provides that, even if a provision of the Oaks Initiative is found invalid, the remaining provisions will remain in effect so long as they can be given effect without the invalidated provision.

2. The History of the Santa Monica Oaks Initiative.

In 2000, a grass-roots group of consumer rights activists based out of Santa Monica called the Oaks Project organized an effort to place anti-corruption municipal codes on local ballot initiatives throughout California, including in Santa Monica.\textsuperscript{71} The Oaks Project argued that the ballot measure was a way to prevent corruption in Santa Monica politics.\textsuperscript{72} Opponents argued that the Oaks Initiative would stifle public participation in Santa Monica, and that campaign contribution limits were already sufficient to limit any corruptive influence. Furthermore,

\textsuperscript{69} Section 2202(b) defines "persons or entities" as entities and individuals who, at the time that the "public benefit" is conferred, have more than a 10% interest or are a trustee, director, partner, or officer of the entity receiving the "public benefit."

\textsuperscript{70} Section 2202(c) defines "personal or campaign advantage" as "(1) any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of $50; (2) any employment for compensation; and (3) any campaign contributions for any elective office said official may pursue."

\textsuperscript{71} The Oaks Project is referred to as "the grass-roots volunteer arm of activist Harvey Rosenfeld's Santa Monica-based Foundation for Taxpayer and Consumer Rights." Putting Political Reform to the Test, Strumwasser & Woocher LLP (Oct. 23, 2002), http://www.strumwooch.com/S-W-Press/2002/October/ Putting-Political-Reform-to-the-Test.aspx.

opponents argued that the Oaks Initiative would impose an onerous burden on residents who volunteered on city boards, and that the law would have little positive impact in Santa Monica.

City Attorney Marsha Moutrie and Assistant City Attorney Joseph Lawrence authored an “impartial analysis” of the measure. They wrote that it was “unclear how the City would be able to monitor compliance with the measure’s requirements” and that the “cost of monitoring ... would likely be substantial.” In addition, they noted that the measure may be subject to a legal challenge on constitutional grounds “because the measure purports to impose stringent limitations upon protected activities, including participation in the electoral process through making and receiving campaign contributions.”

Despite such opposition, almost 59% of Santa Monica voters approved the Oaks Initiative on November 7, 2000. On May 8, 2001, Ms. Moutrie sent a memorandum to the City Council recommending that it initiate a lawsuit challenging the constitutionality of the Oaks Initiative. Ms. Moutrie’s stated purpose for the challenge was to protect individual rights and take action in response to the voters’ decision. City Clerk Maria Stewart relied on Ms. Moutrie’s advice and refused to enforce the Oaks Initiative until its constitutionality could be adjudicated.

Santa Monica filed a lawsuit for declaratory relief and a writ of mandate against its City Clerk, alleging an actual controversy between Santa Monica and its City Clerk over the constitutionality and enforceability of the Oaks Initiative. The Foundation for Taxpayer and Consumer Rights intervened in the lawsuit and filed a motion to dismiss the lawsuit. The trial court granted the motion to dismiss, holding that the case was non-justiciable. Santa Monica appealed the decision, but the appellate court affirmed the trial court on January 28, 2005, writing that “this action fails both the standing and ripeness aspects of the test of justiciability.” Santa Monica appealed the ruling to the California Supreme Court, but the Supreme Court denied review on April 27, 2005.

In 2006, the City Council voted to put Proposition W—the Good Government Act—on the November 7, 2006 ballot in Santa Monica. This measure, if enacted, would have repealed the Oaks Initiative and replace it with a new anti-corruption measure. Ms. Moutrie wrote that Proposition W “would eliminate the risk of a constitutional challenge to Article XXII based on, for example, its prohibitions against campaign contributions or its distinction between ‘yes’ and

74 Id.
75 Id.
“no’ votes,” and “would also reduce costs to the City resulting from the requirement of keeping records relating to individual votes.”

Oaks Project members argued that the proposed legislation would no longer prohibit councilmembers from taking campaign contributions from persons or entities doing business with Santa Monica. Oaks Project members further contended that councilmembers could accept employment or gifts from entities immediately after rewarding them with public benefits. Proposition W was defeated on November 7, 2006.

The Oaks Initiative continues to remain in the Charter of the City of Santa Monica as passed in November 2000. The Santa Monica City Clerk monitors public benefits subject to the Oaks Initiative in a monthly-released report, available on its website.80

3. Santa Monica City Attorney’s Office’s Handling of Oaks Initiative Complaints.

The City Attorney’s Office has received two complaints from resident organizations alleging violations of the Oaks Initiative. It has declined to prosecute either of the complaints. In order to make findings and recommendations for future enforcement of the Oaks Initiative, it is instructive to review the concerns expressed by Ms. Moutrie and her colleagues with respect to both complaints.

a) Oaks Complaint against Pamela O’Connor

On October 8, 2014, the Santa Monica Transparency Project (“SMTP”) filed a complaint with the Santa Monica City Attorney’s Office. In its complaint, SMTP cited 24 violations of the Oaks Initiative against then-Mayor O’Connor. The complaint alleged that Ms. O’Connor “illegally accepted campaign contributions from three of the biggest developers in Santa Monica: Hines, Macerich, and Century West.” SMTP alleged that residents of Santa Monica had asked her to recuse herself from votes on the developers’ projects after she received contributions from individuals at all three companies, but she refused to do so. The complaint alleged that Ms. O’Connor violated the Oaks Initiative either knowingly or recklessly. In response, Ms. O’Connor returned several contributions, citing innocent mistakes. Ms. O’Connor also disclosed that she had hired a treasurer to ensure that such problems did not happen again.

City Attorney Moutrie refused to prosecute SMTP’s complaint because of an apparent conflict of interest. Ms. O’Connor was a councilmember and close co-worker, Ms. Moutrie explained, which created a conflict of interest. As a result, Ms. Moutrie sent the complaint to the District Attorney’s Public Integrity Division (“DA PID”). The DA PID also refused to prosecute the complaint, stating that it did not want to “becom[e] the de facto enforcer of this local misdemeanor offense” and “[their] office also has concerns regarding the constitutional validity of


this provision of the City’s Charter.\textsuperscript{81} The DA PID suggested that Ms. Moutrie cross-designate Oaks Initiative complaints to other cities, but Ms. Moutrie declined to do so because she did not believe that she could “lawfully arrange for other cities to prosect violations of Santa Monica laws.” Ms. Moutrie then referred the complaint to the Attorney General’s office. The Attorney General also declined to take action. The Attorney General suggested that Ms. Moutrie could “obviate [her] conflict concerns...[by] the assignment of a deputy city attorney who is properly insulated from the rest of [her] office and the City Council.”\textsuperscript{82} Ms. Moutrie declined to do so because, in her view, everyone in her office was subject to her oversight.

This complaint has not yet been resolved.

b) Oaks Complaint against Rodney Gould

On June 10, 2015, SMTP filed a complaint against City Manager Rodney Gould, alleging violations of the Oaks Initiative and the ethics code of the International City Managements Association (“ICMA”). SMTP alleged that Mr. Gould approved and executed development agreements with Management Partners—a management consulting firm—shortly before he retired as City Manager and began working for Management Partners. The complaint also alleged that, before Mr. Gould approved the development agreements, Management Partners had hinted in an e-mail that it might extend an employment offer to Mr. Gould. Mr. Gould allegedly expressed interest in a potential position, writing to a Senior Partner at Management Partners, “I would truly enjoy working with you as there are fewer wiser and better people on the planet.”

Mr. Gould defended himself by arguing that there was no connection between the development contracts and his recent employment with Management Partners. He pointed to the fact that he had not fully negotiated or accepted Management Partners’ offer until after he had left his position as City Manager. The ICMA also provided a response, stating that there could only be a violation of the ICMA if Mr. Gould had negotiated his future employment with Management Partners at the same time that negotiations of the development agreements had taken place, or if employment with Management Partners had been extra consideration for the development agreements. The ICMA concluded that, on the facts of Gould’s case, there was no evidence of an ICMA ethics issue.

City Attorney Moutrie responded to SMTP’s complaint in a letter dated June 16, 2015. Ms. Moutrie wrote that the City Attorney’s Office routinely advised Mr. Gould and thus “[could] neither perform investigations nor make filing decisions” because of a conflict of interest. Ms. Moutrie noted that, in the Pamela O’Connor matter, she had referred an Oaks Initiative complaint to the District Attorney and Attorney General but both entities had declined to prosecute. Ms. Moutrie also wrote that she did not believe that the Oaks Initiative applied to the City Manager position. She also noted that the Oaks Initiative had multiple legal infirmities, and she cited two

\textsuperscript{81} Letter from Jackie Lacey, District Attorney, Los Angeles County and Patricia Wilkinson, Head Deputy, Public Integrity Division, Los Angeles County, to Marsha Moutrie, City Attorney, Santa Monica (Nov. 24, 2014).

\textsuperscript{82} Letter from Kamala D. Harris, Attorney General, State of California and Lance E. Winters, Senior Assistant Attorney General, State of California to Terry White, Office of the City Attorney, Santa Monica (Apr. 13, 2015).
judicial decisions finding constitutional issues with the Oaks Initiative. Finally, Ms. Moutrie argued that it was unclear whether the Oaks Initiative could even reach Mr. Gould’s actions seeing as he had accepted the employment position outside of Santa Monica’s city limits and also because he had accepted the position after his retirement from his City Manager position. For those reasons, Ms. Moutrie refused to take any action on the complaint.

On August 7, 2015, members of SMTP filed a lawsuit in their individual capacities against Rodney Gould, alleging violations of the Oaks Initiative and seeking restitution, penalties, and attorney’s fees. On November 27, 2015, Mr. Gould and the SMTP members entered into a settlement agreement. Under the terms of the agreement, Mr. Gould committed, among items, to:

Resign from Management Partners and refrain from accepting any employment with it until the end of the post-employment period during which such employment is prohibited under Oaks (January 31, 2017);

Abide by the post-employment restrictions of the Oaks Initiative as to other companies for which he approved contracts while working for the City, also through January 31, 2017; and

Pay $20,000 to cover Plaintiffs’ attorney’s fees and costs.

Neither Management Partners nor Mr. Gould admitted to any wrongdoing as part of the settlement agreement. Management Partners said in a statement that it agreed with Ms. Moutrie’s statement that the Oaks Initiative was unconstitutional, unenforceable, and inapplicable to Mr. Gould.

B. SURVEY OF OTHER JURISDICTIONS

This section provides a survey of other California jurisdictions that adopted analogues to the Oaks Initiative in 2009 and 2010. It also examines federal restrictions on campaign contributions that are similar to the provisions in the Oaks Initiative.

1. Other Oaks Initiative Jurisdictions.

As mentioned above, in 1999 the Oaks Project organized an effort to place anti-corruption municipal codes on local ballot initiatives throughout California. The codes were called “The Taxpayer Protection Amendment of 2000” (the “TPA”). Oaks Project volunteers successfully placed the code on the local ballot of five cities: Santa Monica, San Francisco, Pasadena, Vista,

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84 Settlement Agreement and Release between Rodney Gould and Mary Marlow, Elizabeth Van Denburgh, and Nancy Coleman (Nov. 27, 2015).
85 *Id.*
and Claremont. According to Oaks Project officials, those cities were chosen to reflect California’s geographical and political makeup.

Oaks Initiative laws have fared differently in each city based on several factors, including the input of the voters, the reaction by political actors, and the way city officials have chosen to enforce the legislation. The approaches these cities took can be separated into two general categories: (1) the jurisdiction passed substitute anti-corruption legislation including some, but not all, of the restrictions in the TPA; and (2) the jurisdiction passed the TPA but has generally not enforced the law.

a) Cities that Replaced the TPA with Different Anti-Corruption Legislation

(1) San Francisco

On November 4, 2003, San Francisco voters repealed the TPA in its entirety and replaced it with “Ethics Reform” legislation that was aimed at addressing concerns that conflict of interest laws in San Francisco had become outdated, confusing, or had been inadequately drafted. While the TPA was repealed, Proposition E contained several prohibitions that aimed to address conflict of interest concerns, and it applied to both elected and appointed city officials. The conflict of interests provisions are still in existence today and largely mirror state conflict of interest laws, specifically the California Political Reform Act. The conflict of interest provisions that are relevant to our review of Santa Monica’s TPA include:

- **Restrictions on influencing public decisions after receiving a financial interest**—No officer or employee of San Francisco can make, participate in making, or seek to influence a decision of the City in which the officer or employee has a financial interest, their family

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86 The Oaks Project missed qualifying TPA for the ballot in Irvine by 81 votes in 2000. While it appears that Irvine residents and Oaks Project volunteers have met with city officials about the TPA since then, it does not appear that it has voted on or implemented any conflict of interest legislation since then.


88 San Francisco Municipal Code, § 3.203(a).

89 A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following: (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more. (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars ($2,000) or more. (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of
members are involved, or their own character or conduct is involved. The law only requires disclosure of a city officer or employee who has “any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship.”

- **Restrictions on gifts before and after providing a benefit**—The law prohibits gifts to officers and employees from persons or entities doing business or seeking to do business with the city. “Gifts” include any payment that confers a personal benefit on the recipient.

- **Disclosure of all potential conflicts of interests**—No officer or employee of San Francisco can make, participate in making, or seek to influence a decision of the City if the officer or employee is discussing or negotiating an agreement concerning future employment with the beneficiary.

- **Post-employment restriction**—No current or former officer or employee of the City can be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.

(2) **Vista**

While voters in Vista approved the TPA on November 7, 2000, they approved another anti-corruption measure—the “Good Government and Fair Elections” ordinance (the “GGFE”)—with a higher proportion of the vote on the same date. Opponents of the TPA had introduced and gathered enough signatures to put their own proposition, the GGFE, on same ballot as the gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to subdivision (f) of Section 89503. Public Reform Act, Cal. Gov’t Code § 87103.


91 “Gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq. . . .” San Francisco Municipal Code, § 3.216. “Gift” means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. Political Reform Act, Cal. Gov’t Code § 82028.

92 San Francisco Municipal Code, § 3.214.

93 San Francisco Municipal Code, § 3.234(a)(3).


TPA. Due to the wording of the GGFE, it became operative while the TPA never became law in Vista.

The GGFE is still law in Vista today. Its main provisions include:

- Restrictions on councilmembers and appointed officials from receiving gifts from any single source or person of value of more than $300 with no gift allowed to be over $100, with regular increases based on the Consumer Price Index;

- Prohibitions on gifts of over $50 to councilmembers and appointed officials if the donor or presenter of the gift has an economic or financial interest in contracts, property applications, or other similar requests for benefits from the city;

- Providing that no councilmember and no council candidate can accept honoraria, and no appointed official can accept it if they would be required to report the receipt of income or gifts from that source under this ordinance; and

- Restricting former councilmembers and appointed officials from influencing the City Council or any administrative action for one year after leaving office or employment.

b) Cities that Passed the TPA but Have Not Yet Prosecuted Any TPA Complaints

(1) Pasadena

Pasadena’s City Council and City Attorney’s Office initially challenged the constitutionality of the TPA, but they were not successful as the appellate state court dismissed their lawsuit for jurisdictional reasons. In 2005, a local Pasadena newspaper conducted an investigation into City Councilmembers and found that six of the eight councilmembers had taken thousands in campaign donations that were prohibited under the TPA while the litigation was ongoing. These councilmembers then approved a measure to indemnify themselves for any...


97 Proposition V was presented as an alternative to Proposition W. It therefore contained a “poison pill” that stated that if Proposition V were to receive more “Yes” votes than Proposition W, Proposition W would be deemed null and void even if voters voted for Proposition W to pass. Proposition W received 11,091 votes while Proposition V received 12,057 votes, and thus Proposition V became law and Proposition W was declared null and void.

98 Vista Municipal Code, Chapter 2.33.

99 See supra note 78 and accompanying text.

potential prosecution. After outcry by the public—including from the then-Mayor—the
councilmembers agreed to give back any contributions that were in violation of the TPA,
implement the TPA as of the summer of 2005, and appoint a Task Force on Good Government
("Task Force") led by a former California Attorney General.

To implement the TPA, the City Council passed a resolution that established guidelines for
TPA enforcement. The guidelines included interpretations of key TPA provisions. The Task
Force issued their report on February 27, 2006, recommending twelve total changes to the TPA:

- The ban on receiving personal or campaign advantages should not apply to officers and
directors from 501 (c)(3), (4), or (6) organizations, except that disclosure of such persons
would continue to be required.
- The TPA should be amended to cover persons bidding on or negotiating for contracts that
are worth over $25,000.
- The TPA should be amended to apply contribution limits to Pasadena political races:
$1,000 per election for City Council and $2,000 per election for Mayor.
- The TPA should cover Pasadena public officials who raise money for local ballot measure
committees that the official controls.
- The TPA should apply only to officials and candidates in city races and not elections
outside of Pasadena.
- The City should authorize the City Attorney to bring criminal actions except in cases
involving elected City officials in which case the City Attorney should refer the complaint
to the L.A. County District Attorney’s office.
- The TPA should give subpoena authority to the City Attorney and, where TPA cases are
referred to it, the L.A. County District Attorney.
- The TPA should apply only to Councilmembers or other City officials serving on outside
boards as City representatives (e.g., the Burbank Airport Authority), if these other agencies
have reporting requirements allowing compliance with the TPA.
- The dollar threshold for determining which decisions are covered by the TPA should be
uniform at $25,000 and above. The only exceptions would be the grant of a tax abatement,
exception or benefit, which should remain at over $5,000 in a twelve-month period, and
awarding of franchises worth over $50,000 in gross receipts.
- The City’s file which lists the persons who are prohibited from providing personal
advantages to City officials should be posted on the internet so that the records are available
to the public.

101 Pasadena City Council Resolution 8500.
• The TPA should eliminate the need to cumulate public benefits in amounts under $5,000 unless it is clear that the amounts will meet or exceed the thresholds.

• The TPA should be clarified to require that the franchise has to be awarded by the City.

The City Council adopted all of the above recommendations from the Task Force, except for the contribution limits. It additionally added four other amendments to the ballot initiative:

• Adding a restriction on campaign contributions during the time period when the person or entity is “bidding on a contract”;

• Amending the time restriction on public officials—other than those on the City Council or City Commission—receiving personal advantages from those to whom they allocate public benefits to “one year after the City employee departs from his or her office or for two years from the date the City employee approves the public benefit, whichever comes first.”102;

• The extent of the TPA’s application to land use decisions shall be addressed through administrative guidelines; and

• A grant of authority to the city council to adopt guidelines for implementation of the TPA that are consistent with the findings and declarations in the TPA.103

Pasadena voters approved the amendments on November 7, 2006.

On February 26, 2007, the City Council passed a resolution that amended the August 1, 2005 guidelines for the implementation of the TPA.104 The guidelines were further amended by the City Council on January 26, 2009 out of a need for additional clarity.105 It seems that no one has reported any violations of the TPA to the City Attorney and no violations have been prosecuted by private individuals in Pasadena.

(2) Claremont

Claremont voters approved the TPA—Measure A—on March 6, 2001. Before the law’s passage, however, the Claremont City Attorney opined that the TPA had significant constitutional infirmities. After its passage, she reiterated those concerns and further stated that the City Council could either take legal action to obtain an enforceability opinion, or not implement the law due to concerns related to its constitutionality.

102 The change is that the TPA restriction on employees is reduced from five years to two years.
103 Pasadena City Council Resolution 8633.
104 Pasadena City Council Resolution 8707.
105 Pasadena City Council Resolution 8918.
On March 29, 2011, the City Council decided to fight the TPA in court.\textsuperscript{106} Claremont eventually joined the \textit{Santa Monica v. Stewart} lawsuit as an \textit{amicus curiae}. As mentioned above, the \textit{Santa Monica} court dismissed the case without reaching the merits of the lawsuit.\textsuperscript{107} After the dismissal, it does not appear as though Claremont took any further actions to amend or enforce the TPA.\textsuperscript{108}

2.  \textbf{Federal Restrictions.}

Federal law places many restrictions on federal employees and federal contractors in order to deter and penalize corruptive activities. These restrictions include banning federal contractors from making political donations, prohibiting federal employees from receiving certain gifts, and disqualifying employees from making decisions on matters in which they have a financial interest.

52 U.S.C. § 30119(a)(1) makes it unlawful for any person or entity “who enters into any contract with the United States . . . directly or indirectly to make any contribution . . . to any political party, committee, or candidate for public office or to any person for any political purpose.” The prohibition applies “between the commencement of negotiations . . . and . . . the completion of performance” of the contract. The Federal Election Commission (“FEC”) has construed the section not to apply “in connection with State or local elections.”\textsuperscript{109} The FEC has interpreted the restrictions to apply “to only the specific legal entity that holds the federal contract, and not necessarily to parent or subsidiary organizations,” though the FEC has recently indicated that it is revisiting this interpretation and may in the future apply the restriction more broadly to related entities.\textsuperscript{110}

Federal contractors challenged the constitutionality of section 30119 on First Amendment and Equal Protection grounds.\textsuperscript{111} In a July 7, 2015, opinion authored by Chief Judge Merrick Garland for an \textit{en banc} panel of United States Court of Appeals for the District of Columbia (“D.C. Circuit”), the D.C. Circuit held that section 30119 did not violate the federal contractors’ First Amendment and Equal Protection rights. The court placed emphasis on the fact that section 30119 fulfills two important anti-corruption interests: (1) “the ‘compelling’ interest in protecting against quid pro quo corruption and its appearance;” and (2) the “obviously important interest[]” in protecting merit-based public administration. The D.C. Circuit noted that those concerns were not theoretical but were rather shown to be realistic by many corruptive events.


\textsuperscript{107} See supra note 78 and accompanying text.

\textsuperscript{108} Claremont Municipal Code, Chapter 2.56.

\textsuperscript{109} 11 C.F.R. § 115.2(a).


\textsuperscript{111} Wagner \textit{v. F.E.C.}, 793 F.3d 1 (D.C. Cir. 2015) (en banc).
Federal regulations also prohibit federal employees from receiving gifts from prohibited sources or in return for influencing an official act. Prohibited sources include any person who:

(1) Is seeking official action by the employee’s agency;

(2) Does business or seeks to do business with the employee’s agency;

(3) Conducts activities regulated by the employee’s agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee’s official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

The federal regulations additionally contain disqualification provisions for “employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially.” These regulations relate to a federal criminal statute, 18 U.S.C. § 208(a), which requires “that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person with whom he is negotiating or has any arrangement concerning prospective employment.” That criminal statute, 18 U.S.C. § 208(a), also prohibits employees “from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.” Federal employees additionally “shall not acquire or hold any financial interest that [they are] prohibited from acquiring or holding by statute, [or] by agency regulation,” which includes restrictions through agency determinations “that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered.”

C. FINDINGS AND RECOMMENDATIONS FOR BEST PRACTICES

This section makes key findings about the Oaks Initiative and recommends best practices for future implementation and enforcement of the Oaks Initiative.

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113 5 C.F.R. § 2635.203.
114 5 C.F.R. § 2635.601.
115 5 C.F.R. § 2635.402.
116 5 C.F.R. § 2635.403.
1. **Issue: Whether the Oaks Initiative Should be Enforced.**

Some of the interviewees expressed an opinion that the Oaks Initiative is unnecessary because Santa Monica is a generally corruption-free city and the Oaks Initiative is burdensome and ineffectual without providing much benefit to Santa Monica. In order to suggest best practices for the Oaks Initiative, it is important first to establish whether the Oaks Initiative serves an important purpose in Santa Monica.

a) **Findings**

The Oaks Initiative contains provisions that, if enforced, fulfill important anti-corruption goals. It is a very useful section in the City Charter because it contains prohibitions against clearly corruptive and potentially corruptive actions, and it invites public and private enforcement.

The Oaks Initiative prohibits three types of personal or campaign advantages: (1) gifts, and similar devices, of a value in excess of $50; (2) employment for compensation; and (3) campaign contributions. It is important to regulate gifts and campaign contributions in order to prevent elected and unelected city officials from exchanging public benefits for monetary compensation. It is similarly important to restrict employment for compensation in order to curtail a potential revolving door issue.

Some interviewees said that federal and state anti-corruption laws already provide ample deterrence and that the Oaks Initiative is therefore an unnecessary piece of legislation. We disagree and find that the Oaks Initiative is useful, even with strong state anti-corruption laws. First, Santa Monica residents can enforce the Oaks Initiative—along with all of the anti-corruption values that it embodies—through private, civil litigation. Granting residents that enforcement power fosters better enforcement and, therefore, better compliance. Additionally, state enforcement agencies do not have the time or resources to litigate each potentially corruptive act. All else equal, enforcing the Oaks Initiative will create a deterrent effect and a tool to minimize corruptive behavior in Santa Monica.

b) **Recommendation for Best Practices**

To the extent that there are constitutional issues, enforceability issues, interpretation issues, or other legal infirmities with the Oaks Initiative, the City Attorney or City Council should clarify or amend the law to remedy those issues, to the extent possible. We make specific recommendations below.

2. **Issue: Whether A Conflict of Interest Truly Precludes Enforcement of the Oaks Initiative.**

City Attorney Moutrie has repeatedly taken the position that she cannot enforce the Oaks Initiative because she works too closely with public officials who are subject to the Oaks Initiative. The District Attorney and State Attorney General have both declined to enforce the Oaks Initiative. Ms. Moutrie said in her interview that she was unsure about how best to enforce the Oaks Initiative going forward.
a) Findings

The City Attorney’s Office’s current structure creates a wall between the Criminal Division and city officials sufficient to mitigate any conflict of interest concerns for the City Attorney. The City Attorney’s Office is separated into three main divisions: (1) Criminal Law; (2) Municipal Law; and (3) Civil Liability. City Attorney Moutrie works closely with the latter two divisions and has substantive oversight over cases in those divisions. The Criminal Division, however, is led by Terry White. The Criminal Division is separated from the Civil Division so as to prevent city officials from influencing criminal prosecutions. While Ms. Moutrie theoretically oversees the Criminal Division, she only becomes involved if unique legal questions are triggered, such as First Amendment rights. Neither Ms. Moutrie nor Assistant City Attorney Lawrence could think of more than one case in the last 20 years in which Ms. Moutrie was substantially involved in a criminal case.

Additionally, while Ms. Moutrie works closely with the City Manager’s Office and councilmembers, Mr. White has interacted with the City Manager’s Office no more than a handful of times during his time as Chief Deputy of the Criminal Division, and Mr. White has never worked with the City Council. Rick Cole confirmed that he often communicates with Ms. Moutrie but that he has not communicated with Mr. White other than during an introductory meeting when he first started his role as City Manager. Mr. White said that the interactions of other attorneys in his Criminal Division with the City Manager’s Office and City Council are similarly limited or nonexistent.

Due to Ms. Moutrie’s close working relationship with the City Council and City Manager’s Office, it is reasonable for her to claim that a conflict of interest prevents her from prosecuting Oaks Initiative complaints against public officials. That said, the insulation of the Criminal Division from the rest of the City Attorney’s Office and Mr. White’s general lack of communication with the City Council and City Manager’s Office suggests that he is free from the same conflict of interest concerns. Based on the limited interaction between members of Mr. White’s division and city officials, it is highly unlikely that a member of his Criminal Division prosecuting a city official under the Oaks Initiative would have a conflict of interest. In fact, Mr. White said that he had no problem prosecuting Oaks Initiative complaints himself and that he believed there was a clear separation between the City Attorney and his Criminal Division, especially because the City Attorney is not involved in criminal matters.

Ms. Moutrie and Mr. Lawrence had two concerns about that arrangement. First, both stated that everyone in the City Attorney’s Office—including those in the Criminal Division—are at-will employees subject to oversight by the City Attorney. As a result, they technically all report to the City Attorney, which means that the Criminal Division is not sufficiently insulated from the City Attorney to overcome conflict of interest concerns. While Ms. Moutrie and Mr. Lawrence are right that the Criminal Division is not perfectly insulated from the City Attorney, the fact that its level of insulation and autonomy is deemed sufficient to allay concerns about the City influencing criminal prosecutions strongly suggests that the insulation is sufficient to solve concerns about the City Attorney influencing Oaks Initiative prosecutions. In addition, unlike the criminal case where Ms. Moutrie was consulted about First Amendment issues, the City Attorney’s Office can create a policy that Oaks Initiative complaints remain within the Criminal Division to prevent any appearance of conflict.
Another concern that interviewees raised was that the Oaks Initiative has both criminal and civil dimensions, which would force a criminal attorney to potentially litigate a civil case. While this is true, it does not seem like an onerous burden. After all, in approximately 15 years, there have been only two complaints. The Oaks Initiative is not a very long ordinance and there is hardly any precedent about its applicability. A criminal attorney would certainly have sufficient expertise to enforce the civil elements of the Oaks Initiative, and the relative dearth of complaints should not impose heavy costs on the attorney who is otherwise focused on other matters.

b) Recommendation for Best Practices

In order to properly enforce the Oaks Initiative, the best practice is for the City Attorney's Office to appoint an attorney in the Criminal Division to be responsible for enforcing Oaks Initiative complaints. Out of an abundance of caution, the City Attorney should provide the utmost deference regarding the substance of the complaint to that attorney and yield oversight of the attorney’s work on the Oaks Initiative complaint to Terry White. Other than that, the separation that already exists between the criminal attorneys and city officials solves for any potential conflicts concerns.

To the extent that the City Attorney is uncomfortable with an attorney under her oversight prosecuting Oaks complaints, the city of Santa Monica should hire a special prosecutor. Special prosecutors are outside attorneys who are hired when a jurisdiction either: has conflict of interest concerns or feels that an outside attorney would be more effective in prosecuting a matter. If the City Attorney continues to have concerns about conflicts with Oaks Initiative prosecutions, she should, with the approval of the City Council if necessary, hire a special prosecutor for the specific purpose of handling Oaks Initiative complaints. That special prosecutor should be completely independent in making her own judgments about the complaint and whether to prosecute—the City Attorney should not provide any opinions or guidance to the special prosecutor. The problem with special prosecutors is their cost, but the fact that there are not many Oaks Initiative complaints means that this cost should be infrequent. With a specified enforcement procedure in place, the Oaks Initiative will serve as a strong deterrent for corruptive actions by public officials.

3. Issue: Whether City Officials Understand Oaks Obligations.

In order for the Oaks Initiative to serve as an effective deterrent to anti-corruptive behavior, city officials subject to the Oaks Initiative need to understand their obligations under the law. In August 2006, the City Attorney drafted an information memorandum about city officials’ obligations under the Oaks Initiative for city boards and commissions but it does not appear that this information was shared with all city officials subject to the Oaks Initiative. Every interviewee we spoke with agreed that receiving more information and clarification on the Oaks Initiative would be helpful for them.

a) Findings

The City Attorney’s Office has provided inadequate guidance to councilmembers and city officials on the application of the Oaks Initiative. Every city official—elected and unelected—stated that they would benefit from training and guidance regarding the Oaks Initiative. Currently, it appears that training on the Oaks Initiative is only provided to councilmembers during ethics
training in election years and it does not appear that this training is extensive. The City Attorney’s Office admitted that they have not provided extensive training on Oaks Initiative matters, stating that part of the reason for that are the ambiguities in the Oaks Initiative.

b) Recommendation for Best Practices

The City Attorney should draft guidelines for the implementation of the Oaks Initiative. Such guidelines would be a powerful and efficient remedy to ambiguities or potential infirmities in the Oaks Initiative. The City Council should then approve the guidelines and ensure that they take effect immediately. To the extent that there is confusion about, for example, who the Oaks Initiative applies to or how it is triggered, establishing guidelines for implementation would help provide guidance to city officials and the public about how the provisions of the Oaks Initiative will be interpreted. Additionally, promulgating a clear set of guidelines would give Santa Monica residents confidence that the Oaks Initiative is being properly interpreted and enforced.

In fact, Pasadena did exactly this in 2005. The voters of Pasadena passed an ordinance very similar to the Oaks Initiative in March of 2001, and in 2005 the City Council passed a resolution adopting their City Attorney’s interpretation of the ordinance for the purpose of fulfilling the ordinances’ requirement of “the City’s best efforts at interpretation and guidance so that [the ordinance] can be implemented to the best of the City staff’s abilities.”

A draft of potential guidelines for Santa Monica is attached to this report as Exhibit 1.

In addition, the City Attorney’s Office should provide periodic training on the Oaks Initiative to city employees who qualify as “public officials,” clarifying for them what obligations and actions could subject them to liability. New employees subject to the provisions of the Oaks Initiative should receive information during their orientation process so that they are fully informed of their obligations as soon as they begin working for the city. Elected officials should be given training on the Oaks Initiative in a separate session from their ethics training—this will allow for a more in-depth conversation with councilmembers about their obligations under Oaks.

4. Issue: Whether Compliance with the Oaks Initiative is Burdensome.

Every councilmember that we interviewed stated that compliance with the Oaks Initiative is burdensome. The more burdensome the compliance, the more likely there are to be inadvertent mistakes by affected parties and accordingly less trust that the Oaks Initiative is properly drafted. It is therefore important to analyze whether compliance is burdensome and how it could be made less so.

a) Findings

The Oaks Initiative imposes a heavy compliance burden on councilmembers. Councilmembers are given a list in PDF form by the City Clerk that contains a list of city
contractors from whom they cannot accept personal or campaign benefits. The PDF list contains the meeting date during which the vote was taken to approve the public benefit, the entity the benefit was provided to, a description of the benefit, individuals with 10% ownership of the entity or service on the board of that benefit, and how council members voted on the project. Oaks Initiative restrictions can apply for up to “six years from the date the official approves or votes to approve the public benefit.” For 2010 to 2015, there are 401 pages of contractors with up to five contractors per page. Some of the entities have 29 or more individuals listed as having ownership or being on the board of directors for the entities.

Council members said that compliance with the Oaks Initiative was extremely time intensive. And, given the number of names to check, there is no assurance that inadvertent mistakes do not abound. Council members have to search through the PDF report individually for every contributor to their political campaign. The report also includes contracts from all the way back in 2002 that would clearly not give rise to any current Oaks Initiative restrictions.

Based on our review of the list of city contractors, we agree that the Oaks Initiative imposes a heavy compliance burden on council members. The expenditure of these resources without any assurance of compliance is problematic because it does not efficiently fulfill the anti-corruption goals of the Oaks Initiative and imposes immense costs of compliance, which may deter qualified individuals from running for political office.

b) Recommendation for Best Practices

We recommend that the City Clerk provide the report in EXCEL—or a comparable spreadsheet program—with each affected entity and associated name in its own row. Reports with contributors to council members should also be retained in an EXCEL format—they are currently also in a PDF report. The benefit of this is that anyone—council members, the City Clerk, or community members—can use a simple search function in EXCEL to find any improper contributions. For example, if the restricted individuals are in column A, the contributors are in column B, and the list of names begins in the second row, the directions would be to:

1) Click cell C2
2) Enter this formula: =ISNUMBER(MATCH(B2,A:A,0))
3) Drag the formula down Column C for all items in B
4) Filter Columns A, B, and C for all “TRUE” values in Column C


118 Please note that this is just one way of using a spreadsheet file to make compliance easier. We encourage the use of other data analytics techniques that help reduce the compliance burden on council members.

119 “TRUE” means that there is a match between a name in Column A and a name in Column B, meaning that there is a match between a restricted name and a contributor.
5) Analyze the names in Column B associated with the “TRUE” values to determine compliance.

The benefit of this proposed system is that it would save councilmembers a large amount of compliance time. Instead of cross-checking each individual contributor one-by-one against the PDF list, review to find potential violations would take no more than a few minutes by using the above formula in EXCEL. This change in presentation should not cost Santa Monica any money either because the PDF provided by the City Clerk appears to be in an “Excel”-type format already.

We also recommend that the City Clerk remove contracts that were approved more than six years before the date of the report. Under section 2203 of the Oaks Initiative, the longest restriction possible is “six years from the date the official approves or votes to approve the public benefit.” It is therefore of no use that there are contracts on these lists from more than six years ago. To the extent someone needs historical information, the City Clerk can keep old reports available for download on its website.

5. Issue: Whether the Oaks Initiative Should be Amended.

a) Findings

Based on our review of the Oaks Initiative and our conversations with city officials, we believe that there are certain provisions of the law that should be amended or clarified for more efficient compliance and enforcement. Each is discussed in turn.

(1) Ban on Campaign Contributions

Section 2202(c)(3) of the Santa Monica City Charter prohibits “any campaign contributions for any elective office said official may pursue” by persons receiving benefits approved by that city official for the period of time that the Oaks Initiative is triggered. Since it applies only to elective office, this provision appears to govern councilmembers and city officials who decide to run for political office.

Ms. Moutrie and others believe that this is unconstitutional because it is an outright ban on campaign contributions. They argue that persons who receive a benefit are barred from the political process, which seems overly restrictive. In addition, the restriction prevents the donor and the recipient from exercising their freedom to associate with one another after a “public benefit” has been conferred.

We believe that this ban on campaign contributions by those who receive public benefits is very similar to the federal ban on campaign contributions by federal contractors.\textsuperscript{120} In fact, the Oaks Initiative restriction is in some ways narrower than the federal restriction. 52 U.S.C. § 30119(a)(1) restricts contributions from the “commencement of negotiations” to “the completion of performance”—the Oaks Initiative only restricts from when the public benefit is approved and

\textsuperscript{120} 52 U.S.C. § 30119(a)(1) makes it unlawful for any person or entity “who enters into any contract with the United States . . . directly or indirectly to make any contribution . . . to any political party, committee, or candidate for public office or to any person for any political purpose.” The prohibition applies “between the commencement of negotiations . . . and . . . the completion of performance” of the contract.
to a specified time period tied to that vote, not the length of the contract. In addition, § 30119(a)(1) applies to all federal political parties, committees, and candidates for public office, not just those who exercised discretion to approve and approved the public benefit.

These differences are important to note because the ban on contributions by federal contractors in § 30119(a)(1) was deemed constitutional by the D.C. Circuit.121 The same anti-corruption interests that were at issue in that case are present in the Oaks Initiative. Namely, restricting the ability of local contractors from contributing to local officials who approved their contract promotes “the ‘compelling’ interest in protecting against quid pro quo corruption and its appearance” because prohibiting such contributions both prevents quid pro quo agreements and creates confidence in the public that such agreements are not being made.122 In addition, making sure officials cannot receive remuneration for their vote promotes the “obviously important interest[[]]” in protecting merit-based public administration.

We therefore believe that the ban on campaign contributions in the Oaks Initiative would likely be upheld against a First Amendment challenge. Since we believe that protecting against quid pro quo arrangements—and the appearance of such arrangements—is very important, we do not suggest amending the ban on campaign contributions in the Oaks Initiative.

(2) Timing of the Restriction

Currently, the Oaks Initiative prohibits a public official from receiving a personal or campaign advantage after they approve or vote to approve a public benefit.123 But there is no prohibition on public officials receiving such advantages before approving or voting to approve a public benefit. Ms. Moutrie and others argue that there is an anti-corruption interest in preventing city officials from receiving advantages before approving projects, similar to the anti-corruption interest in preventing city officials from receiving advantages after approving projects. There is no reason to restrict ex-post personal or campaign advantages but not ex-ante personal or campaign advantages. Ms. Moutrie argues that the mismatch is arbitrary and may violate substantive due process rights.

We think a reasonable argument can be made that the restriction occurring after the vote is not arbitrary. The Oaks Initiative is focused on limiting quid pro quo corruption where the remuneration offered in exchange for approval of a public benefit is contingent on the approval. Nevertheless, we believe that the best solution is to amend the Oaks Initiative to add a prohibition against receiving ex-ante benefits. Such an adjustment absolutely furthers the anti-corruption interests of the Oaks Initiative because it restricts quid pro quo arrangements where the vote is

121 See supra note 111 and accompanying text.

122 Some public officials we interviewed believe that the ban on contributions does not further an important anti-corruption interest because the campaign contribution limit in Santa Monica is currently $325, a very low ceiling. Some councilmembers expressed to us that it was difficult to believe that they would be incentivized to take action to approve a project based on a $325 contribution. However, there is a legitimate concern that multiple employees within an organization may donate to a councilmember who approves their project and such an aggregate contribution could certainly have a persuasive effect.

123 Santa Monica City Charter, § 2203.
contingent on receipt of benefits. To the extent that there are legitimate concerns about substantive due process rights and arbitrariness, this change should assuage those concerns.

When dealing with an ex-ante restriction, it is crucial to determine at what point contribution prohibitions are triggered. In the federal context, the restriction begins at the “commencement of negotiations” between the federal government and federal contractors. We suggest adopting this language for the amendment but there may be some confusion about what the “commencement of negotiations” would mean in the context of a bidding process. We believe that for bidding, the restriction should begin at the time a contractor begins their consideration of bidding for a public contract. That is, when the contractor begins its consideration of submitting a bid for public benefits, restrictions on personal and campaign advantages should be triggered.

(3) Scope of City Contractors Subject to the Oaks Initiative

The Oaks Initiative applies to persons and entities receiving a public benefit. It also applies to individuals who, during the period the benefit is made, have more than a 10% interest or are a trustee, director, partner, or officer of an entity receiving such a benefit. Some have argued that a reasonable amendment to this would be to allow an exception for directors and officers of non-profit entities. Multiple interviewees noted that there are many non-profit organizations in Santa Monica that have volunteer boards of directors. Imposing the Oaks Initiative restrictions on these volunteers reduces their willingness to participate in non-profit organizations and effectively limits their ability to participate in the local political process based on their volunteer service.

It is reasonable to prevent directors or owners of for-profit public contractors from conferring benefits, but there is no similar interest in preventing directors who volunteer to serve on the boards of charitable non-profit organizations from conferring personal or campaign advantages on city officials. Pasadena passed such an exception, which exempts “such persons from an organization that is exempt from income taxes under Section 501(c)(3), (4), or (6) of the Internal Revenue Code.”124 We believe that a similar amendment to the Oaks Initiative would be proper.

(4) Scope of City Officials Subject to the Oaks Initiative

Ms. Moutrie believed that there was confusion as to whether the Oaks Initiative applied to all public officials in Santa Monica or only elected public officials. Many unelected public officials that we interviewed expressed similar views, stating that they were unclear whether the Oaks Initiative applied to them.

In our opinion, the Oaks Initiative specifies clearly that “public officials” includes “any elected or appointed public official acting in an official capacity.” There is no indication in the language of the Oaks Initiative that it meant to apply only to elected officials. To the extent there

124 “However, this exception shall not apply to trustees, directors, partners, or officers of such organizations that are political committees or control political committees as defined by California Government Code Section 82013 or 2 U.S.C. 431(4). Any person who is exempted by this subdivision shall still be considered a public benefit recipient for the purposes of disclosure under Section 1705(b) and (c).” Pasadena City Charter, § 1703.

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is confusion about what “appointed public official” means, other portions of the Santa Monica City Charter are instructive. Article VII, named “The Appointive Officers” provides guidance. This section specifies the “Officers to be appointed by the City Council,” “Officers to be appointed by the City Manager,” and “Other appointive officers.” In fact, in August 2006, the City Clerk’s Office released an information memorandum “prepared...[by] [t]he City Attorney [Marsha Moutrie]” which specified that “public official” included City Councilmembers, Planning Commission members, City Manager and Department heads and designees who confer “public benefits.”

Ms. Moutrie and others may still believe that “public official” is not perfectly defined in the Oaks Initiative. Pasadena, in its guidelines for enforcement of its Oaks Initiative, specified that all city officials—elected or unelected—who “make the final approval” of public benefits are subject to the Oaks Initiative. We believe there is no harm in making an amendment to the Oaks Initiative that more clearly specifies that it applies to elected and unelected city officials who exercise discretion in approving a public benefit.

(5) Jurisdictional Application

In the connection with the Rodney Gould complaint, Ms. Moutrie stated that she felt as though it was unclear whether the Oaks Initiative applied to personal or campaign advantages made outside the geographic boundaries of Santa Monica. Based on the text of the Oaks Initiative, the restrictions on receiving personal or campaign advantages are triggered when the public official exercises discretion to approve or vote to approve a public benefit. Nowhere in the Oaks Initiative does it specify that, once triggered, the restriction only applies to personal or campaign advantages made in Santa Monica. In fact, such a provision could lead to absurd results. For instance, a “public official” could approve a “public benefit” and avoid the barbs of the Oaks Initiative by merely arranging to accept a personal or campaign advantage just outside the boundaries of Santa Monica.

Principles of statutory interpretation—specifically the doctrine of absurdity—counsel that a law should be interpreted in such a way to avoid absurd outcomes. The best interpretation to avoid the flawed outcome here is that the predicate act that triggers the Oaks Initiative needs to be in Santa Monica but the restriction on receiving a personal or campaign advantage extends to anywhere the advantage is procured. We do believe however that, out of an abundance of caution, this should be clarified in the Oaks Initiative through an amendment.

(6) Penalty on City Contractors

The Oaks Initiative only penalizes public officials, not their patrons. There is no penalty provided in the Oaks Initiative for the city contractor. Multiple interviewees expressed that it seemed arbitrary to them that there was a punishment inflicted on individuals receiving personal or campaign advantages but not on individuals or entities furnishing that advantage. They expressed support for including penalties for city contractors.

That there should be a penalty on city contractors is reasonable and, we believe, should be included in an amendment to the Oaks Initiative. This would achieve the same purpose—preventing public contractors from conferring personal and campaign advantages on city officials—while putting the onus to comply on contractors in addition to councilmembers. It is arguably easier for a contractor to instruct its directors and owners to not give personal or campaign advantages to a small group of people in city government than for councilmembers to go through 400 pages of contractors every election cycle to assure compliance. Santa Monica can ensure that the contractor advised its related parties about their Oaks Initiative obligations by adding one additional question to its already-existing Oaks Initiative Disclosure Form \cite{126} that states: “Person or Entity warrants that it has sent notification to its trustees, directors, partners, officers, and 10% equity holders (as applicable) of their obligations under City Charter Article XXII—Taxpayer Protection to not provide personal or campaign advantages to city officials who have approved their public benefit.”

\textbf{(7) Employment Restriction}

The Oaks Initiative restricts public officials from accepting “any employment for compensation” from those to whom they allocated public benefits.\cite{127} The purpose of this restriction is to prevent public officials from awarding contracts to entities they will work for in the future. Ms. Moutrie and others argue that this restriction may be found unenforceable under California law. California Business & Professions Code section 16600 voids “every contract...[restraining persons] from engaging in a lawful profession, trade or business.” The Ninth Circuit held in April 2015 that Section 16600 may extend to not just “covenants not to compete” but also “other contractual restrictions on professional practice.”\cite{128}

At this point, it is unclear whether section 16600 would apply to void the employment restriction in the Oaks Initiative. On one hand, the Oaks Initiative restrictions could be thought of as contractual restraints because city officials are subject to the provisions of the Oaks Initiative, which limit their employment opportunities. On the other hand, there is no precedent that applies section 16600, a part of the California Business & Professions Code, to anti-corruption municipal legislation.

Our recommendation is to keep these employment restrictions in the Oaks Initiative for several reasons. It is unclear whether California courts will apply section 16600 to invalidate the employment restriction. In light of this and that the employment restriction fulfills a very important anti-corruption interest—and directly addresses the type of quid-pro quo arrangement anti-corruption legislation should seek to prevent—these employment restrictions should be enforced as written.

\cite{126} Oaks Initiative Notice, City of Santa Monica, available at https://www.smgov.net/uploadedFiles/Departments/Finance/Purchasing_Section/OakInitiativeNotice.pdf.
\cite{127} Santa Monica City Charter, § 2202(e)(2).
\cite{128} \textit{Golden v. California Emergency Physicians Medical Group}, 782 F.3d 1083 (9th Cir. 2015).
b) **Recommendation for Best Practices**

The Oaks Initiative has commendable goals that need to be preserved but could also be advanced more effectively. The best practice we recommend therefore is to pass an amendment to the Oaks Initiative that improves its implementation and enforcement. A draft of such an amendment is in Exhibit 2 to this report. This amendment largely mirrors the changes suggested above.
EXHIBIT 3

(Firm Bios)
About John C. Hueston

John Hueston, a Fellow of the American College of Trial Lawyers, has been described by Chambers USA as "hard driving, insightful and aggressive" with a "commanding reputation for his trial advocacy." Rated one of the nation's top trial lawyers, Mr. Hueston has been recognized twice as a "California Lawyer of the Year," including for his recovery of $5.15 billion after trial.

Mr. Hueston has represented Fortune 500 companies and governments as lead counsel in their most challenging and profile cases and investigations. His work has ranged from winning and defeating multi-billion dollar actions to terminating some of the nation's most significant regulatory and criminal investigations and cases.

Mr. Hueston is also noted for "his deftness with sensitive, white collar matters and investigations" (Benchmark Litigation). In these matters, his unrelenting focus is not just winning, but avoiding reputational damage. As noted by Benchmark Litigation: "as great as he is with high-profile work, he is equally great with deliberately 'low profile' stuff - the matters his clients don't want you hearing about."
Representative commentary and reviews:

- "hard-driving, insightful and aggressive" with "an energy that is tremendous" *Chambers USA*

- "He doesn't just win. He destroys." *Los Angeles Times*

- A "high-profile, tough-as-nails lawyer" *Daily Journal*

- "To a judge, he is a master of the facts; to a jury, he is a storyteller; to the opposing side, he is a formidable, relentless foe." *Attorney at Law Magazine*

- "Hueston has a knack for taking complicated information and presenting it to jurors so they'll understand it in a personal way." *Houston Chronicle*

- "[A] commanding reputation for his trial advocacy" *Chambers USA*

- [W]idely lauded... simply an ass-kicking trial lawyer with an appetite for taking matters all the way." *Benchmark Litigation*

- "a devastating cross examination..." *Los Angeles Times*

- "With no key evidence, skill was at a premium.... Hueston's chilly persistence left the once-genial corporate chieftain, who had been expected to flash his charm like a get-out-of-jail card, stammering and angry, drawn for the jury in a few quick strokes as a micromanager who thought he could talk his way out of trouble..." *The Washington Post*

The American Lawyer magazine has recognized Mr. Hueston as one of the nation's Top 50 Young Litigators. As a Fellow of the American College of Trial Lawyers, Mr. Hueston is among less than 1% of active lawyers who have "mastered the art of advocacy and whose professional careers have been marked with the highest standards of ethical conduct, professionalism, civility and collegiality." *Chambers & Partners* recognizes Mr. Hueston as a "Leader in his Field," and as a leading lawyer in commercial litigation and white-collar crime and government investigations. *Benchmark Litigation* and the *National Trial Lawyers* have cited him as a national "Top 100 Trial Lawyer"; *Benchmark* has annually recognized...
Mr. Hueston as a National Litigation Star. Lawdragon Magazine has repeatedly recognized Mr. Hueston as one of "The 500 Leading Lawyers in America." Best Lawyers in America has named Mr. Hueston a "Lawyer of the Year" and has recognized him annually since 2009. The Daily Journal has repeatedly named him as one of California’s 100 most influential lawyers. Mr. Hueston is a recipient of the Anti-Defamation League’s Marcus Kaufman Jurisprudence Award.

As a prosecutor, Mr. Hueston was presented with four awards by three U.S. Attorneys General for his trial work, including the highest award bestowed by the U.S. Department of Justice.

Corporate Crisis and White Collar Criminal Defense

- On the eve of trial in July 2015 and after four years of investigation and litigation, obtained dismissal of all felony federal charges against a subsidiary of Waste Management Inc., America’s largest environmental services provider, and two of its managers.

- Secured termination of SEC investigation of high-level PIMCO officer relating to allegations of misleading investors about the performance of fund and alleged failure to accurately value certain fund securities.

- Obtained dismissal of criminal mortgage fraud indictment after evidentiary hearings for prosecutorial misconduct; Dallas County District Attorney held in contempt.

- Reversed initial SEC charging decision and terminated insider trading and tipping investigation into Goldman Sachs banker with alleged ties to Galleon Group.

- Obtained dismissal of all 306 counts of an indictment brought by the Nevada Attorney General’s “Mortgage Fraud Task Force” in first "robo-signing" prosecution.

- Obtained declination of criminal case against Angelo Mozilo, former CEO of Countrywide Financial.

- Obtained complete dismissal of felony charges based on successful challenge to the constitutionality of the offense statute.

- Terminated criminal investigation of Fortune 500 medical device manufacturer without payment of fine or civil settlement.
• Conducted FCPA investigation on behalf of a Fortune 100 company within 60 days and concluded it without assessment of sanctions or fines.

• Terminated criminal and parallel civil investigations targeting CEO of Fortune 500 medical device manufacturer for alleged complicity in off-label promotion scheme and false and misleading public statements and filings regarding device development.

• Resolved tri-state Attorneys General investigation into alleged false advertising by Fortune 500 health care company without fines or penalties.

• Obtained prosecution declination for Kaiser Permanente in Nadya Suleman “Octomom” investigations of alleged HIPAA violations.

• Resolved federal investigation of alleged celebrity privacy breaches at UCLA without charges or fines.

• Served as independent counsel for investigations on behalf of numerous government agencies, including the County of San Bernardino and the City of Santa Monica.

Business Trials and Litigation

• Secured a $5.15 billion settlement after trial for the Tronox Trust as the Litigation Trustee responsible for prosecution of consolidated national litigation against Anadarko Petroleum Company and Kerr McGee Corporation for fraudulent transfer of massive environmental, tort, retiree and other liabilities.

• In multi-billion dollar securities action against Amgen, obtained dismissal of shareholder derivative suit and favorable resolution of related actions.

• Obtained summary judgment for Sempra Energy in a cross-border dispute relating to a billion-dollar liquefied natural gas terminal.

• Representing a leading global professional services company in an ongoing $200 million actuarial malpractice lawsuit.
After a 3-week jury trial in New York federal court, won a $12 million punitive damages verdict and liability findings on all claims of fraud, deceptive business practices and false advertising.

Successfully challenged the constitutionality of a land use ordinance described by the New York Times as “one of the most stringent anti-development measures ever attempted in the country.”

Lead trial counsel in patent jury trial against LG Electronics, obtaining favorable infringement and invalidity verdicts as to all asserted claims, and a damages award of the full amount sought.

Represents Navajo Nation for matters rising from Gold King Mine waste water disaster.

Represents Sumner M. Redstone in breach of fiduciary duty and fraud case.

Represents Alec Baldwin in fraud case against art dealer.

Represents IMDb in challenging the constitutionality of a California law restricting speech.

Obtained $50 million for Pacific Life against Bank of New York Mellon at conclusion of motions for summary judgment in breach of contract and breach of fiduciary duty matter in an investment mismanagement case.

Obtained dismissal with prejudice of consolidated federal shareholder litigation arising from a $500 million settlement with the USDOJ for alleged off-label promotional activities related to Botox.

Obtained over $50 million and award of IP rights for major telecommunications company at the conclusion of an 8-month action.

Obtained dismissals and defeated TROs in high-stakes trade secrets cases including Broadcom v. SpaceX and Teva v. Amgen.

Obtained broad injunctions against theft of trade secrets and confidential information, admissions of misappropriation of confidential information and published apologies from 5 former employees of CoreLogic Solutions, LLC.
- Secured decertification of consumer class action alleging violations of California's false advertising and consumer protection laws.

- Obtained dismissal with prejudice of False Claims Act claims alleged to be worth tens of millions of dollars in action brought against public entity.

- Recovered $20 million "earn out" payments for former executives of Automotive.com.

- Secured permanent injunction and won trial for UCLA in civil actions against organizations and individuals threatening violence against faculty members and administrators.

Mr. Hueston has lectured nationally at law and business schools on topics of trial advocacy and corporate governance, including Cornell, Loyola, Stanford, UCLA, U.C. Hastings, UCI, USC, and Yale.

Mr. Hueston served as a law clerk for the Honorable Frank M. Johnson, Jr. of the U.S. Court of Appeals for the Eleventh Circuit. Mr. Hueston is currently National Co-Chair of the ABA White Collar Crime Committee. Mr. Hueston is a member of the American College of Trial Lawyers' National Trial Competition Committee and Federal Rules of Evidence Committee. Additionally, Mr. Hueston serves as a Central District of California Merit Selection Panel member to assist the U.S. District Court with the appointment and reappointment of magistrate judges.

Mr. Hueston is a past President of the Orange County Bar Association, the second largest bar association in the State of California, and a former President of the Federal Bar Association of Orange County. Mr. Hueston also served as a Central District of California Judicial Conference Lawyer Representative. Mr. Hueston serves as a member of Senator Kamala Harris' Leadership Circle. Mr. Hueston also serves Yale Law School and Dartmouth College in a number of leadership roles, and is a member of the Board of Visitors for UCI Law School.
About Brian J. Hennigan

Brian Hennigan is a partner in Hueston Hennigan LLP. He is a Fellow in the American College of Trial Lawyers.

For the past twenty years, Mr. Hennigan has specialized in complex litigation, with an emphasis on white collar criminal defense. Over that time period, he has successfully represented individuals and corporations facing a wide array of challenges presented by federal prosecutors and investigating agencies. More recent representations have included the successful representations of individuals facing allegations under the Foreign Corrupt Practices Act, the Securities and Exchange Commission Act, the Internal Revenue Code, and the Sherman Act. In addition to corporate representations, Mr. Hennigan has represented several professional athletes, leaders of various religious denominations, doctors, lawyers, accountants, and business executives in federal criminal matters.

"He is perhaps number-one when you’re thinking strategy and relationships in the office and in the community."

Chambers USA, 2014

His skills at representing individuals in white collar investigations has garnered praise from numerous sources. Chambers USA has ranked Mr. Hennigan in Band One every year since 2008
in the White Collar Crime & Government Investigations category and lauded him as a “creative thinker and problem solver” and as a “terrific attorney because of his great ability to communicate with judges and juries.” Mr. Hennigan has the highest Martindale-Hubbell rating, a peer review rank of AV-Preeminent. He has consistently been recognized as one of the top white collar criminal defense lawyers by a variety of sources and was named the Los Angeles “Lawyer of the Year” in White Collar Criminal Defense by The Best Lawyers in America.

“A “creative thinker and problem solver.”
Chambers USA

Mr. Hennigan has also established himself as a premier trial attorney in civil actions. His extensive civil experience includes securities and class action matters, patent licensing cases, antitrust cases, contracts cases, and unfair business practice cases. He has also successfully represented law firms and individual lawyers on malpractice claims with regard to complex tax matters.

A “terrific attorney because of his great ability to communicate with judges and juries.”
Chambers USA

Before co-founding Hueston Hennigan LLP, Mr. Hennigan was a partner at Irei & Manella LLP. Prior to that, he served as an Assistant United States Attorney in the Central District of California, where he was an Assistant Division Chief for the Criminal Division of that Office. In that position, he conducted numerous grand jury investigations, was lead trial counsel in over thirty trials, and successfully represented the United States in numerous appeals before the Ninth Circuit Court of Appeals. For his work in the U.S. Attorney’s Office, Mr. Hennigan received commendations from the Justice Departments, as well as from numerous government agencies.

Los Angeles “Lawyer of the Year” in White Collar Criminal Defense.
Chambers USA

Honors & Honors

- Chambers USA America’s Leading Lawyers for Business, Top Ranking, 2003-present;
- Martindale-Hubbell, Peer Review ranking of “AV-Preeminent”;
- *Best Lawyers in America*, 1998-present; named Los Angeles Criminal Defense White Collar Lawyer of the Year, 2010;


**Seminars & Speaking Engagements**


- Moderator, "Recent Developments in Fraud and Abuse Enforcement in Health Care", American Bar Association, Health Care Section, February 2012;

- "Trends in Enforcement and Prosecution of Ponzi Schemes", American Bar Association, National Securities Fraud Conference, October 2010;

- Moderator, "Town Hall Discussion on Brady Compliance", American Bar Association, National Sentencing Program, October 2010;

- Moderator, "Obstruction and False Statements: the Cover-Up is Worse than the Crime", American Bar Association, White Collar Crime Institute, March 2010;

About Alex Romain

Alex Romain is a leading national trial lawyer with more than 17 years' experience in high-stakes complex civil and corporate litigation, securities litigation and enforcement, and white-collar criminal defense. Mr. Romain previously was a litigation partner for 10 years at Williams & Connolly LLP, in Washington, D.C. From his successful defense against a $1.6 billion professional liability suit to his innovative work on the historic Senator Ted Stevens case, Mr. Romain has represented a variety of clients in their most important matters. These include Fortune 500 corporations and executives in federal and state courts throughout the country, before the Department of Justice and the Securities and Exchange Commission, and in arbitrations, congressional investigations, and administrative proceedings.

Mr. Romain was a member of the trial team that exonerated the late Senator Ted Stevens, playing a key role in pursuing the exculpatory evidence that ultimately led to the Senator's victory. The American Lawyer has described his team's work on the case as "one of the best criminal defense performances in memory, resulting in a heightened scrutiny of prosecutors that will affect the Justice Department for years to come." Mr. Romain also successfully represented the former Chairman and CEO of Fannie Mae against securities fraud claims in which the plaintiff sought more than $2 billion in damages, and the court awarded his client summary judgment on all counts.

In 2015, Mr. Romain was featured in Law360's "Minority Powerbrokers" series and was selected to Savoy Magazine's list of "Most Influential Black Lawyers." In 2010, the National Law Journal named Mr. Romain to its "Appellate Hot List" for his work as lead attorney in the favorable decision, In re Fannie Mae Securities Litigation,
552 F.3d 814 (D.C. Cir. 2009), a decision that affirmed the trial court's holding a government agency in contempt. For his work at the Department of Justice, in the Office of the Assistant Attorney General for Civil Rights, Mr. Romain received the U.S. Attorney General's Special Commendation Award for Outstanding Service.

Mr. Romain has litigated privilege and conflicts issues on behalf of private equity and accounting firms. He has also defended individuals and corporations against allegations of campaign finance violations, obstruction of justice, bank fraud, environmental pollution, theft, fraudulent misappropriation, and attempted murder.

On a pro bono basis, Mr. Romain has served as counsel to the Sitar Arts Center, in Washington, DC, and he is a Board Member of the Duke Ellington School of the Arts, in Washington, D.C.

In 2014, the U.S. District Court for the District of Columbia appointed Mr. Romain to serve as Chairman of the U.S. District Court Magistrate Judge Merit Selection Panel. He served on the District of Columbia Bar's Legal Ethics Committee from 2009 to 2014, and has been an adjunct faculty member at American University's Washington College of Law. Mr. Romain has a native fluency in French and is proficient in Spanish.

Mr. Romain is not yet admitted in California.

BUSINESS TRIALS AND LITIGATION

- As lead counsel, representing a leading global professional services company in an ongoing $200 million actuarial malpractice lawsuit.
- Successfully defended an international, New York-based law firm against a $1.6 billion corporate meltdown claim brought by a bankruptcy trustee.
- Successfully represented the Baltimore Ravens and several of its senior personnel in connection with the independent investigation conducted into the National Football League's handling of the Ray Rice controversy and Mr. Rice's grievance against the Ravens.
- Won summary judgment on all counts in a $2 billion securities class action case, representing the former Chairman and CEO of Fannie Mae against securities fraud claims.
- As co-lead counsel, successfully represented a global professional services company in an $80 million ERISA breach of fiduciary duty case alleging negligent investment advice.
- Successfully defended the former CFO of a major oil services company in connection with an SEC enforcement investigation involving allegations of accounting fraud, after which the SEC declined to bring any charges against the former CFO.
• Defended a global professional services company in connection with the Department of Justice Antitrust Division’s investigation of the proposed mergers of Anthem with Cigna and Aetna with Humana, and represented the company in the federal litigation brought by the Department of Justice in United States v. Anthem, et al., and United States v. Aetna, et al.

• Successfully defended a major stock exchange in connection with a securities class action lawsuit.

• Represented a global alternative investment firm in a $65 million civil case.

• Successfully defended a for-profit college in connection with state and federal investigations of allegedly false representations and fraudulent recruiting practices.

• Won summary judgment on all counts in a $500 million legal malpractice suit against an international law firm.

WHITE COLLAR CRIMINAL DEFENSE

• Successfully defended the late Senator Ted Stevens on criminal charges that he made false statements on federal disclosure forms. Mr. Romain played a leading role in pursuing the exculpatory evidence that ultimately led to the Senator’s exoneration.

• As co-lead counsel, defended the owner of a healthcare company in a two-week federal criminal trial, in Little Rock, Arkansas, on six counts of bribery, conspiracy, and honest services fraud (July 2016).

• As lead counsel, defended an individual in a week-long trial on charges of attempted murder.

• Defended a leading cruise line company in a grand jury investigation regarding alleged environmental pollution.

• As lead counsel, defended an individual on charges of theft and fraudulent misappropriation.

• Defended Washington, D.C. businessman in connection with U.S. Attorney’s investigation into the financing of a 2010 “shadow campaign” on behalf of former D.C. Mayor Vincent Gray and charges of obstruction of justice and campaign finance violations.
EXHIBIT 4

(Sample Contract)
March 2017

Legal Services for San Diego Association of Governments

Request for Proposals
Solicitation 5005172
Independent Examination of Measure A Communications

Robert G. Marasco
Partner
San Diego, CA
(619) 795-1014
robert.marasco@dinsmore.com
Section 1: Executive Summary

We appreciate the opportunity to participate in this Request for Proposal process to identify counsel to handle the Independent Examination of Measure A Communications (Solicitation Number 5005172) for the San Diego Association of Governments (SANDAG).

As described in this proposal, our team features several former federal prosecutors with extensive experience conducting, managing and advising on investigations. Our team will be led by Robert Marasco, a partner in the firm's San Diego office who previously served as a federal prosecutor with the U.S. Department of Justice, working specifically as an Assistant U.S. Attorney in the U.S. Attorney's Offices for the District of New Jersey and the Southern District of California. He will be supported by a first-class team of attorneys throughout the firm, including Miko Criticis, a former U.S. Attorney for the Southern District of Ohio, and Bill Hunt, a former First Assistant U.S. Attorney and Criminal Chief of the U.S. Attorney's Office for the Southern District of Ohio.

The goal of this project is to conduct an apolitical investigation to determine "who know what, when" in the most cost-effective, expeditious, and accurate manner in order to protect taxpayer money. Given their backgrounds, we are confident our team has the experience and capabilities to accomplish this goal and perform the tasks described throughout the RFP. We believe that this unique blend of team members will provide SANDAG with the highest quality of service and efficiency in conducting this investigation in a manner that is beyond reproach. Our experience investigating both discreet and public matters with objectivity will be advantageous given the media attention this matter has already received.

We have enclosed detailed information about our team members, their experience, our proposed approach to the investigation and proposed costs. We would also welcome the opportunity to discuss in further detail the ways we can bring value to SANDAG throughout this process.

We again thank you for the opportunity to submit a response and we look forward to working with you.

Primary contact:
Robert G. Marasco
Partner
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San Diego, CA 92101
(619) 795-1014
robert.marasco@dinsmore.com

Robert G. Marasco

Best Lawyers
Best Law Firms
US News
2015

Best Lawyers
*Our Top Listed Attorneys
35 Top Listed Practices*

2016

Benchmark Litigation

Client Service
A-Team

Accomplish more:

Dinsmore & Shohl LLP | Legal Counsel
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Section 2: Qualifications and Experience

Below please find more information about our capabilities and experience, as well as information about the attorneys who are available to serve SANDAG.

We represent both individuals and corporations, utilizing an aggressive approach to handle investigations, subpoena requests, search warrant issues, grand jury testimony and when necessary, criminal and civil proceedings. Additionally, understanding that the evolving regulatory climate inherently brings more risk, we offer proactive counseling on compliance and ethics issues, with an eye toward eliminating potential concerns before they become problems. With a practical, communication-centric approach, our insight and collective experience affords our clients the resources they need to confidently move their business forward. Below are several representative examples of our team’s experience, including work with public entities:

- We represented a county health plan during an investigation by the California Attorney General’s Office into fraud allegations and guided the health plan so as to avoid criminal charges. The investigation involved the review of tens of thousands of emails and documents, interviews of dozens of individuals, drafting of multiple reports, representing individuals during interviews with government prosecutors and investigators, responding to government document demands, and presenting findings to the prosecutors and investigators. Ultimately, the CA Attorney General’s Office found there had been no fraud and closed its investigation without taking any adverse action against the public agency.

- We represented a Metropolitan Housing Agency whose executive director was alleged to have improperly used public funds for his personal benefit. The investigation included interviews of Agency personnel and public housing tenants as well as financial examination of Agency books and records. The allegations and resulting investigation were heavily reported on in the local press, and while there were no findings of impropriety, the executive director was eventually removed from his position.

- We represent a California public agency that was the victim of an embezzlement scheme by a former employee. The review of hundreds of emails and documents and personnel interviews aided us in deciphering the full scope of the fraud and permitted us to present the matter to federal authorities. We were able to demonstrate the extent of the fraud and convince the authorities to proceed with a prosecution of the former employee, while working to recoup full restitution for the public agency.

- We represented a public university whose athletic director improperly used his purchasing authority for personal enrichment. The investigation of this matter included utilization of an accounting firm to track financial transactions spanning several years and the interviews of numerous university officials. Our findings were reported to the university president and the board of trustees. They, in turn, authorized us to present our findings to the authorities. The athletic director was ultimately convicted of embezzlement of public funds.

- We represented a multi-national pharmaceutical company based in California that was being investigated by the U.S. Department of Justice and various state Attorneys-General for fraud and anti-kickback allegations. The internal investigation involved a team of attorneys that reviewed tens of thousands of emails and documents, interviewed dozens of individuals, drafted multiple reports, presented findings to the corporate board, and then presented findings to government prosecutors and investigative agents. Ultimately, we were able to secure a dismissal of the investigation resulting in no criminal charges or civil penalties.

- We represented a software company investigated by the California Attorney General’s Office for a privacy data breach and failing to report it. Following an internal investigation that involved extensive document review and interviews of personnel, we were able to demonstrate to the prosecutors and investigators that no such breach occurred and convinced the Attorney General’s Office to dismiss the investigation, which prevented the client from suffering any civil or criminal penalties. Thereafter, we worked with the company to bolster its data privacy compliance program to avoid such issues in the future.
Section 2: Qualifications and Experience

Below please find more information about our capabilities and experience, as well as information about the attorneys who are available to serve SANDAG.

- We represented the U.S. subsidiary of an international corporation and led a team of attorneys through a multi-national internal investigation into possible violations of the Foreign Corrupt Practices Act by the U.S. subsidiary's foreign agent. The investigation involved the review of thousands of emails and documents, interviews of dozens of individuals, drafting of multiple reports, and presenting the findings to corporate executives. The matter did not escalate to a formal governmental investigation and we worked with the client to bolster its internal compliance policies and procedures.

- We represented a San Diego-based bio tech company investigated by the U.S. Department of Justice and more than 30 state Attorneys-General for alleged False Claims Act violations. In conducting our internal investigation, we reviewed tens of thousands of emails and documents, interviewed more than a dozen individuals, presented findings to the corporate executives, and made presentations to the government prosecutors and investigators. As a result, we were able to significantly mitigate the client's exposure to penalties and avoid criminal charges altogether.

- We represented a health care services business that provided billing services to doctors groups and hospital emergency room physicians to determine whether the company's billing practices resulted in upcoding and overcharging government health care programs. As a result of the investigation, potential civil and criminal charges against the company were not pursued.

- We represented a national assisted living company in an investigation of a construction project manager who had created false invoices for work not completed on their facilities throughout the south and midwest. The investigation resulted in presenting our findings to the FBI which resulted in the prosecution of the construction manager.

- We represented a national equipment supplier suspected of anti-trust violations. We conducted over 60 interviews of company sales personnel along with a team of Dinsmore attorneys. We then presented our findings to the Department of Justice Anti-Trust division attorneys, resulting in discontinuation of their investigation.

- We represented a large national company which was under investigation by the United States Department of Justice for alleged antitrust violations. After conducting an internal investigation and making numerous presentations to the Government, the lengthy grand jury investigation was closed with no criminal charges, civil penalties or administrative sanctions taken against the company.

- We represented a large international company which was under investigation by the United States Department of Justice for fraud and obstruction of justice. After completing an internal investigation and making numerous presentation to the Government, the three year investigation was closed with no criminal, civil or administrative sanctions levied against the company.

- We represented a private university which was under criminal investigation by the United States Department of Justice for fraud. After a lengthy investigation which included conducting an internal investigation and making several presentations to the Government, the criminal matter was declined.

- We represented a national coal company under criminal investigation by the United States Department of Justice for Clean Water Act violations. We negotiated a misdemeanor plea and resolved favorably to the client all civil and regulatory matters.

- We represented a hospital that was under investigation by the United States Department of Justice for alleged Anti-Kickback Statute violations. After an investigation of more than two years, criminal charges were declined and a civil and administrative resolution favorable to the client was achieved.
Section 2: Qualifications and Experience

Below please find more information about our capabilities and experience, as well as information about the attorneys who are available to serve SANDAG.

Below is more information about the attorneys who will serve SANDAG in this matter:

Robert G. Marasco
Partner
San Diego, CA
(619) 795-1014
robert.marasco@dinsmore.com

Robert is a former federal prosecutor who began his career as an Assistant U.S. Attorney with the U.S. Attorney’s Office for the District of New Jersey and later served in that same capacity with the U.S. Attorney’s Office for the Southern District of California. During that service, he was responsible for hundreds of investigations of both individual and corporate targets. He has extensive experience investigating fraud of all types, including wire, mail, bank, tax, securities, healthcare and government contract fraud. Robert has led numerous investigations both as a prosecutor and as a private attorney, and so is experienced in handling matters that require discretion as well as matters in the public eye. He has presented extensively on government investigations and is regularly interviewed by the media relating to such matters.

Primary tasks: 1) Review files, documents, emails; 2) Develop interview list and conduct interviews; 3) Develop conclusions based on investigation results; 4) Prepare written report regarding conclusions; 5) Publicly present report and conclusions and respond to media inquirers; 6) Be point of contact for investigation and any follow-up services.

D. Michael Crites
Partner
Columbus, OH
(614) 628-6934
mcrites@dinsmore.com

D. Michael Crites is the former United States Attorney for the Southern District of Ohio and an Assistant United States Attorney for the Southern District of Ohio. He has years of grand jury and litigation experience in federal court and regularly litigates and negotiates global settlements of criminal, civil and regulatory matters on behalf of corporations, businesses and public entities throughout the United States. Mike is also frequently called upon by public and private sector clients to conduct confidential internal investigations to assist clients in assessing potential criminal, civil and regulatory risks and also frequently advises clients on corporate compliance.

Primary tasks: 1) Review files, documents, emails; 2) Develop interview list and conduct interviews; 3) Develop conclusions based on investigation results; 4) Prepare written report regarding conclusions.
Section 2: Qualifications and Experience

Below please find more information about our capabilities and experience, as well as information about the attorneys who are available to serve SANDAG.

Bill is a former federal prosecutor with more than 30 years experience handling white collar criminal matters. He represents businesses and individuals in criminal, civil, and regulatory disputes with the federal government. He has experience litigating matters involving financial fraud, tax fraud, wire fraud, money laundering and regulatory violations. In addition, Bill manages and conducts internal investigations for corporations needing outside counsel. In addition to personally trying over 100 cases to verdict in federal court, Bill has supervised numerous significant financial investigations in his capacity as First Assistant U.S. Attorney and former Criminal Chief of the U.S. Attorney’s Office for the Southern District of Ohio. These cases included a $2 billion fraud case involving a health care financial services company, and a wire and mail fraud case in which tens of thousands of victims were auto shipped nutraceutical products without their consent.

Primary tasks: 1) Review files, documents, emails; 2) Develop interview list and conduct interviews; 3) Develop conclusions based on investigation results; 4) Prepare written report regarding conclusions.
As you can imagine, we regularly handle matters such as the type covered by this RFP. Such matters require discretion and often result in the occurrence of the investigation, either by us or by law enforcement authorities, never being disclosed publicly. The confidential nature of an investigation is a paramount concern for our clients, both while they are occurring and afterwards. The disclosure of such information could adversely affect reputations and business relationships and opportunities. Moreover, under California law and our ethical obligations as attorneys, we owe a duty of loyalty and confidentiality to our clients, past and present. While we have permission to disclose their information confidentially for purposes of being references, we cannot do so publicly in this response. Notwithstanding the guidelines related to public records requests, which do provide certain protection to documents in the possession of SANDAG, those guidelines do not appear to protect this response from possible public access. As a result and in adherence to our duties of loyalty and confidentiality, we cannot disclose our references in this response, but would appreciate the opportunity to provide the information in a confidential manner.
Section 4: Technical Approach

Below please find a detailed description that illustrates our approach to providing the deliverables for each task in accordance with the schedule identified in the RFP.

1) Upon hire, we would first like to meet with the Executive Committee ("EC") and/or Board of Directors ("BOD") to fully discuss their concerns, ask questions, and allow the members to ask any questions of us. This would allow us to ascertain whether there are any specific political concerns or considerations in order to be mindful of such so we can ensure an apolitical, objective approach to the investigation. Also, this will allow us to gain a full appreciation of the project and adjust our plans accordingly.

2) The RFP indicates there are approximately 2,700 emails to be reviewed. Assuming these emails have been collected and isolated and no other collection is necessary, we would begin with an initial level of review by associates to isolate those most pertinent. Simultaneously, we would segregate the emails for discussion with specific individuals. If necessary, a second level of review by a partner would be conducted to ensure we can proceed efficiently.

3) We understand there are an estimated 20 individuals to interview. We suggest a tiered interview process to make efficient use of taxpayer money. We would first determine which individuals are most critical based upon discussions with the EC and/or BOD and review of the emails, and place them in Tier 1 for interviews. The remaining individuals would be placed in Tiers 2 and 3. We would then interview those individuals in Tier 1. Following those interviews we would assess whether additional interviews are necessary and whether the make-up of Tiers 2 and 3 should be adjusted. Additionally, we would re-assess our approach to the interviews to ensure subsequent interviews are streamlined and carried out efficiently. Only if additional interviews are necessary would we proceed with Tier 2, and repeat our re-evaluations again before proceeding to Tier 3 interviews. Reports of the interviews would be prepared in anticipation of inclusion in the final report.

4) Following review of all documents and information gathered through interviews the team would meet to assess the evidence and develop conclusions. These conclusions would be expressed in the final report.

5) The assessment of the evidence, including analysis of the documents and interviews, would be articulated in a written report. The report would be drafted to address all concerns of the EC and/or BOD as expressed in the RFP and the initial meeting.

6) The team lead partner would then present the findings to the EC and BOD. During this time he would be available to respond to questions from the EC, BOD, and the public, if necessary.

7) Any follow-up work would be driven by requests of the EC and/or BOD.
Section 5: Cost Proposal

It is always our goal to bring value to clients through the delivery of top quality legal services. Below please find our cost proposal, and we would welcome the opportunity to discuss additional fee arrangements should you desire.

Given the variety of tasks, we feel that a blended hourly rate arrangement will provide the most value to SANDAG. Therefore, we propose that all partner-level time will be billed at an hourly rate of $500 and all associate time will be billed at $300. These blended rates are reflected in the pricing chart below.

<table>
<thead>
<tr>
<th>Task Number</th>
<th>Task Description</th>
<th>Individual and Title</th>
<th>Estimated Number of Hours</th>
<th>Hourly Rate</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Review files, documents, emails and other communications regarding scope of work [assuming 2,700 emails]</td>
<td>R.G. Marasco, Partner and team</td>
<td>Partner - 20</td>
<td>$500</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Associate - 40 Total: 60</td>
<td>$300</td>
<td>$12,000</td>
</tr>
<tr>
<td>2</td>
<td>Develop interview list and conduct interviews. Estimated Interviews: 20 [if all necessary]</td>
<td>R.G. Marasco, Partner and team</td>
<td>Partner - 40</td>
<td>$500</td>
<td>$20,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Associate - 40 Total: 60</td>
<td>$300</td>
<td>$12,000</td>
</tr>
<tr>
<td>3</td>
<td>Develop conclusions based on investigation results.</td>
<td>R.G. Marasco, Partner and team</td>
<td>Partner - 6 Total: 6</td>
<td>$500</td>
<td>$3000</td>
</tr>
<tr>
<td>4</td>
<td>Prepare a written report regarding conclusions.</td>
<td>R.G. Marasco, Partner and team</td>
<td>Partner - 20</td>
<td>$500</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Associate - 60 Total: 105</td>
<td>$300</td>
<td>$18,000</td>
</tr>
<tr>
<td>5</td>
<td>Public Reports and Presentations. Estimated Presentations: 2</td>
<td>R.G. Marasco, Partner</td>
<td>6</td>
<td>$0</td>
<td>$0 [This time will not be charged.]</td>
</tr>
<tr>
<td>6</td>
<td>Additional Review and follow-up services as requested by the Board. Estimated Not to Exceed Hours: 80</td>
<td>R.G. Marasco, Partner and team (if necessary)</td>
<td>80 Partner - 20</td>
<td>$500</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Associate - 60</td>
<td>$300</td>
<td>$18,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: $30,000 (if necessary)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>All Other Direct and Indirect Costs: Attach itemized list of additional costs showing type of cost, quantity and unit price.</td>
<td></td>
<td></td>
<td></td>
<td>Not-to-exceed $10,000</td>
</tr>
</tbody>
</table>

Total Proposal Price $83,000 (plus $40,000 in additional costs only if necessary)
The following signed documents are enclosed as requested:

- RFP Attachment B – Certifications
- RFP Attachment D – Conflict of Interest Statement

We also have enclosed information regarding Section IX.H of the RFP relating to Indemnification.
ATTACHMENT B - CERTIFICATIONS

The Proposer certifies that

(A) It □ has ☒ has not (Check One)

participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor);

(B) The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(D) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
(E) The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

(F) Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Do not have a proposed debarment pending; and
- Have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Are not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

__________________________________________________________________________

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 3/23/17 [date], at SAN JOSE [city], CA [state].

<table>
<thead>
<tr>
<th>Name of Firm:</th>
<th>Dinsmore &amp; Shohl LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name:</td>
<td>Robert G. Marasco</td>
</tr>
<tr>
<td>Title:</td>
<td>Partner</td>
</tr>
<tr>
<td>Signature:</td>
<td>Robert G. Marasco</td>
</tr>
<tr>
<td>Date:</td>
<td>3/23/17</td>
</tr>
</tbody>
</table>
ATTACHMENT D – CONFLICT OF INTEREST STATEMENT

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity's interest are, or may be, adverse to the Board's interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

X I have no conflict of interest to report.

I have the following potential conflict of interest to report:

<table>
<thead>
<tr>
<th>Description of Potential Conflict(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
</tbody>
</table>
ATTACHMENT D – CONFLICT OF INTEREST STATEMENT CONTINUED

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

<table>
<thead>
<tr>
<th>Name of Firm:</th>
<th>Dinsmore &amp; Shohl LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name:</td>
<td>Robert G. Marasco</td>
</tr>
<tr>
<td>Title:</td>
<td>Partner</td>
</tr>
<tr>
<td>Signature:</td>
<td>Robert G. Marasco</td>
</tr>
<tr>
<td>Date:</td>
<td>3/22/17</td>
</tr>
</tbody>
</table>
REDACTED – MARKED CONFIDENTIAL
March 24, 2017

Ms. Ramona Edwards
Sr. Contracts and Procurement Analyst
SANDAG
401 B Street, Suite 800
San Diego, CA 92101

Re: Executive Summary: Independent Examination of Measure A Communications (RFP 5005172)

Dear Ms. Edwards:

Lounsbery, Ferguson, Altona and Peak is pleased to submit the attached response to the SANDAG RFP for an Independent Examination of Measure A Communications. The proposal presents an opportunity for the SANDAG that is unlikely to be matched by any other firm. The Firm proposes that Of Counsel James P. Lough serve as lead counsel. Mr. Lough will be the contact person and can be reached through the office address and main line. Please ask for Kathleen Day if he is not available. He can also be reached by cell (619) 838-3858 and jpl@lfap.com.

Mr. Lough will use the assistance of Associates Alena Shamos and Yana Ridge for research, document collection and analysis. Ms. Shamos will conduct some of the interviews. He will also rely upon his administrative legal assistant, Kathleen Day, who has assisted him on similar matters over the twelve years. The review of electronic data is extremely important, especially at the beginning of a review. There are normally thousands of electronic mails that must be sorted through to get a picture of the timeline and important players. Also, the hand-written notes of internal meetings and interactions with those involved in the issue being investigated are an important source of information that must be reviewed quickly and efficiently. These items are essential to help prepare for interviews of key persons. For these reasons, Mr. Lough will rely upon a small team to help sort through the documents. If necessary, Mr. Lough will also rely upon other firm partners to assist in determining the scope of the investigation. Helen Peak, City Attorney of San Marcos, and the undersigned will be available on an "as needed" basis to assist. We both have extensive experience in these matters. Media contacts will be handled by Mr. Lough or the undersigned.
Usually, these matters are supervised by a small *ad hoc* committee of the Governing Board. The Firm will provide updates on a regular basis as requested. Updates usually include discussion of the framework of the review and associated cost estimates as the matter progresses. It is also assumed that updates in Closed Session will be given to the Executive Board and/or the Governing Board as required.

The Firm proposes an Of Counsel/Partner rate of $275 per hour, which is Mr. Lough’s discounted rate for public entities on similar matters. The Associate rate would be $225 per hour. Other normal rates and charges would apply. However, in county travel would not be charged. We project an estimated budget of $78,125, which includes eighty hours of additional follow up services if requested by the Board.

We look forward to answering any questions regarding the Firm’s proposal.

Sincerely,

[Signature]

KENNETH H. LOUNSBERY
SECTION 2
Independent Examination of Measure A Communications

Lounsbery Ferguson Altona & Peak LLP
Response to RFP 5005172
Section 2:
QUALIFICATIONS AND EXPERIENCE
Independent Examination of Measure A Communications (RFP 5005172)

The qualifications and experience of the Firm include members who have represented public and private entities in high profile matters. We propose James P. Lough to serve as the lead attorney on this matter. We propose that he be assisted by two associates, Alana Shamos and Yana Ridge. As back up and a resource to Mr. Lough, we propose that Senior Partners Kenneth Lounsbury and Helen Peak provide advice and counsel, including media strategy, during the Review. Mr. Lounsbury has practiced municipal law for over 40 years and served as former San Diego City Attorney John Witt’s Chief Assistant. Ms. Peak is the City Attorney of San Marcos and provides ethics and election counsel to a wide variety of public clients. The resumes of each of the five attorneys are attached for your review.

As previously stated, the Firm proposes that Of Counsel James P. Lough serve as lead counsel. Mr. Lough has led several high-profile investigations of public officers and governmental operations like the Independent Review requested by this RFP. A partial list of his high profile, recent investigations include:

(1) Centre City Development Corporation: Investigation and Report on the Conflict of Interest Issues of Executive Director Nancy Graham.

(2) San Diego Unified Port District: Investigation, Report and Resolution of Chief Executive Officer Wayne Darreau Conflict of Interest Matter.


In addition to the publicly-known investigations listed above, Mr. Lough has handled numerous confidential investigations of potential wrongdoing involving officers and employees in San Diego and Imperial County over the last 14 years. He has also provided behind the scenes “crisis management” legal advice and special counsel to public entities for high profile matters for decades.

Prior to practicing in San Diego County, Mr. Lough served as County Counsel for Humboldt County. In that office, he was the primary legal counsel and advisor for the Humboldt County Civil Grand Jury in numerous investigations of local government operations.
Mr. Lough also advises public entities and officers on ethics, conflicts of interest and election matters. Each of these issues is likely to be involved in the Review. He has served as a local campaign ordinance enforcement officer for several cities in San Diego County over the years. In that role, he reviewed records and communications to determine if violations took place including illegal coordination of campaign expenditures.

In his role as outside ethics/conflict of interest counsel, Jim Lough has advised public entities on policies and procedures that should be followed during political campaigns. There are strict rules that require informational items prepared by public entities to be accurate and not favor any side during a political campaign. A recent example of Mr. Lough’s advisory role on these issues was review of materials developed by the City of Carlsbad during its February 2016 special referendum election involving potential development in the area known as the “Strawberry/Flower Fields”. The review was to ensure that the materials provided accurate information to the public on the ramifications of the referendum without violating state law forbidding campaign advocacy.

Mr. Lough will use the assistance of Associates Alena Shamos and Yana Ridge for research, document collection and analysis. Ms. Shamos serves as litigation counsel in cases involving election law, public records and ethics issues. Ms. Shamos will likely conduct some of the witness interviews. Ms. Ridge has experience in document review and analysis in high profile election and other public matters. He will also rely upon his administrative legal assistant, Kathleen Day, who has assisted him on similar investigations over the last twelve years.

The review of electronic data is extremely important, especially at the beginning of a review. There are normally thousands of electronic mails that must be sorted through to get a picture of the timeline and important players. Also, the hand-written notes of internal meetings and other documents involved in the issue being investigated are an important source of information that must be reviewed quickly. These items are essential to help prepare for interviews of key persons. For these reasons, Mr. Lough will rely upon a small team to help sort through the vast number of documents that are typical to these reviews in a cost-effective manner.

If necessary, Mr. Lough will also rely upon other firm partners to assist in determining the scope of the investigation. Helen Peak, City Attorney of San Marcos, and the Mr. Lounsbery will be available on an “as needed” basis to assist. They both have extensive experience in these matters. Mr. Lounsbery handles election litigation and often serves as the spokesperson for clients in matters covered by local and regional media outlets.

The Firm proposes an Of Counsel/Partner rate of $275 per hour, which is Mr. Lough’s discounted rate for public entities on similar matters. The Associate rate would be $225 per hour. Other normal rates and charges would apply. However, in-county travel would not be charged.
JAMES P. LOUGH

Mr. Lough has specialized in municipal law since 1980. Beginning in 1985, he served as City Attorney for the City of Hermosa Beach. Beginning in 1992, Mr. Lough also served as the City Attorney for the City of Fresno. As Fresno City Attorney, he assisted in the development of the Strong Mayor Charter Reform package; issuance of pension obligation bonds to stabilize long-term pension obligations; and the development of a Regional Medical Center and a Triple A Baseball stadium for the Fresno Grizzlies.

Mr. Lough has also served as the County Counsel to the County Humboldt. He supervised the County’s civil legal staff and represented the Board of Supervisors, County Departments, Special Districts and the Grand Jury. He advised on general county legal issues and represented the County in federal and state litigation. In his capacity as County Counsel, he represented the Tax Assessment Appeals Board, County Registrar of Voters, the County Planning Commission and various county and special district boards and hearing bodies.

He has represented special districts, counties, joint powers authorities and cities as both general and special counsel. He has served as General Counsel for entities including the Westside Hospital District, Vaughn Water Company, Del Rey Community Services District, North Coast Air Quality Management District, South Bay Regional Communications Authority, Lemon Grove Sanitation District, and the Lakeside Fire Protection District. As Special Counsel, he has represented numerous special districts including the Ridgecrest Community Hospital District, Five Cities Economic Development Authority, Redway Community Services District, and the Sanger Unified School District.

In 2001, Mr. Lough joined the firm of McDougal, Love, Eckis, Boehmer, Foley & Lough, where he served as City Attorney for Lemon Grove, Imperial Beach, and Solana Beach. He handled election matters, stormwater and environmental issues and represented various cities in writ proceedings and appellate work.

He joined Lounsbery, Ferguson, Altona & Peak in February 2010 as Of Counsel. Currently, Mr. Lough represents the City of Lemon Grove as City Attorney, and serves as Special Counsel for a variety of entities including Chula Vista, El Centro, Vista and Imperial County. He successfully represented Vista before the California Supreme Court on the issue of whether Charter Cities are subject to state legislative control in the expenditure of locally-generated tax revenue.
Mr. Lough has published numerous articles for various legal publications, including *Duquesne Law Review, California Public Law Journal* and *Western Cities Magazine*. He is also a co-editor of the 2001 edition of the Municipal Law Handbook, published by the League of California Cities. Mr. Lough has also conducted training on AB 1234 for various city governments, and has lectured before the San Diego City Attorney’s Association, League of California Cities, and Fresno Bar Associations on a wide range of issues, including election law, The Telecommunications Act, Proposition 218, The Ralph M. Brown Act, Campaign Finance Reform, and ethics.

Mr. Lough attended California State University, Fullerton where he earned a degree in Political Science. In 1979, he earned his Juris Doctor degree from Southwestern University School of Law in Los Angeles where he was a Member of the Law Review and the Phillip Jessup International Law Moot Court team. In 1980, he received his LL.M in Urban Studies from Washington University School of Law in St. Louis, Missouri. Mr. Lough is a member of the California State Bar, and the San Diego County Bar Association. He is also admitted to practice before all the Federal District Courts in California and the Ninth Circuit Court of Appeals.
KENNETH H. LOUNSBERY

Mr. Lounsbery attended the College of William and Mary where he earned a degree in Political Science. In 1965, he was awarded a Juris Doctor degree with honors from the California Western University School of Law.

Upon admission to the bar Mr. Lounsbery began his career as a prosecutor in the Criminal Division of the San Diego City Attorney's office. Upon promotion to the Civil Division, Mr. Lounsbery specialized in land use, redevelopment and utility regulation matters.

Mr. Lounsbery was named City Attorney of the City of Escondido in 1970. During his term, he litigated from trial to the California Supreme Court, the landmark case affirming the right of a City to declare a billboard to be a public nuisance.

In 1972, Mr. Lounsbery was appointed as the City Attorney in the City of South Lake Tahoe. While in Tahoe, he activated the City’s redevelopment agency, began assemblage of land for redevelopment and handled the prosecution of various environmental lawsuits.

Mr. Lounsbery returned to the City of Escondido in 1976 as its City Manager. During his four-year tenure as Manager he concentrated on the formation and direction of the City's redevelopment agency and negotiated the long-term lease of City-owned land for the development by Ernest W. Hahn of the North County Fair regional shopping center.

Mr. Lounsbery left his municipal position in 1980 to join Higgs, Fletcher & Mack. As a resident partner in the firm's Escondido office, Mr. Lounsbery represented private clients in the areas of land use, development, construction and redevelopment law.

In 1982, the Lusardi Construction Company hired Mr. Lounsbery to become its full time General Counsel; in 1983, he was also named Vice President. His responsibilities included the oversight of all legal aspects of construction matters and the handling of land use entitlements, including environmental approvals, project permitting, financing and completion. These included several industrial developments, one regional shopping center, a large mixed-use project and municipal solid waste facilities. The use of redevelopment financing was a factor in nearly all of these projects.
In 1989, Lusardi named Mr. Lounsbury as President of a sister corporation, Servcon, which had the special purpose of obtaining approvals for developing and constructing municipal solid waste disposal facilities. Upon obtaining approvals for two such projects, in 1992 Servcon was sold and Mr. Lounsbury returned to Higgs, Fletcher & Mack.

From 1992 to 1997, Mr. Lounsbury held the post of contract City Attorney for the City of San Marcos. During his tenure, he authored the City's Charter and guided its adoption by election. Pursuant to the terms of the new Charter, and under the auspices of redevelopment, Mr. Lounsbury oversaw the development of City-owned land; the resulting office and retail commercial facilities now generate more revenue for the City than is produced by the ad valorem tax base.

In 1996, Mr. Lounsbury formed the firm of Lounsbury Ferguson Altona & Peak. He now specializes in land use entitlements, environmental law, project financing, municipal law, and public/private partnerships. All such matters implicated the changing status of the redevelopment laws of the state; thus, he maintains and consults with respect to the restructuring of such laws.

Mr. Lounsbury has served as special counsel to the Cities of El Cajon (personnel matters), Imperial Beach (construction defect litigation) and San Diego (drafted Pension Reform Proposition, which passed and is on appeal). He provided back-up services to James P. Lough, the City Attorney for Lemon Grove, and consulted with Mr. Lough regarding the defense of the Charter of the City of Vista before the California Supreme Court.

As past president of the local Chamber of Commerce and a publicly elected director of the Palomar-Pomerado Hospital District, Mr. Lounsbury has actively served the greater San Diego County community. He currently serves as a charter member of the President’s Advisory Council for California State University-San Marcos. He is the past President of the San Diego-Imperial County City Attorney’s Association, and the San Diego-Imperial County City Manager’s Association.

Mr. Lounsbury is a member of the U.S. Supreme Court Bar, the State Bar of California, and the San Diego County Bar Association.
HELEN HOLMES PEAK

Helen Holmes Peak practices in the area of municipal law and government relations. She has represented numerous public agencies in transactional and litigation matters in a variety of practice areas, including general municipal, land use, environmental, eminent domain, real estate transactional, elections, public contracting, and employment and personnel matters. In connection with her representation, Ms. Peak has participated in negotiations with and hearings before numerous local and state regulatory and permitting agencies. She served as Corporation Counsel of Centre City Development Corporation in San Diego (now Civic San Diego) from 2001 to 2008. Ms. Peak currently serves as the contract City Attorney for San Marcos, a position she has held since 1997.

Ms. Peak received an undergraduate degree in political science from Stanford University in 1979 and received her Juris Doctor degree in 1983 from McGeorge School of Law, University of the Pacific. Lounsbey Ferguson Altona & Peak was formed in 1996. She was previously a partner at Higgs, Fletcher & Mack and manager of its North County office in Escondido.

She served on the Legal Advocacy Committee of the League of California Cities (2007-2009, Chair 2008-2009), and is currently a member of the League’s Post-Redevelopment Working Group (2012 to present). Ms. Peak is also a member of the City Attorneys Association of San Diego (past President). She currently serves on the Board of Directors of the Camp Pendleton Armed Services YMCA (past President). Ms. Peak is a member of the State Bar of California, the San Diego County Bar Association and the U.S. Supreme Court Bar.
ALENA SHAMOS

Ms. Shamos joined Lounsbury Ferguson Altona & Peak LLP in 2004. Her civil litigation practice includes trial, real estate and business litigation, partition and quiet title actions, Government Tort Liability, writ practice, appellate practice, constitutional challenges, unlawful detainer, municipal litigation, elections law, redevelopment dissolution, contract disputes, tort disputes, California Public Records Act litigation, environmental litigation (CEQA and NEPA) and construction defect litigation. Ms. Shamos represents government entities, businesses and individuals.

Ms. Shamos is fluent in Russian and speaks Spanish. In addition, Ms. Shamos holds a California Real Estate Broker's License since 2004 to facilitate her real estate litigation practice.

In 2001, before joining Lounsbury Ferguson Altona & Peak, Ms. Shamos was an associate at Mazzarella, Dunwoody & Caldarelli, LLP. Her responsibilities included various aspects real estate, business and land use litigation.

Ms. Shamos was admitted to the California State Bar in 2001. That year Ms. Shamos also received her Juris Doctor degree from University of San Diego School of Law. During law school, she received high honors in Negotiation and participated in mediation training.

During law school Ms. Shamos clerked at the law offices of White and Bright, LLP to gain practical experience with civil litigation. Ms. Shamos also interned with the San Diego County Public Defender's Office where she obtained courtroom experience. For several years before and during law school, Ms. Shamos worked at the San Diego Association of Realtor's® Legal Affairs department, where she facilitated mediations, arbitrations and ethics hearings (enforcing the Realtor® Code of Ethics).

In 1997 Ms. Shamos earned a Bachelor of the Arts from San Diego State University in International Business with a focus on Western Europe and a specialization in Spanish. During her years at San Diego State, she perfected her Spanish speaking skills by studying in Madrid, Spain.

Ms. Shamos is a member of the State Bar of California. She is also a member of the Litigation Section of the San Diego County Bar Association and was a member of the Hon. William B. Enright American Inn of Court from 2012 to 2013.
Ms. Shamos' recent publications include, "New Rules On Demurring and Conferring in 2016 (San Diego Attorney Journal and Orange County Attorney Journal, May 2016) and "Juror Misconduct – If You Can't Say it in Person, You Can't Type it on Facebook or Twitter" (North County Lawyer, October 2011).

Ms. Shamos also participated as a reviewer for the 2016 Edition of the California Municipal Law Handbook.
YANA L. RIDGE

Yana Ridge advises clients on matters involving the initiative petition process and elections law, land acquisition and development, municipal law, corporate law, and real property. She gained her expertise in the initiative petition process and elections law issues through her active work with the Citizens' Property Rights Initiative, an initiative measure by Escondido grass-roots organization to preserve the open space designation of the Escondido Country Club, adopted August 14, 2013, and the counter measure “The Lakes” to allow development of hundreds of units on the Escondido Country Club property. Her latest involvement in the initiative petition process and elections law issues has encompassed the pension reform measures in San Diego (Proposition B) and San Jose (Measure B), both of which have been challenged by the labor unions attempting to compromise the vote of the People.

Ms. Ridge’s transactional practice includes preparation of purchase and sale agreements, cost sharing agreements, easement agreements, CC&Rs and leases. Her litigation practice includes real property disputes and corporate tort liability. Her public practice includes advising private clients as to matters involving city and county actions, including the enforcement of elections laws and Public Records Act requests.

Ms. Ridge graduated Cum Laude from University of San Diego, School of Law in 2015. Prior to graduation, Ms. Ridge interned for the San Diego Bankruptcy Court and served as a teaching assistant in the USD Legal Writing Department. She earned her Bachelor of Arts degree from the University of California, Riverside in 2012, majoring in Sociology.

Ms. Ridge is an active member of the State Bar of California and admitted to practice before the United States District Court for the Southern District of California. Ms. Ridge is also a member of the San Diego County Bar Association.

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SECTION 3
Independent Examination of Measure A Communications

Lounsbury Ferguson Altona & Peak LLP
Response to RFP 5005172
Section 3:
REFERENCES
Independent Examination of Measure A Communications (RFP 5005172)

1. Thomas Russell, General Counsel
   San Diego Unified Port District
   3165 Pacific Highway
   San Diego, CA 92101
   Ph: 619-686-6219

James Lough has served in a variety of roles for the Port relevant to review. He was the principal investigator in two matters that closely resemble the scope of work under this RFP.

Investigation, Report and Resolution of Chief Executive Officer Wayne Darbeau Conflict Matter: Mr. Lough was hired to investigate the potential conflict of interest of the former Chief Executive Officer. Mr. Lough handled the confidential investigation that was subject to public scrutiny and kept the Board of Port Commissioners informed in confidential closed sessions. He reported to the Board and engaged in follow-up negotiations on behalf of the Port to resolve the matter.

Investigation and Report on Governmental Operations Re: "Who Sank the Reuben E. Lee": Mr. Lough was retained by Interim Port General Counsel Celia Brewer and continued work under Mr. Russell. The matter involved the destruction of an iconic structure within Port jurisdiction without the authority of the Board of Port Commissioners or the California Coastal Commission. Mr. Lough investigated the matter, reviewing more than twenty thousand documents and conducting interviews with multiple public and private witnesses. Mr. Lough made recommendations on personnel matters and potential policy changes to prevent future approvals without following legal channels. He also assisted in gaining approvals for reuse of the property by the Board of Port Commissioners and the Coastal Commission as a follow-up to the Investigation.

General Conflict of Interest and Ethics Advice: For the past seven years, Mr. Lough has provided legal advice on various types of potential conflict of interest and ethics matters that typically face local officials in the State of California. Because the Port District is landlord for tideland coastal assets, the conflict and ethics issues for the professionals that serve for the District are often unique and arise more frequently than the typical
government entity. On rare occasions, Mr. Lough has also advised the Port on restrictions applicable to a California local government during initiative campaigns that affect matters within their jurisdiction.

2. Celia Brewer, City Attorney
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008
Ph: 760-434-2891

**Campaign Information and Legal Compliance:** Mr. Lough has represented Carlsbad during the last two elections as Special Counsel, reviewing information provided to the voters on an initiative (November 2016) and referendum (February 2016 Special Election). As part of each legal review, Mr. Lough would do an analysis of the accuracy and neutrality of information provided to the public in written, video or audio form. This information included technical materials provided by engineers, planners, public safety and financial consultants on various aspects of the two projects at issue: a commercial development and a fire station. The financial consultants prepared economic analysis of the benefits of the private development proposal that was subject to intense public scrutiny.

3. Jeffrey Epp, City Attorney
City of Escondido
201 N Broadway
Escondido, CA 92025
Ph: 760-839-4608

**Campaign Enforcement Officer:** Prior to joining the Firm, Mr. Lough served as local campaign enforcement officer for complaints of election violations in Escondido. Local campaign rules usually require an independent lawyer handle these issues. Since joining a firm in Escondido, he no longer serves in that role.
4. Claudia Silva, Assistant County Counsel
   County of San Diego
   Office of County Counsel
   1600 Pacific Hwy Rm 355
   San Diego, CA 92101-2437
   Ph: 619-531-4847

   **Campaign/Election Litigation and Advisory Support:** Prior to serving as Assistant County Counsel, Ms. Silva served as City Attorney for National City. Mr. Lough and Ms. Alena Shamos served as litigation counsel in challenges to arguments related to a National City Sales Tax measure. Ms. Shamos and Mr. Lough also advised the City on campaign advocacy restrictions placed on local governments.

5. Glen Googins, City Attorney
   City of Chula Vista
   276 4th Avenue
   Chula Vista, CA 91910
   Ph: 619-691-5037

   **Ethics, Election and Charter Initiative Advice and Counsel.** Mr. Lough serves, on a rotating basis, as Counsel to the Chula Vista Ethics Commission. He advised the Commission on complaints over the appointment of a local representative of the City's waste hauling franchise to the City Council. Over the years, Mr. Lough has advised the City on elections, ethics, conflict of interest and other related matters as Special Counsel.
SECTION 4
Independent Examination of Measure A Communications

Lounsbery Ferguson Altona & Peak LLP
Response to RFP 5005172
Section 4:
TECHNICAL APPROACH
Independent Examination of Measure A Communications (RFP 5005172)

1. Review Files, Documents, Emails and Other Communications Regarding Scope of Work.

The initial review of documents must be accomplished quickly and efficiently. The number of documents listed seem to be lower than are found in a typical investigation of this type. We assume that an initial review by the client has eliminated extraneous emails that are normally supplied to Outside Counsel in these matters.

We propose to use two associates with whom the Principal Attorney (Lough) works on similar document-intense matters to perform the initial review, highlight and categorize the documents for analysis. Both Associates are familiar with election-related matters, having worked on litigation involving initiatives and campaign issues for public and/or private clients. The Principal attorney will prepare a Scope of Work and proposed timeline based on this preliminary review. Usually, there will be some adjustments as other documents are needed to fill in gaps in the various paths the matter took during the election campaign. Also, some documents take on more significance as the process evolves. Document review is usually not limited to the initial phase but rather is part of an iterative process as the review unfolds.

2. Develop Interview List and Conduct Interviews.

The compilation of interview lists will be a collaborative effort based on the document review. Usually document review continues through this process when we learn of other relevant documents during interviews. If necessary, sometimes consultation with the supervisory ad hoc will yield information that may help prioritize the interviews based on connections between personnel that do not show up on the organizational chart or in the documents.

Mr. Lough will be the primary interviewer. Ms. Shamos will also likely conduct interviews based on time constraints or if there are a high number of interviews. The tasks will be divided based on the importance of the information the witness may possess and the time line placed on the investigators. Ms. Lough and Ms. Shamos have used this approach in several matters they have handled together. Repeat interviews with key witnesses are likely depending on the type of testimony received as it relates to other interviews or newly discovered documents.
This is the stage that could cause delays in meeting the deadlines projected in the RFP. Absent significant changes in the projected estimates, the Firm expects to meet the time deadlines. If there are any delays that could affect the timeline, Mr. Lough will contact the Board liaison and explain the issues and seek modifications in the work schedule to deal with new issues or reallocate resources to meet the scheduled milestones.

Based on years of experience in similar investigations and from experiences with civil service hearings, the original improper action may not be serious for an actor. However, subsequent actions are often taken to hide or cover up the original wrongdoing. These subsequent actions can often be more serious that the actions being covered up. The interviewers will strive to make questions clear and easily understandable. “Gotcha” questions will not be used to trick people into possible inaccurate responses. Also, it will be made clear that “honesty is the best policy” and the Review is conducted to learn the truth. The Board is entitled to the staff’s best answers to the questions. However, recalcitrant witnesses should be treated in the same manner as an “adverse witness” in civil litigation. Any reluctance to testify by an officer under the Board’s control will be noted in the report.

3. Written Report.

Mr. Lough will prepare the written report. He will rely on Ms. Shamos to review for consistency with witness testimony. He will also rely upon Ms. Ridge for consistency with the documentary evidence received. This practice that has worked in the past. Mr. Lough will make all final recommendations to the SANDAG Board. He is likely to consult with Mr. Lounsbury and Ms. Peak on the propriety of the recommendations.

The Report will include the Firm’s recommendation for possible personnel actions and recommended structural changes. Recommended personnel actions will be made consistent with the rules and regulations of the organization. Sometimes past practice and other precedents will be considered when these recommendations are made. Serious wrongdoing, if discovered, will be the basis for referral to outside law enforcement.

The structural changes could be organizational or recommended controls of the discretionary duties of certain officers or employees. Organizational recommendations could include added or streamlined documentation requirements. Often the recommendations include the addition of checks and balances that require approvals be elevated to the Board level or consolidated in a single staff member who is given responsibility over an issue. Sometimes work is performed with several actors having input, yet none having ultimate responsibility. Institutional controls, individual responsibility and assignment of responsibility are usually key issues in these matters.
4. Public Reports and Presentations

Any public report will be given by Mr. Lough with the technical assistance of Ms. Shamos and possibly Mr. Lounsbery. To the extent that there are issues that cannot be discussed in public, such as personnel privacy matters or other confidential issues, the Report may be redacted to reflect a public and confidential version, depending on the Board’s preference.

The Public Report usually focuses on structural reforms and explaining the process that was followed during the Review. It is highly recommended that deviations from the recommended actions by the Board during a public session should be discussed thoroughly and input should be taken from Special Counsel and the Board’s legal counsel before action is taken that significantly deviates from the recommendation.

For example, Mr. Lough gave a public presentation on a matter that faced intense public scrutiny. One of the recommendations was to suspend a development agreement to stop a project from going forward while law enforcement reviewed the transaction. With no prior discussion and without allowing input on the legal ramifications of the action from either the General Counsel or the Special Counsel, the Board in question voted to terminate the transaction. The Developer brought a $5 million-dollar action that eventually was settled. Prior consultation with legal counsel should be requested on any legally significant deviation from the recommended actions. While the public pressure to act is always present in these matters, it is recommended that care be taken when recommendations are implemented.


Since much effort is put into a Review such as the one requested by this RFP, Special Counsel are often asked to follow through with assistance through the implementation process. The Firm stands ready to assist in temporary follow-up work.


The RFP states that the lead counsel will address media issues. The Firm and Mr. Lough have handled media inquiries in these matters before and have also worked with in-house and outside consultant media staff. The preference is entirely up to the client. Throughout the process, Mr. Lough will consult with those persons designated by the Board to review short and long term media strategies. He will also regularly consult with Mr. Lounsbery, who has an extensive background in legal/media relations.

It is anticipated that an initial informal press conference will be held after public appointment is made at a Board meeting that includes whomever the Board may wish to be present. Mr. Lough
will brief the press on the process to be followed and likely timelines. It will be stressed that this will be an independent review with no preconceived notions of blame or fault. The Review will protect the privacy rights of those involved.

Mr. Lough will handle press inquiries during the process. For the most part, the response will be that the process is ongoing and the Report will be made to the Board in a timely manner. We will not comment on speculation or other “fishing expeditions” about the direction of the Review during the process. All press inquiries and responses by the Firm will be shared with whomever the Board determines should be the contact person. Significant press inquiries that are likely to also seek Board member comment will be forwarded to the appropriate Board member contact as quickly as possible.

As with all high profile public matters, there is a real possibility of leaks. We are well aware of our ethical duties to keep client confidences. However, considering the size of the Board, including alternates, we would not be surprised if leaks occurred. Once we learn of a leak or information that has been improperly disclosed, we will contact the authorized Board member(s) as soon as possible to relay what information we have about the possible leak. A plan of action will be recommended that takes into account the type of information and whether there are privacy rights that must be protected.

At the time the Report, or appropriate portions, is made public, we will coordinate with the designated Board contacts to arrange the method of distribution of information. Sometimes a press conference is held after the Board takes public action to accept the Report. We will be available to play whatever role requested by the Board Chair. Usually, a statement is made by the Board Chair with a follow up statement by the author of the Report. During questions by media, the Mr. Lough and possibly Mr. Lounsbury will assist in determining the scope of answers based on appropriate legal constraints. It is best to brief all participants ahead of time on what can and cannot be disclosed including information that law enforcement, if involved, may not want to highlight.
SECTION 5
Independent Examination of Measure A Communications

Lounsbery Ferguson Altona & Peak LLP
Response to RFP 5005172
<table>
<thead>
<tr>
<th>Task No.</th>
<th>Description</th>
<th>Individual and Title</th>
<th>Estimated Hours</th>
<th>Hourly Rate</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Review files, documents, emails and other communications</td>
<td>J. Lough, of Counsel</td>
<td>14</td>
<td>$275</td>
<td>$3,850.00</td>
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<td></td>
<td>Review files, documents, emails and other communications</td>
<td>A. Shamos, Associate</td>
<td>13</td>
<td>$225</td>
<td>$2,925.00</td>
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<tr>
<td></td>
<td>Review files, documents, emails and other communications</td>
<td>Y. Ridge, Associate</td>
<td>13</td>
<td>$225</td>
<td>$2,925.00</td>
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<tr>
<td>2</td>
<td>Develop interview list; conduct interviews.</td>
<td>J. Lough</td>
<td>60</td>
<td>$275</td>
<td>$16,500.00</td>
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<tr>
<td></td>
<td>Develop interview list; conduct interviews.</td>
<td>A. Shamos</td>
<td>20</td>
<td>$225</td>
<td>$4500.00</td>
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<td>3</td>
<td>Develop conclusions based on investigation results</td>
<td>J. Lough</td>
<td>45</td>
<td>$275</td>
<td>$12,375.00</td>
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<td>4</td>
<td>Prepare written report</td>
<td>J. Lough</td>
<td>20</td>
<td>$275</td>
<td>$5,500.00</td>
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<tr>
<td>5</td>
<td>Public Reports and Presentations</td>
<td>J. Lough</td>
<td>10</td>
<td>$275</td>
<td>$2,750.00</td>
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<td>6</td>
<td>Additional review and follow-up services as requested by Board</td>
<td>J. Lough</td>
<td>60</td>
<td>$275</td>
<td>$16,500.00</td>
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<tr>
<td></td>
<td>Additional review and follow-up services as requested by Board</td>
<td>A. Shamos</td>
<td>10</td>
<td>$225</td>
<td>$2,250.00</td>
</tr>
<tr>
<td></td>
<td>Additional review and follow-up services as requested by Board</td>
<td>Y. Ridge</td>
<td>10</td>
<td>$225</td>
<td>$2,250.00</td>
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<td>7</td>
<td>All other direct and indirect costs.</td>
<td>Lump Sum</td>
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<td>Estimated Total</td>
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<td></td>
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SECTION 6
Independent Examination of Measure A Communications

Lounsbury Ferguson Altona & Peak LLP
Response to RFP 5005172
Section 6
CERTIFICATIONS
Independent Examination of Measure A Communications (RFP 5005172)

THE PROPOSER CERTIFIES THAT:

A. It ☒ has ☐ has not

Participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 1114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract subject to Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor);

B. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

C. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

D. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

E. The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
Section 6
CERTIFICATIONS

- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

F. Proposer has contracted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past 3 years;
- Do not have a proposed debarment pending; and
- Have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to executed, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 24, 2017, at Escondido, California.

Name of Firm: Lounsbery Ferguson Altona & Peak, LLP
Printed Name: Kenneth H. Lounsbery
Title: Partner
Signature: [Signature]
Date: 3-24-17

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Section 6
CONFLICT OF INTEREST STATEMENT
Independent Examination of Measure A Communications (RFP 5005172)

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that the entity’s interest is, or may be, adverse to the Board’s interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

I have no conflict of interest to report.

✓ I have the following potential conflict of interest to report:

<table>
<thead>
<tr>
<th>Description of Potential Conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. City of Lemon Grove: James P. Lough is City Attorney</td>
</tr>
<tr>
<td>2. City of San Marcos: Helen Holmes Peak is City Attorney</td>
</tr>
</tbody>
</table>
Section 6
CONFLICT OF INTEREST STATEMENT

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Name of Firm: Lounsbery Ferguson Altona & Peak, LLP
Printed Name: Kenneth H. Lounsbery
Title: Partner
Signature: [Signature]
Date: 3-26-17
SECTION 7
Independent Examination of Measure A Communications

Lounsbury Ferguson Altona & Peak LLP
Response to RFP 5005172
Section 7:
Independent Examination of Measure A Communications (RFP 5005172)

AGREEMENT FOR LEGAL SERVICES
BY AND BETWEEN
SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG)
AND
LOUNSBERRY, FERGUSON, ALTONA, & PEAK

THIS AGREEMENT FOR LEGAL SERVICES (the “Agreement”) entered into this day of ______, 2017, is made between SAN DIEGO ASSOCIATION OF GOVERNMENTS (“SANDAG”) and LOUNSBERRY, FERGUSON, ALTONA & PEAK (the “FIRM”). This Agreement sets forth the parties’ mutual understanding concerning legal services to be provided by the FIRM and the fee arrangement for said services.

Article 1. **Retainer.** SANDAG hereby retains the FIRM to assist in representing it in connection with an investigation, subject to this Agreement.

Article 2. **Scope of Services.** SANDAG shall have the right in its sole discretion to determine the particular services to be performed by the FIRM under this Agreement. These services include the following: Conduct a Review pursuant to Request for Proposal (“RFP”) No. 5005172, which is incorporated herein by reference. In that the RFP calls for an Independent Review, the FIRM shall have full authority to use the methods of conducting the Review it deems appropriate and make what recommendations it deems appropriate within the scope of the RFP, this Agreement and any amendments thereto. It is expected that the FIRM will work with SANDAG’s designated representative(s) under Board direction.

Article 3. **Compensation.** Compensation paid under this Agreement shall be as follows:

- James P. Lough: $275 per hour
- Kenneth H. Lounsberry: $275 per hour
- Helen Holmes Peak: $275 per hour
- Alena Shamos: $225 per hour
- Yana Ridge: $225 per hour

A. SANDAG has appropriated or otherwise duly authorized the payment of an amount not to exceed $80,000.00 for legal services and out-of-pocket disbursements pursuant to this Agreement. In no event shall the total fees plus out-of-pocket disbursements exceed this amount without written authorization of SANDAG. SANDAG and the FIRM may agree to a lesser amount for within the Scope of Services in writing.

B. The FIRM shall keep SANDAG advised monthly as to the level of attorney hours and client services performed under Article 1. The FIRM will not charge SANDAG for travel time; however, the FIRM may charge for work performed for SANDAG during any travel time.

C. SANDAG further agrees to reimburse the FIRM, in accordance with the procedures set forth in this Article, for telephone, fax, mail, messengers, federal express
Section 7:
Independent Examination of Measure A Communications (RFP 5005172)

deliveries, document reproduction, client-requested clerical overtime, lodging, and similar out-
of-pocket expenses charged by the FIRM as a standard practice to its clients generally, with the exception of travel and meals. In any billing for disbursements, the FIRM shall provide SANDAG with a statement breaking down the amounts by category of expense. The following items shall not be reimbursed, unless SANDAG has specifically agreed otherwise:

(1) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(2) Storage of open or closed files, rent, electricity, local telephone, postage, receipts or transmission of telecopier documents, or any other items traditionally associated with overhead.

(3) Photocopy charges in excess of $.20 (twenty cents) per page.

(4) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(5) Secretarial overtime. Where case requirements demand overtime, SANDAG will consider reimbursement on a case-by-case basis. SANDAG will not reimburse overtime incurred for the convenience of the FIRM’s failure to meet deadlines known in advance.

(6) Equipment, books, periodicals, research materials, Westlaw/Lexis or like items.

(7) Express charges, overnight mail charges, messenger services or the like, without SANDAG's prior consent. SANDAG expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, SANDAG will consider reimbursement on a case-by-case basis.

(8) Travel and meals.

(9) Late payment charge and/or interest. Due to the nature of SANDAG’s payment process, SANDAG will not pay any late charges or interest charges to bills. Every effort will be made to pay bills promptly.

D. Bills from the FIRM should be submitted. The individual time and disbursement records customarily maintained by the FIRM for billing evaluation and review purposes shall be made available to SANDAG in support of bills rendered by the FIRM.

E. The FIRM agrees to forward to SANDAG a bill for each one-month period of services under this Agreement, and SANDAG agrees to compensate the FIRM on this basis.

F. Billing Format. Each billing entry must be complete, discrete and appropriate.

(1) Complete.

(a) Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.

(b) The date the work was performed must be included.

(c) The hours should be billed in .10 hour increments.
Section 7:
Independent Examination of Measure A Communications (RFP 5005172)

(d) The specific task performed should be described, and the related work product should be referenced (“telephone call re: trial brief,” “interview in preparation for deposition”).

(e) The biller’s professional capacity (partner, associate) should be included.

(2) Discrete: Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

(3) Appropriate.

(a) SANDAG does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, SANDAG will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes. Neither will SANDAG pay for outside expenses such as messenger delivery fees, outside photocopying, videotaping of depositions, investigative services, outside computer litigation support services, or overnight mail.

(b) Due to the nature of SANDAG’s payment process, SANDAG will not pay any late charges. Every effort will be made to pay bills promptly.

G. Staffing. Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is the FIRM’s decision, and SANDAG’s representative may review staffing to ensure that it is optimal to achieve the goals of the engagement at the least cost. Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the FIRM.

Article 4. Independent Contractor. The FIRM shall perform services as an independent contractor. It is understood that this contract is for unique professional services. Accordingly, the duties specified in this Agreement may not be assigned or delegated by the FIRM without prior written consent of SANDAG. Retention of the FIRM is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

Article 5. Confidentiality of Work. All work performed by the FIRM including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the FIRM pursuant to this Agreement is for the sole use of SANDAG. All such work product shall be confidential and not released to any third party without the prior written consent of SANDAG.

Article 6. Compliance with Controlling Law. The FIRM shall comply with all applicable laws, ordinances, regulations, and policies of the federal, state, and local governments as they pertain to this Agreement. In addition, the FIRM shall comply immediately with any and all directives issued by SANDAG or its authorized representatives under authority of any laws statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
Section 7:  
Independent Examination of Measure A Communications (RFP 5005172)

Article 7.  **Acceptability of Work.** SANDAG shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement and the amount of compensation due. In the event the FIRM and SANDAG cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM in this Agreement, SANDAG or the FIRM shall give to the other written notice. Within ten (10) business days, the FIRM and SANDAG shall each prepare a report which supports their position and file the same with the other party. SANDAG shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the FIRM.

Article 8.  **Indemnification.** The FIRM agrees to indemnify and hold SANDAG and its agents, officers, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including injury to the FIRM's employees, agents, or officers, which arise from or are connected with or caused by the negligent acts or omissions or willful misconduct of the FIRM and its agents, officers, or employees in performing the work or other obligations under this Agreement, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its agents, officers, or employees.

Article 9.  **Insurance.** The FIRM shall not commence work under this Agreement until it has obtained all insurance required in this Article with a company or companies acceptable to SANDAG. At its sole cost and expense, the FIRM shall take and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

A.  Commercial general liability insurance with a combined single limit of not less than one million dollars ($1,000,000).

B.  For all of the FIRM's employees which are subject to this Agreement, to the extent required by the State of California, Workers' Compensation Insurance in the amount required by law.

C.  Errors and omissions insurance in an amount not less than two million dollars ($2,000,000) per claim.

D.  All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. The policies carried pursuant to paragraph 9.A above shall name as additional insureds SANDAG and its elected officials, officers, employees, agents, and representatives. All policies shall contain language, to the extent obtainable, to the effect that: (1) the insurer waives the right of subrogation against SANDAG and its elected officials, officers, employees, agents, and representatives; (2) the policies are primary and not contributing with any insurance that may be carried by SANDAG; and (3) the policies cannot be cancelled or materially changed except after thirty (30) days' notice by the insurer to SANDAG by certified mail. The FIRM may effect for its own account insurance not required under this Agreement.

Article 10.  **Drug Free Work Place.** The FIRM agrees to comply with SANDAG's Drug-Free Workplace requirements. Every person awarded a contract by SANDAG for the
Section 7:
Independent Examination of Measure A Communications (RFP 5005172)

provision of services shall certify to SANDAG that it will provide a drug-free workplace. Any subcontract entered into by the FIRM pursuant to this Agreement shall contain this provision.

Article 11. Non-Discrimination Provisions. The FIRM shall not discriminate against any subcontractor, vendor, employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The FIRM will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: 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. The FIRM agrees to post in conspicuous places available to employees and applicants for employment any notices provided by SANDAG setting forth the provisions of this non-discrimination clause.

Article 12. Effective Date and Term. This Agreement shall be effective upon execution by the FIRM and SANDAG and continue until written notice of cancellation. This Agreement may be terminated at any time by either party with sixty (60) days’ written notice to the other. Notice of termination by the FIRM shall be given to SANDAG Attorney.

Article 13. Notification of Change in Form. The FIRM has the right to effect changes in form including but not limited to: the change in form from a partnership to a professional law corporation; the change in form of any partner or partners from an individual or individuals to a professional law corporation; the change in form of any corporate partner or partners to any individual partners. SANDAG shall be promptly notified in writing of any change in form.

Article 14. Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the notice. Unless otherwise provided by notice in writing from the respective parties, notice to SANDAG shall be addressed to:

John Kirk, General Counsel
SANDAG
401 B Street, Ste. 800
San Diego, CA 92101

cc: Board of Directors
John Kirk, General Counsel
SANDAG
401 B Street, Ste. 800
San Diego, CA 92101

Legal Services Agreement, 2017

Between SANDAG
Lounsbery, Ferguson, Altona & Peak

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Section 7: Independent Examination of Measure A Communications (RFP 5005172)

Notices to the FIRM shall be addressed to:

James P. Lough, Esq.
Lounsbury, Ferguson, Altona & Peak
960 Canterbury Place
Suite 300
Escondido, CA 92025

Nothing contained in this agreement shall preclude or render inoperative service or such notice in the manner provided by law.

Article 15. **Headings.** All article headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

Article 16. **Miscellaneous Provisions.**

A. **Time of Essence:** Time is of the essence for each provision of this Agreement.

B. **California Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The FIRM covenants and agrees to submit to the personal jurisdiction of the San Diego Superior Court for any dispute, claim, or matter arising out of or related to this Agreement.

C. **Integrated Agreement:** This Agreement including attachments and/or exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged in this Agreement. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by SANDAG and the FIRM.

D. **Severability:** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

E. **Waiver:** The failure of SANDAG to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

F. **Conflict of Interest:** During the term of this Agreement, the FIRM shall not perform services of any kind for any person or entity whose interests conflict in any way with those of SANDAG. This prohibition shall not preclude SANDAG from expressly agreeing to a waiver of a potential conflict of interest under certain circumstances.

G. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

H. **Counterparts.** This Agreement may be signed in counterparts.

I. **Construction.** The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and
Section 7:
Independent Examination of Measure A Communications (RFP 5005172)

negotiation of this Agreement, and (iii) any rule or construction to the effect that ambiguities are
to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or
any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date
and year first above written.

SAN DIEGO ASSOCIATION OF
GOVERNMENTS

By: _____________________________
   Chairman, Board of Directors

LOUNSBERY, FERGUSON, ALTONA &
PEAK

By: _____________________________

APPROVED AS TO FORM:

By: _____________________________
   John Kirk, General Counsel
RESPONSE TO
SAN DIEGO ASSOCIATION OF GOVERNMENTS
REQUEST FOR PROPOSALS
NO. 5005172
INDEPENDENT EXAMINATION OF MEASURE A
COMMUNICATIONS

BY
HIGGS FLETCHER AND MACK, L.L.P.
APRIL 24, 2017
1. Executive Summary

Higgs Fletcher and Mack, L.L.P. ("Higgs" http://www.higgslaw.com) is pleased to submit the following Statement of Qualifications to provide legal services in response to San Diego Association of Governments’ ("SANDAG") Request for Proposals concerning its need for Independent Examination Services regarding Measure A communications. Higgs has built a team of outstanding attorneys that collectively meet all of SANDAG’s criteria for examination services.

Higgs is uniquely suited to provide the legal services sought by SANDAG. In particular, the most valuable services that Higgs can provide are: (1) an examination team headed by a former Assistant United States Attorney with extensive experience in the investigation of public entities; (2) an essential local presence for seventy-five (75) years in San Diego; and (3) an intimate and thorough understanding of the County of San Diego, its cities and related agencies, and existing connections to, and credibility with, those entities.

SANDAG seeks legal counsel regarding a specific investigation of communications relating to Measure A. Consequently, Higgs has assembled a well-rounded, specially-selected group of attorneys who bring valuable experience and insight into this task. Higgs’ ability to match experienced attorneys with SANDAG’s area of need is critical to providing a thorough and independent examination, as well as a clear and informative written report of conclusions and public presentation of findings. The Higgs’ team is committed to conducting a hard-driving investigation that will assure that every avenue is pursued and every important question is answered. In short, Higgs has the experience and tools to deliver the type of investigation that will satisfy both the SANDAG board and the general public.

Having worked with other public entities and agencies in the past (including SANDAG and San Diego Metropolitan Transit System), Higgs appreciates the need for efficient, cost-effective legal services. Operating out of one office, as opposed to multiple offices throughout the state or the country, Higgs controls its overhead and offers competitive rates for its services.

In addition to Higgs’ commitment to superior, cost-effective legal representation, Higgs is equally committed to promoting diversity within the firm and the San Diego legal community. Higgs recognizes the benefits that a diverse work force brings to a law firm, its employees and its clients. Higgs’ sponsors diversity scholarships for law students, its attorneys actively participate in several minority bar organizations, and is a past recipient of the Earl B. Gilliam Bar Association’s Corporate Diversity Award.

Thank you for the opportunity to be of service to SANDAG.

Sincerely,

John J. Rice, Partner

RFQ No: 5005172
2. Qualifications and Experience

Higgs Fletcher and Mack has the background and experience to efficiently and effectively conduct this investigation into Measure A communications. The Lead Investigator, John Rice, is a former federal prosecutor who served in several United States Attorneys Offices, including the Southern District of California and the Southern District of New York. Notably, Mr. Rice also served as a Branch Chief for a United States Attorney’s Office where he was responsible for representing the office in department-wide inspections and investigations of allegations involving office personnel. As a prosecutor, he was involved in dozens of investigations of government agencies. This experience has ranged from investigations of appointed and elected officials and their respective staffs to candidates and their campaigns. It has also involved investigations of law enforcement and over governmental agencies. As defense counsel, Mr. Rice has represented both individuals and institutions in regard to a variety of local and federal investigations.

The Higgs team also includes Paul Pfingst, former elected District Attorney for San Diego County. Mr. Pfingst’s lengthy career as an attorney has included both the prosecution and defense of public officials. He has extensive experience handling media requests in both small and large matters, involving issues of both local and national interest.

The investigation will also be supported by attorney Victor Pippins. As an associate at Higgs for over 5 years, Mr. Pippins has been involved in numerous high profile cases, including the defense of elected public officials and witnesses in high profile corruption indictments. As an attorney for nearly 10 years, Mr. Pippins has extensive experience reviewing and synthesizing large amounts of data and communications involving multiple agencies relating to internal and external investigations.

John Rice: Partner at Higgs Fletcher and Mack – Lead Investigator
As the lead investigator, Mr. Rice will be responsible for overseeing the investigation. Mr. Rice will be the main point of contact for SANDAG. He will be intimately involved in the review of pertinent communications, coordinating and conducting many of the witness interviews, and will be responsible for preparing the written report and delivering the public presentation.

Paul Pfingst: Partner at Higgs Fletcher and Mack
Mr. Pfingst will use his vast experience in investigations and public agencies to give guidance in developing interview questions and in developing conclusions based on the investigative results.

Victor Pippins: Associate at Higgs Fletcher and Mack
Mr. Pippins will directly assist Mr. Rice at every stage of the investigation. Mr. Pippins will be involved in the review and synthesis of the various communications regarding the forecasting model for Measure A. He will also participate in the interviews.
comes time to develop conclusions, Mr. Pippins will assist Messrs. Rice and Pfingst by ensuring that the results of the document review are well organized and easily accessible. He will also participate in drafting the written report.
3. References

It bears noting that due to the sensitive nature of many internal investigations, it is inappropriate to provide clients as referrals due to the need for confidentiality. Because the proposed lead attorney on this matter, John Rice, investigated corruption cases for many years as a federal prosecutor, we have provided two of the investigative agents he worked with as references as well.

Leonard Davey, Supervisory FBI Special Agent (Ret.), (858) 263-5011, leonard.davey@cox.net; worked together on various public corruption investigations including an investigation of San Diego and Las Vegas elected officials.

Henry Nembach, Supervisory FBI Special Agent (Ret.), (619) 246-4312, HNembach@sempra.com; worked together on an investigation of San Diego and Las Vegas elected officials.

David Rivkin, CPA, (858) 692-0800, david@rivkin01.com; represented in relation to litigation connected to long-term government investigation.

Jacob Stern, Business Executive, (858) 208-8308, jrs.stern@outlook.com; represented in relation to investigation of company practices and potential violations by related parties.
4. Technical Approach

Our first task will be thorough review of all files, documents, emails and other communication regarding Measure A. This will begin with a detailed inventory of the types and amounts of communications to be reviewed. As we review the communications themselves, they will be categorized and indexed for efficient recall during the process of developing a conclusion and preparing written findings.

Next, we will use the information gained during the review of the communications to develop a list of individuals to be interviewed. We typically will interview individuals based on the information gathered during the document review. Interviews will be conducted efficiently and will focus on clarifying and embellishing information gleaned from the previously reviewed documents. Information obtained from interviews will also be mined for any missed leads and discovering any additional relevant documents.

The next step will be devoted to synthesizing the information obtained from the documents and interviews in order to develop conclusions regarding the forecasting model for Measure A. This critical stage will necessitate collaboration between all the investigative team members, including Mr. Pfingst. We will be referring to our detailed review of the documents and communications, along with our impressions from the interviews and understanding of proper management practices in crafting our conclusions.

After making the conclusions, Mr. Pippins will assist Mr. Rice in preparing a written report. Our team's experience in these types of investigations will help us to clearly and concisely express not only our conclusions, but how we arrived at them. Mr. Rice, an accomplished trial lawyer and law-school lecturer, will present our findings at a public presentation, and will handle all press requests. The entire team will be available for any additional review and follow-up services, as requested by the Board. As noted previously, the over-arching goal of the investigation will be to follow every lead and make every reasonable conclusion based on an impartial review of the facts regardless of where that leads us.
<table>
<thead>
<tr>
<th>Task Number</th>
<th>Task Description</th>
<th>Individual and Title</th>
<th>Estimated Number of Hours</th>
<th>Hourly Rate</th>
<th>Extended Price</th>
</tr>
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<td>1</td>
<td>Review files, documents, emails and other communications regarding scope of work</td>
<td>John Rice, Partner</td>
<td>35</td>
<td>$400</td>
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<td></td>
<td>Victor Pippins, Associate</td>
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<td>$350</td>
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<td>2</td>
<td>Develop interview list and conduct interviews. Estimated interviews: 20</td>
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<td>$400</td>
<td>$15,000</td>
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<td></td>
<td></td>
<td>Victor Pippins, Associate</td>
<td>20</td>
<td>$350</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Develop conclusions based on investigation results.</td>
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<td>10</td>
<td>$400</td>
<td>$5950</td>
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<tr>
<td></td>
<td></td>
<td>Paul Pfingst, Partner</td>
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<td>Victor Pippins, Associate</td>
<td>3</td>
<td>$350</td>
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<td>4</td>
<td>Prepare a written report regarding conclusions.</td>
<td>John Rice, Partner</td>
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<td>Victor Pippins, Associate</td>
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<td>5</td>
<td>Public Reports and Presentations. Estimated Presentations: 2</td>
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<td>$800</td>
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<td>Additional review and follow-up services as requested by the Board. Estimated Not to Exceed Hours: 80</td>
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<td>Victor Pippins, Associate</td>
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<td>All Other Direct and Indirect Costs: Attach itemized list of additional costs showing type of cost, quantity and unit price.</td>
<td>TBD: Copy and Presentation Costs</td>
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<td>Lump Sum</td>
<td>$1500</td>
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**Total Proposal Price** $85,750
John J. Rice

Direct: (619) 595-4322
Email: ricej@higgslaw.com

Attorney John Rice, a former federal prosecutor, represents both individuals and corporations in a wide range of complex white collar matters, including SEC enforcement actions, anti-money laundering and bank secrecy act compliance matters, and foreign corrupt practices act investigations.

- Expertise - White-collar Criminal Defense, Internal Investigations
- 20+ Years – Civil Litigation and Federal Criminal Law
- Adjunct Professor – USD School of Law

John Rice is an experienced litigator who has tried numerous cases to verdict, including dozens of federal jury trials, and argued cases before federal appellate courts. His practice focuses on white-collar criminal defense, internal investigations and complex civil litigation.

Before entering private practice, Mr. Rice spent more than 15 years with the U.S. Attorney’s Office, most recently as an Assistant U.S. Attorney in the Southern District of California specializing in public corruption cases. In addition to his work in the Southern District of California, he served in the organized crime and terrorism section of the U.S. Attorney’s Office for the Southern District of New York, and served as branch chief for the Northern Mariana Islands. In 2005, Mr. Rice was a member of the trial team that obtained guilty verdicts against several elected public officials, including a San Diego city councilman and a former Las Vegas county commissioner.

Mr. Rice served a judicial clerkship with the Honorable Judith N. Keep, of the U.S. District Court for the Southern District of California from 1987 to 1988.

REPRESENTATIVE MATTERS

- Represented executive in Anti-Money Laundering/Bank Secrecy Act investigation.
- Represented accountant in tax and currency structuring investigation.
- Represented financial professional in insider trading matter including trial.
- Represented executive in insider trading and Foreign Corrupt Practices investigation.
- Represented individual in SEC enforcement investigation.
- Represented company in FINRA matter.
- Represented company in investigation involving the DOJ, FDA and Customs.
- Represented company in employee and contractual dispute and related arbitration.
- Represented family and estate in civil rights action.
Represented individuals and class members in complex securities litigation.
Conducted internal investigation involving allegations of theft of intellectual property and unfair competition.

SCHEDULE YOUR CONSULTATION WITH JOHN RICE
For a straightforward consultation about your business or organization's legal issues:
Contact John Rice

TEACHING
- University of San Diego School of Law, Federal Criminal Law (2007 to present)
- Lecturer, various law enforcement and corporate governance seminars

PRACTICE GROUPS
- Business Litigation
- Corporate and Securities Law
- Criminal Law
- Privacy and Information Security

EDUCATION
- J.D., University of Virginia School of Law (1987)
- A.B., Harvard University (cum laude) (1983)

ADMITTED TO PRACTICE
- California
- United States District Court for the Southern District of California (1989)
- United States Court of Appeals for the Second Circuit (1996)

AFFILIATIONS
- State Bar of California
- San Diego County Bar Association
- Jackie Robinson Family YMCA, Board of Managers
Paul J. Pfingst

Direct: (619) 595-4246
Email: pfingst@higgslaw.com

One of San Diego's top attorneys, and known for his expertise in both civil and criminal legal matters, Paul Pfingst has successfully litigated many of San Diego's most high profile trials.

- Served - SD County District Attorney
- Expertise - White-Collar Crime & Professional Licensing
- Selected - Super Lawyer

Paul Pfingst rejoined Higgs Fletcher & Mack in 2003 after serving eight years as San Diego County District Attorney. He is recognized as one of San Diego's top trial lawyers. His successful prosecutions of San Diego's most serious criminal cases earned him a national reputation. He is the former President of the California District Attorneys Association and a former member of the Board of Directors of the National District Attorneys Association. In 2000, the United States Attorney General presented Mr. Pfingst with the coveted "William French Smith Award" for outstanding contributions to law enforcement. Mr. Pfingst has lectured extensively on trial technique and has contributed to a variety of legal publications.

Prior to his election in 1994, Mr. Pfingst was a Firm partner specializing in product liability, medical malpractice, professional licensing, and general litigation. Mr. Pfingst was the lead attorney for California physicians in the national breast implant litigation. He is a prolific trial lawyer representing clients in both state and federal courts and has been selected by his peers to the American Board of Trial Advocates (ABOTA).

Mr. Pfingst has appeared before the California Supreme Court and the California Court of Appeals. He is admitted to practice in both California and New York. He is a graduate of St. John's University School of Law and Union College in Schenectady, New York.

Mr. Pfingst currently represents clients in complex litigation, white collar crime, and professional licensing matters.

Paul Pfingst was selected as a San Diego "Super Lawyer®" in 2015, and again in 2016. Each year, no more than 5 percent of the lawyers in the state are selected by the research committee at Super Lawyers® to receive this prestigious designation.
SCHEDULE YOUR CONSULTATION WITH PAUL PFINGST

For a straightforward consultation about your business or organization's legal issues:

Contact Paul Pfingst

PRACTICE GROUPS

- Business Litigation
- Criminal Law
- Health Care Law
- Products Liability Law

EDUCATION

- J.D., St. John's University School of Law (1976)
- B.A., Union College, New York (1973)

ADMITTED TO PRACTICE

- California
- New York

AFFILIATIONS

- State Bar of California
- San Diego County Bar Association
- American Board of Trial Advocates
Victor N. Pippins, Jr.

Direct: (619) 595-4288
Email: pippinsv@higgslaw.com

From wire fraud to drug possession, internet crimes to immigration, San Diego criminal defense attorney Victor Pippins expertly and professionally represents his clients.

• Expertise – Criminal Defense & Immigration Law
• Experience – State & Federal Cases
• Recipient – Super Lawyers “Rising Star”

Victor Pippins specializes in the area of criminal defense. He has represented over 200 people charged with a variety of offenses in both state and federal court. More than a dozen of those cases were tried to a jury verdict. Mr. Pippins has also represented clients before the Ninth Circuit Court of Appeals. In addition to criminal defense, Mr. Pippins is experienced in immigration law, having successfully attacked prior orders of deportation.

Mr. Pippins has handled cases involving offenses ranging from Driving Under the Influence to wire fraud, money laundering, complex conspiracies and internet-based crimes. His experience also involves the representation of individuals charged with drug offenses, ranging from the possession of small, personal use amounts to thousands of pounds of controlled substances. He also has experience representing individuals who are the subject of federal grand jury investigations, avoiding indictment in some cases. Mr. Pippins has been designated by the U.S. District Court for the Southern District of California as an experienced criminal practitioner qualified to handle appointments arising under the Criminal Justice Act.

REPRESENTATIVE MATTERS INCLUDE

• Defending multiple clients charged with aggravated identity theft and misuse of visas and passports;
• Federal wire fraud charges based on allegations of investment fraud;
• Defending the owner of a state licensed medical marijuana dispensary facing federal drug charges; and
• Successfully advocating for clients who had previously been deported, but were determined after extensive litigation with the United States Citizenship and Immigration Service to be United States citizens.
Mr. Pippins earned his Bachelor of Arts from Amherst College in Amherst, Massachusetts. He earned his law degree from the University of the Pacific, McGeorge School of Law, where he specialized in trial advocacy.

Victor Pippins was selected as a San Diego “Rising Star” in 2015 and 2016. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research committee at Super Lawyers® to receive this prestigious designation. In his free time, Victor volunteers as a Mock Trial Coach at The Academy of Our Lady of Peace.

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SCHEDULE YOUR CONSULTATION WITH VICTOR PIPPINS

For a straightforward consultation about your business or organization's legal issues:

Contact Victor Pippins

---

PRACTICE GROUPS

- Criminal Law

EDUCATION

- J.D., McGeorge School of Law, University of the Pacific (2007)
- B.A., Amherst College (2000)

ADMITTED TO PRACTICE

- California

AFFILIATIONS

- State Bar of California
- San Diego County Bar Association
- Earl B. Gilliam Bar Association
- San Diego County Indigent Criminal Defense Grant Fund (Founding Board Member)
• Kids at Heart Tutoring
ATTACHMENT B - CERTIFICATIONS

The Proposer certifies that

(A)  ☑ has  ☐ has not

(Check One)

participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor).

(B)  The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depositary, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C)  No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(D)  If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
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- Are not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on [date], at [city], [state].

Name of Firm: Higginbotham & Mack
Printed Name: John J. Rice
Title: Partner
Signature: [Signature]
Date: 3/23/2017
ATTACHMENT D – CONFLICT OF INTEREST STATEMENT

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity’s interest are, or may be, adverse to the Board’s interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

☑ I have no conflict of interest to report.

☐ I have the following potential conflict of interest to report:

<table>
<thead>
<tr>
<th>Description of Potential Conflict(s)</th>
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<tr>
<td>3</td>
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I hereby certify that the information set forth above is true and complete to the best of my knowledge.

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<th>HIGGS, FLETCHER &amp; MACK LLP</th>
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<tr>
<td>Printed Name:</td>
<td>Alexis S. Gutierrez</td>
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<tr>
<td>Title:</td>
<td>Partner</td>
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<td>Date:</td>
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Proposal to Provide Legal Services:

Independent Examination of Measure A Communications

March 24, 2017

Submitted by

McNamara Benjamin LLP
501 West Broadway, Suite 2020
San Diego, CA 92101

Contact: Thomas W. McNamara
tmcnamara@mcmamarallp.com
619-269-0499 (Direct)
619-269-0401 (Fax)
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I. EXECUTIVE SUMMARY

McNamara Benjamin LLP is pleased to submit this proposal to provide legal services in response to SANDAG’s Request for Proposal for an Independent Examination of Measure A Communications. Our attorneys have led investigations as prosecutors, in organizational internal inquiries, and as agents of courts throughout the country. We have also advised and assisted clients on the ramifications of our investigative findings, including managing related regulatory inquiries and enforcement actions. This broad experience puts us in a very small group of practitioners best-qualified to assist SANDAG, most of whom practice at large law firms and charge $1,000 or more per hour. As a boutique firm composed of attorneys trained at the top law firms in the country, we offer the same talent and experience as those top-tier firms, but with the value, focus, and local insight that only a boutique San Diego firm could provide.

The diverse team we propose to work on this matter includes three former federal prosecutors from the San Diego U.S. Attorney’s Office, Tom McNamara, Sanjay Bhandari and Sara O’Connell. As Assistant United States Attorneys, they were involved in the most significant investigations of public agencies and officials in San Diego during their time in office. Mr. McNamara was on the team which investigated and prosecuted a high profile case against San Diego Superior Court judges through trial, a large federal Campaign Finance figure through investigation and charges, and the investigation and plea of a San Diego City Council member. Mr. Bhandari was involved in the City Council case, and also successfully prosecuted both a sitting San Diego-area United States Congressman (in the largest bribery scheme uncovered to date) and the Executive Director of the CIA. They also investigated and prosecuted many far less newsworthy, but no less important, corruption cases against federal agents. Of note, they also investigated and prosecuted many of the most significant non-public corruption, white collar cases in San Diego history, including the PinnFund Ponzi scheme, and the Peregrine Systems software revenue recognition fraud scheme.

In private practice, our attorneys have participated in numerous internal investigations for companies, investment firms, and non-profit organizations over the last fifteen years. These are often very sensitive matters which must be handled expeditiously, independently and thoroughly. Much like the task at hand with this independent examination, these investigations involve forensic review of electronic evidence (emails, reports, calendars and documents), interviewing relevant witnesses, preparing a written report, and presenting the findings to company boards, judges, or inside counsel. These are all things we have done many times.

Our attorneys have been appointed as monitor or receiver by federal courts throughout the country. In almost 30 separate appointments in regulatory enforcement lawsuits we have acted as the independent agent of the appointing court. We are tasked with objectively investigating the underlying facts and presenting our results in written reports to the courts.
Our philosophy is the same regardless of the context of the investigation. We follow where the facts lead. We then report our findings clearly and concisely.

We stand ready to answer any questions or provide additional information.

McNamara Benjamin LLP
II. QUALIFICATIONS AND EXPERIENCE

This project will be co-lead by Tom McNamara.

Mr. McNamara has a diverse background in civil and criminal law. After law school and a federal judicial clerkship, he was an associate in the Washington, D.C. office of a large law firm for four years, principally involved in corporate securities business matters and securities litigation.

In 1991, Mr. McNamara began an eleven-year career as a federal prosecutor when he joined the U.S. Attorney’s office in San Diego. His primary focus was major economic crimes and public corruption. He was instrumental in the long-term investigation, prosecution and conviction of three Superior Court judges and an attorney who was bribing them. For a thirteen-month period, 1997-1998, Mr. McNamara was detailed to Washington, D.C. as a prosecutor with the Campaign Financing Task Force growing out of the 1996 Presidential election. He led the investigation which resulted in the Task Force’s first indictment of a foreign donor and political operative. Back in San Diego, Mr. McNamara led an investigation of a sitting San Diego City Council member related to her vote on the downtown ballpark project.

Mr. McNamara left the government and returned to private practice in 2002. Since then, he has focused on litigation, white collar matters and internal investigations. He has been involved in numerous internal investigations. As a result, he has conducted investigations, compiled data, interviewed witnesses, prepared reports, and presented findings to boards, board committees and inside counsel. In the course of these investigations, he has extensively interacted and cooperated with enforcement agencies, such as the Securities and Exchange Commission, and federal prosecutors. He also served for several years as the Managing Partner of the San Diego office of a leading law firm.

A significant part of Mr. McNamara’s practice involves acting as receiver or monitor in regulatory enforcement actions. He has been appointed by United States District Courts throughout the country in matters brought by the SEC, the Consumer Financial Protection Bureau, the Federal Trade Commission, the Commodity Futures Trading Commission, and numerous state regulatory agencies. In these appointments, Mr. McNamara is charged with objectively investigating and presenting findings to the appointing court.

This project will be co-lead by Sanjay Bhandari.

Mr. Bhandari has worked on complex civil and criminal matters throughout his career. He began his legal career advising on civil and criminal matters as a law clerk for the late Honorable Napoleon A. Jones, Jr. in San Diego, then worked on complex civil and criminal litigation for three years at Latham & Watkins, and then in late 1999 began with the U.S. Attorney’s Office in San Diego. While in government, including a year at the Securities & Exchange Commission, Mr. Bhandari led or co-led numerous significant investigations, including the PinnFund Ponzi scheme, the corruption prosecutions of a sitting U.S. Congressman and the Executive Director of the CIA, and most of the senior executives of Peregrine Systems, Inc.
Upon leaving government in 2008, Mr. Bhandari served as a litigation partner for two of the best law firms in the country, Sidley Austin LLP and Baker & McKenzie LLP, before turning towards a more boutique practice. Currently, Mr. Bhandari’s practice focuses on white collar defense, investigations, and trial work in civil and criminal cases.

Mr. Bhandari’s work in private practice has included numerous small-scale and large-scale internal investigations (including investigations that spanned multiple countries), regulatory compliance advice, and representing clients in government investigations and enforcement proceedings. His cases have involved antitrust, bribery/anti-corruption (including domestic bribery and the Foreign Corrupt Practices Act (FCPA)), fraud, health care, money laundering, securities (including insider trading, revenue recognition, and other issues), and tax issues, among others. He has tried over twenty cases, before arbitrators, judges, and juries.

Sara O’Connell will be a member of the project team. Ms. O’Connell is a former federal prosecutor and has successfully tried numerous cases to verdict and secured a dozen appellate victories. She has participated in internal investigations of companies and investment firms. Ms. O’Connell is an adjunct professor at the University Of San Diego School Of Law, where she teaches a litigation skills course. Before joining McNamara Benjamin, Ms. O’Connell was an attorney at Covington & Burling in San Diego. Prior to becoming an attorney, Ms. O’Connell was the communications director for a Member of Congress.

We may use additional members on the project team as needed, depending on scope and timing decisions that will depend upon further consultation with the client.
III. REFERENCES

Our references are submitted under separate confidential cover.
IV. TECHNICAL APPROACH

A. Investigative Protocols

Given the public interest in this matter, and the potential for inquiry from the San Diego U.S. Attorney’s Office or other government bodies, the investigative protocols must be crafted carefully (a) to ensure that the investigative findings will be accepted without further costly investigation or public skepticism, (b) to allow disclosure of as much of the investigative findings and process as is counseled by SANDAG’s status as a public body, and (c) to retain legal privilege for those parts of our investigation and that part of our client consultation that the public interest does not require divulging. To accomplish these aims, we will need to advise and decide with SANDAG at the outset what will be publicly released, in what form, and on what information SANDAG may wish to retain privilege to face likely challenges downstream. Both of these issues will require consideration of relationships with third parties such as auditors, lenders, contractual counter-parties, and regulators.

Among the issues we would discuss in crafting the investigative protocols will be the following: deciding the likely form and scope of disclosure at the close of our investigation; whether our reporting should include recommendations for remedial action; ensuring the perception of independence, quality and reliability of investigative results; ensuring the scope of the investigation will address all applicable regulatory issues as well as other likely downstream challenges SANDAG will face, while providing results within the required time; electronic and other evidence retention and gathering options, including dissemination of protocols to avoid evidence spoliation or waiver of privilege; availability of corporate amnesty or other incentives to encourage witness candor; interview protocols (including location for SANDAG employee interviews, number and identity of persons attending, and memorialization); schedule for interim briefings and consultations with client; and identity of persons at SANDAG who will constitute the client to ensure efficiency and retention of legal privilege.

B. Initial Scoping Interviews

We would start our investigation through initial scoping interviews with a small group of people. These scoping interviews would be short sessions designed to provide information that will allow a more tailored, cost-effective, and swift forensic review, by providing a grounding in the organizational structures, personnel, and events subject to inquiry. By doing these scope-defining interviews early, we have found, our team is much more focused and informed in preserving and reviewing the right types of data, and the client may even learn enough to be able to implement interim remedial measures to avoid later problems arising from contracts, employment laws or other issues. As part of these initial scoping interviews, we would also obtain some basic documents including the core documents surrounding the events under inquiry, organizational charts, and telephone lists. We will also identify and obtain information (internally or externally, as appropriate) about any accounting, regulatory, or other technical information necessary for the investigative team to properly contextualize or understand the evidence or issues. We will identify any barriers or constraints on witness interviews, including if a witness is only available for a short time, requires union representation at any interview, etc.
Finally, together with the client, we will analyze the degree to which information outside SANDAG can be gathered to enhance the reliability of the investigative results.

C. Document Collection and Analysis

The initial set of document custodians (those persons inside or outside SANDAG from whom we would collect data for investigation) would be determined through the scoping interviews. Much of the document collection and analysis will be electronic, requiring participation of an electronic forensic team. Usually the forensic team is engaged by counsel and operating under our direction to preserve privilege. Search techniques and coding are decided, in collaboration with the client, with an eye towards future demands from litigants or regulators for various types of data, to avoid burdensome costs or additional forensic searches in the future. The Cost Proposal at Attachment A to the RFP does not have a line item or category for data collection and analysis; similarly, the Tasks and Deliverable section of the RFP implies that the data collection may have already been done, as there is a reference to a particular number of emails to be reviewed. In our experience it is best to use a third party forensic team to ensure the requisite expertise and independence are present. We will want to be comfortable with the collection and analysis process to ensure that the investigation is fulsome. This is something we will have to discuss with the client.

D. Substantive Witness Interviews

The initial scoping interviews, together with the results of document analysis, will tell us which witnesses must be interviewed. We generally will schedule interviews in a reverse pyramid approach, becoming more informed by speaking with less-involved persons before addressing critical questions with deeply-involved persons. As a boutique law practice, we do not anticipate having any conflicts with the individual witnesses or entities we will need to contact, but as a first measure we will of course run conflicts and otherwise ensure there are no ethical issues to proceeding. We will decide whether it will be productive to provide the witness some documents in advance of the interview, particularly where they are represented by sophisticated counsel. We will decide the most appropriate interview location and other such questions. We will provide the proper advisements and admonishments to each witness, to avoid related ethical issues, claims of joint privilege, etc. We will memorialize the interviews promptly, and in a way that maximizes the potential for legal privilege given expected disclosures. We would also promptly take steps to preserve and analyze any new sources of data identified in the interview.

E. Closing the Investigation

We anticipate preparing at least one report of investigation, and possibly two (one including privileged information and one that could be released publicly without waiving privilege globally). The format of the reports and distribution protocols would have been decided at the outset in the investigative protocols phase, though further client consultation may be advisable given investigative developments. Upon consideration of investigative findings, it is possible that SANDAG will decide upon remedial measures. Such measures could include, for example, new policies and related internal controls; personnel actions (from reprimand to termination); corporate governance changes; contractual amendments; and litigation.
Given the profile of this matter, it is possible that during and/or after the investigation, it will be necessary or appropriate for us to interact with a regulator or other third party, including potentially adopting remedial measures advanced by a regulator. We have extensive experience dealing with regulators on such matters, including in particular with the regulators who might take interest in this matter.
V. COST PROPOSAL

See attachment.
VI. SAMPLE CONTRACT

See attachment.
Attachment B – Certifications

The Proposer certifies that

(A) It □ has ☑ has not

(Check One)

participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor);

(B) The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(D) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
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- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Do not have a proposed debarment pending; and
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- Are not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 24, 2017, at San Diego, California.

McNamara Benjamin LLP
Thomas W. McNamara, Partner
Attachment D – Conflict of Interest Statement

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity’s interest are, or may be, adverse to the Board’s interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

X I have no conflict of interest to report.

_____ I have the following potential conflict of interest to report:

<table>
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<th>Description of Potential Conflict(s)</th>
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</table>

13

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I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Dated: March 24, 2017

McNamara Benjamin LLP
Thomas W. McNamara, Partner
VII. REQUIRED SUBMITTED DOCUMENTS
Attachment A - Cost Proposal

### I: Planning the Investigation
- Decide the scope of the investigation; define internal and external reporting and cooperation requirements; identify overseeing body.

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**SUBTOTAL** $2,000

### II: Interim Measures and Data Preservation
- Identify and implement interim remedial measures.
- Preserve data. (Assistance re relevant custodians, IT systems, etc.)
- Conduct appropriate interim reporting.

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**SUBTOTAL** $3,400

### III: Review Files and Documents
- Review files, documents, emails and other communications regarding scope of work

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**SUBTOTAL** $10,500

### IV: Interviews
- Initial/orientation interviews
  - Preparation and post-interview documentation
  - Interview incl. travel
- Detailed witness interviews
  - Preparation and post-interview documentation
  - Interview incl. travel

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**SUBTOTAL** $78,000
V: Closing the Investigation (including reporting, final remedial measures)

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<td>$400</td>
<td>-</td>
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<td>Negotiate resolution of related litigation or government inquiry.</td>
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<td><strong>$99,900</strong></td>
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</tbody>
</table>
March 24, 2017

Via Email (ramona.edwards@sandag.org)

SANDAG

c/o Ramona Edwards
401 B Street, Suite 800
San Diego, CA 92101

Re: Independent Examination of Measure A Communications (Invitation #5005172)

Dear Ms. Edwards:

Thank you for selecting this firm to represent you as counsel in the Independent Examination of
Measure A Communications.

Client; Scope of Engagement. Our client in this engagement will be SANDAG ("you"). Our
engagement will be limited to representing you in the above-referenced matter.

Staffing. Sanjay Bhandari and I will have primary responsibility for your representation and will
utilize other firm lawyers and legal assistants as we believe appropriate in the circumstances.
We will provide legal counsel to you in accordance with this letter and in reliance upon
information and guidance provided by you. We agree to keep you reasonably informed of
progress and developments, and to respond to your inquiries.

Cooperation. To enable us to represent you effectively, you agree to cooperate fully with us in
all matters relating to the investigation, and to fully and accurately disclose to us all facts and
documents that may be relevant to the matter or that we may otherwise request. You also agree
to pay our statements for services and other charges as stated below.

Advice About Possible Outcomes. Either at the commencement or during the course of our
representation, we may express opinions or beliefs concerning the investigation or various
courses of action and the results that might be anticipated. Any such statement made by any
partner or employee of our firm is intended to be an expression of opinion only, based on
information available to us at the time, and should not be construed by you as a promise or
guarantee.

Fees. Our fees will be based primarily on the amount of time spent on your behalf. Each lawyer
and legal assistant has an hourly billing rate based generally on experience and special
knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an
hour, will be the initial basis for determining the fee. Generally, my time is billed at $595 per

501 West Broadway, Suite 2020, San Diego, CA 92101
hour, Sanjay Bhandari’s time is billed at $575 per hour, and rates for other attorneys range from $350 to $550 an hour, with time devoted by legal assistants charged at $170 an hour. For this matter, we are willing to accept reduced, blended rates of $350-400 per hour, depending on the complexity of the task. (See detailed budget proposal for more details.)

Costs and Expenses. The firm typically incurs costs in connection with legal representation. These costs may include such matters as long distance telephone charges, special postage, delivery charges, telecopy and photocopy charges and related expenses, travel expenses, meals and use of other service providers, such as printers or experts. We separately bill for computerized legal research and related expenses. You also agree to pay the charges for copying documents for retention in our files.

You authorize us to retain any investigators, consultants or experts necessary in our judgment to represent your interests in the investigation. At our option, we may forward third-party charges directly to you for payment.

Payment of Statements. Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services for you and withdraw as your counsel.

The fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Any estimate of fees and costs that we may have discussed represents only an estimate of such fees and costs. It is also expressly understood that payment of the firm’s fees and costs is in no way contingent on the ultimate outcome of the matter.

Termination of Representation. You may terminate our representation at any time by notifying us. Your termination of our services will not affect the responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers’ work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We may destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

We may withdraw from representation if you fail to fulfill your obligations under this agreement, including your obligation to pay our fees and expenses, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to you.
If the foregoing is acceptable, please sign below and return a copy of the executed letter to us. Please call me if you have any questions.

Very truly yours,

Thomas W. McNamara
TWM:jej

Agreed to and Accepted:

SANDAG

By: ____________________________

Name: __________________________

Title: __________________________
Biography

Mr. McNamara represents clients in federal and state courts and in grand jury and SEC investigations across the country. He defends companies and individuals in federal criminal investigations, including allegations of health care fraud, computer crimes, financial fraud, and environmental crimes. He conducts internal investigations on behalf of inside counsel and board committees.

Representative government investigation and enforcement matters include the following:

- Representing companies and individuals in investigations of alleged misbranding and adulteration under the Federal Food Drug and Cosmetic Act (FDCA)
- Representing pharmaceutical executives in Off-Label Promotion investigations
- Conducting internal investigations into issues such as allegations of self-dealing, revenue recognition, and employee threats
- Representing hospital executive in Anti-Kickback investigation and prosecution brought by the U.S. Attorney's office; charges dismissed after trial
- Representing senior city executive in SEC investigation into municipal bond issuances and disclosure documents
- Representing attorney in SEC insider trading investigation
- Representing executive in computer crimes investigation and prosecution
- Representing individual in government procurement fraud prosecution

Mr. McNamara's practice also encompasses complex commercial litigation and class actions in federal and state courts. These matters include consumer class actions, securities class actions, trademark and trade secret lawsuits, and contract disputes.

Representative civil litigation matters include the following:

- Defending Telephone Consumer Protection Act (TCPA) class action cases on behalf of companies
- Defending securities class actions in state and federal court on behalf of developer client
- Defending consumer class actions arising out of the September 2011 Southern California electrical blackout
- Prosecuting Lanham Act violations on behalf of Fortune 500 company
- Defending California Wiretap class action cases on behalf of financial services client

Mr. McNamara has also been appointed receiver by U.S. District Courts throughout the country in actions brought by the SEC, the Commodity Futures Trading Commission, the Federal Trade Commission, and state regulators.
Mr. McNamara was a federal prosecutor for 11 years for the U.S. Attorney's Office for the Southern District of California, focusing on major economic crimes and public corruption. He worked on the Campaign Financing Task Force in Washington, D.C., investigating violations of federal campaign finance laws during the 1996 presidential election, and was the lead prosecutor in the Task Force’s first indicted case. He was awarded the U.S. Department of Justice Director’s Award on two separate occasions.

Mr. McNamara has tried numerous cases before judges, juries in state and federal court, and arbitration panels.

**Mr. McNamara’s recent publications and speaking engagements include:**

- "Increased Focus on Enforcement in Clinical Research – Lessons from Recent Cases," Corporate Compliance Program sponsored by the San Diego Regulatory Affairs Network, April 17, 2014
- Panelist, "Intensifying Scrutiny – New Laws and Increased Enforcement in Pharmaceutical and Medical Device Industries," Ballard Spahr webinar, December 8, 2011
- "FCPA Enforcement in the Health Care Industry: Stronger Than It Has Ever Been and Getting Stronger," BNA's Medical Devices Law & Industry Report, June 1, 2011
- Panelist, "Money Laundering and Other Compliance Issues," INSOL International Annual Regional Conference 2011, Singapore
Sanjay Bhandari
501 West Broadway, Suite 2020
San Diego, California 92101
Tel: 619-550-2445
Email: sbhandari@mcnamarallp.com

Biography

Sanjay Bhandari's practice focuses on white collar defense, investigations, and trial work in civil and criminal cases. He brings to this work over twenty years of experience as a federal prosecutor, SEC enforcement attorney, and a partner at elite law firms, including two of the top twenty law firms in the world.

Mr. Bhandari's work has included internal investigations, regulatory compliance, and representing clients in government investigations and enforcement proceedings. His cases have involved antitrust, bribery/anti-corruption (including domestic bribery and the Foreign Corrupt Practices Act (FCPA)), fraud, health care, money laundering, securities (including insider trading, revenue recognition, and other issues), and tax issues, among others. He has tried over twenty cases, before arbitrators, judges, and juries.

Judicial Clerkships


Education

- Cornell Law School (J.D. 1995, cum laude)
- Editor, Cornell Law Review
- Georgetown University School of Foreign Service (B.S.F.S. 1991, cum laude)

Languages

- French, German, and Hindi

Admissions

- California
- U.S. District Courts for the Central, Eastern, Northern, and Southern Districts of California
- U.S. District Court for the District of Colorado
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Federal Circuit
Sara J. O'Connell
501 West Broadway, Suite 2020
San Diego, California 92101
Tel: 619-269-0496
Email: soconnell@mcnamarallp.com

Biography

Sara O'Connell represents clients in matters involving intellectual property disputes and government investigations. A former federal prosecutor, she has successfully tried numerous cases to verdict and secured a dozen appellate victories. Most recently Ms. O'Connell has litigated claims of patent and trademark infringement, trade secret theft, and contractual interference, and represented clients in investigations by DOJ, FDA, DOD, and other agencies.

Ms. O'Connell was recognized as a Super Lawyers 2015 Rising Star. She is an adjunct professor at the University of San Diego School of Law, where she teaches a litigation skills course. Prior to becoming an attorney, Ms. O'Connell was the communications director for a Member of Congress.

Representative intellectual property matters include the following:

- American Automobile Association v. Zaid, CV 14-4040 (C.D. Cal.). Represented AAA in trademark infringement case, resulting in order to transfer registration of domain name to client.

Education

- Georgetown University Law Center (J.D.)
- Boston University (B.A. 1997, magna cum laude)

Professional Activities

- San Diego Intellectual Property Law Association
- Federal Bar Association, San Diego Chapter
MARCH 24, 2017 (Submitted via EMAIL)

TRG WORKPLACE INVESTIGATIONS’ RESPONSE TO SANDAG’S RFP SOLICITATION NO: 5005172

SOLICITATION: INDEPENDENT EXAMINATION OF MEASURE “A” COMMUNICATIONS
SECTION 1: EXECUTIVE SUMMARY

CONTACT INFORMATION

TRG WORKPLACE INVESTIGATIONS, A DIVISION OF THE ROSE GROUP
APLC
10021 Willow Creek Road, Suite 200, San Diego, CA 92131
www.rosegroup.us
Phone: 619.822.1088

Primary Contact Attorney/Investigator
Kenneth J. Rose
President of The Rose Group APLC
Email: krose@rosegroup.us
Cell: 619.851.0803

Secondary Contact Attorney/Investigator
Robert H. Rose
Email: rrose@rosegroup.us
Cell: 619.851.1985

TRG WORKPLACE INVESTIGATIONS welcomes the opportunity to provide the services requested by SANDAG under the RFP. TRG WORKPLACE INVESTIGATIONS has the experience to effectively conduct the investigation requested by SANDAG.

TRG WORKPLACE INVESTIGATIONS is a division of The Rose Group, APLC. TRG WORKPLACE INVESTIGATIONS conducts thorough unbiased internal workplace investigations in a wide array corporations, non-profits, and public sector entities.

The principals of TRG WORKPLACE INVESTIGATIONS are San Diego attorneys Kenneth J. Rose and Robert H. Rose. Ken and Robert have conducted more than 50 third-party independent investigations concerning alleged employee and staff misconduct. Our technical approach and standard operating procedures have been developed through our vast experience. As such, we know what we are doing when we investigate, and we are very effective and efficient.

TRG WORKPLACE INVESTIGATIONS references, which include public, non-profit, and corporate entities, as well as attorney colleagues, can confirm our qualifications, expertise, and effectiveness in conducting investigations.

Ken and Robert are highly experienced employment law specialists in San Diego. Ken and Robert undertake high-level sensitive investigations that are best handled by independent seasoned lawyers, who could become a witness in subsequent judicial proceedings. For this investigation, Ken will be the lead investigator. Ken will be responsible to present to the SANDAG Board of Directors and handle other requests as SANDAG requires. However,
the actual investigative work, including witness interviews, will be divided up between Ken and Robert to achieve maximum efficiency.

TRG WORKPLACE INVESTIGATIONS views SANDAG’s requirements as best met by attorneys experienced in employment law. We understand the dynamics of workplaces, how best to determine the scope and depth of investigations based on the allegations and subsequent information uncovered, the best approaches to interviewing employees to elicit truthful and complete information uncoerced, how to organize investigations to limit disruption of normal operations, how to develop a clear and complete record that the investigation was properly performed and ensure that the evidence supports our ultimate findings.

TRG WORKPLACE INVESTIGATIONS’ credentials and hands on experience in getting to the bottom of complaints of misconduct and determining the facts make us uniquely qualified to perform the services as described in this RFP and deliver a report to the SANDAG Board of Directors.

If selected, we will uncover whether there is evidence that SANDAG staff knew that the Measure A revenue forecast was inflated, if so when they knew, and whether SANDAG’s staff knowingly withheld material information from the public until after the November 2016 elections.

Respectfully submitted,

Kenneth J. Rose, President
The Rose Group, APLC dba TRG WORKPLACE INVESTIGATIONS

SECTION 2: QUALIFICATIONS AND EXPERIENCE

TRG WORKPLACE INVESTIGATIONS IS UNIQUELY QUALIFIED TO PERFORM THE INVESTIGATION

The principals of TRG WORKPLACE INVESTIGATIONS are San Diego attorneys Kenneth J. Rose and Robert H. Rose. Ken and Robert have conducted more than 50 third party independent investigations concerning alleged employee and staff misconduct.

TRG WORKPLACE INVESTIGATIONS’ credentials and hands on experience in getting to the bottom of complaints of misconduct and determining the facts make us uniquely qualified to perform the services as described in this RFP and deliver a report to the SANDAG Board of Directors. If selected, we will uncover whether there is evidence that
SANDAG staff knew that the Measure A revenue forecast was inflated, if so—when they knew, and whether SANDAG’s knowingly and purposefully withheld material information from the public until after the November 2016 elections.

TRG WORKPLACE INVESTIGATIONS expects that its references, which include public, non-profit, and corporate entities, as well as attorney colleagues, will confirm our qualifications, expertise, and effectiveness in conducting investigations.

TRG WORKPLACE INVESTIGATIONS views SANDAG’s requirements as best met by attorneys experienced in employment law. We understand the dynamics of workplaces, how best to determine the scope and depth of the investigation dependent on the allegations and subsequent information uncovered, the best approaches to interviewing employees to elicit uncovered maximum truthful information, how to organize investigations to limit disruption of normal operations, how to develop a clear and complete record that the investigation was properly performed and ensure that the evidence supports our ultimate findings. We do not view our role as prosecutors or interrogators. The purpose of our investigations is to gather information to explain an idea event or situation in the news. We carefully prepare for all interviews, ask open-ended questions directed to obtaining the information we are seeking, and adjust our approach during interviews to encourage the persons interviewed to talk freely. We do not pre-judge and look at the facts from all angles.

TRG WORKPLACE INVESTIGATIONS will recommend to SANDAG the engagement of forensic consultants to assist with the investigation, as we deem necessary. This can best be determined after the investigation is in progress. Based on the limited information provided through the RFP, our investigation may require consulting with an economic modeling expert.

As a rule, TRG WORKPLACE INVESTIGATIONS’ investigations are confidential, and we do not discuss details or even the existence of the investigations with third parties without prior authorization from the entity that retained us. We will be available to respond to press inquiries only with the prior authorization of SANDAG.

ABOUT TRG WORKPLACE INVESTIGATIONS

TRG WORKPLACE INVESTIGATIONS is a division of The Rose Group, APLC. TRG WORKPLACE INVESTIGATIONS conducts thorough unbiased internal workplace investigations in a wide array of industries, and for corporations, non-profits, and public sector entities of all sizes, in any location in California or elsewhere in the United States. TRG WORKPLACE INVESTIGATIONS has the experience to effectively conduct the investigation requested by SANDAG.

TRG WORKPLACE INVESTIGATIONS undertakes high-level sensitive investigations that are best handled by an independent seasoned employment law specialist, who could become a witness in subsequent judicial proceedings. Ken and Robert’s legal training, interpersonal

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1 Attachment F is TRG WORKPLACE INVESTIGATIONS’ CV, and includes articles on investigation practices authored by Ken Rose and Robert Rose.
and interview skills, temperament, extensive employment law knowledge, and experience
litigating employment lawsuits provide the framework for investigations that are high
quality, thorough, unbiased, and performed promptly.

TRG WORKPLACE INVESTIGATIONS conducts thorough and impartial investigations,
designed to determine the validity of the allegations, and provide evidence (if any) on which
the entity that retained can rely to remedy whatever wrongdoing is uncovered. We
determine the scope and depth of the investigation based on the allegations, the policies of
the entity that retains us, and applicable State and federal laws implicated. At the outset, we
exercise due diligence to identify witnesses, documents that should be reviewed, and other
potential evidence. We will develop a clear and complete record that the investigation was
properly performed, and to ensure that the evidence supports our findings. We prepare
written reports, in which we include detailed summaries of the witness interviews and
information from the documents reviewed, and provide conclusions about the allegations
investigated. Our investigations are structured to avoid conflicts of interest, and preserve
attorney-client and work product privileges—allowing the entities that retain latitude to
determine whether and when to waive those privileges.

TRG WORKPLACE INVESTIGATIONS' PRINCIPALS- KEN ROSE AND ROBERT
ROSE

Ken Rose and Robert Rose are highly experienced employment law specialists in San Diego.
Ken and Robert undertake high-level sensitive investigations that are best handled by
independent seasoned lawyers, who could become a witness in subsequent judicial
proceedings. Ken and Robert's legal training, interpersonal and interview skills,
temperament, extensive employment law knowledge, and experience litigating employment
lawsuits provide the framework for investigations that are high quality, thorough, unbiased,
and performed promptly.

For this investigation, Ken will be the lead investigator. Ken will be responsible to present to
the SANDAG Board and handle requests. However, the investigative work, including
witness interviews, will be divided up between Ken and Robert to achieve maximum
efficiency.

KEN ROSE

Ken Rose is the founder and President of The Rose Group, A Professional Law Corporation,
and Rose Mediation. Ken has practiced employment and labor law for more than 40 years.
Prior to founding The Rose Group, APLC, Ken was a shareholder at Littler Mendelson, and a
partner with Procopio, Cory, Hargreaves, and Savitch. Ken also serves as a Judge Pro Tem
for the California Superior Court and as a private mediator in litigation matters.
Ken is admitted to practice law in California, Maryland, and the District of Columbia. Ken
received his law degree from the George Washington University Law School in 1976. He
received his college degree from the Cornell University School of Industrial and Labor
Relations in 1972.

2 Attachment G has Ken Rose's and Robert Rose's CVs.
Ken has received many honors with recognition for his legal expertise, employment law experience, integrity and overall professional excellence, including: •AV- Preeminent, Martindale-Hubbell Peer Review Ratings; •International Who’s Who of Management Labour & Employment Lawyers and The International Who’s Who of Business Lawyers; •San Diego Super Lawyers; and •San Diego Magazine Top Lawyer.

ROBERT ROSE

Robert Rose received his law degree from The George Washington University Law School in 2011. He graduated cum laude in 2007 from the Georgetown University School of Foreign Service, with a Bachelor’s degree in International Polities.

Prior to joining The Rose Group, Robert gained extensive experience working in securities litigation at Quinn Emanuel Urquhart and Sullivan, and as a legal analyst at Fortune 500 company Oracle. He has also worked on cases related to employment law, whistleblower claims and international torts.

In addition to employment law, Robert’s practice includes international trade law and alcoholic beverages law.

Robert is fluent in Spanish and conducts investigations in both English and Spanish.

SECTION 3: REFERENCES

1. Lisa Stoia
   Director of Administrative Services
   Helix Water District
   7811 University Avenue, La Mesa, CA 91942
   619-667-6205
   lisa.stoia@helixwater.org

TRG WORKPLACE INVESTIGATIONS conducted investigations for Helix Water District that involved complaints alleging employee misconduct.

2. Allen Carlisle
   CEO/General Manager
   Padre Dam Municipal Water District
   9300 Fanita Parkway, Santee, CA 92071
   619-258-4614
   ACarlisle@padre.org

TRG WORKPLACE INVESTIGATIONS conducted an investigation for Padre Dam Municipal Water District that involved complaints alleging employee misconduct.
3. Mallory Zaslav  
Sr. Director for Human Resources  
Salk Institute for Biological Studies  
10010 North Torrey Pines Road, La Jolla, CA 92037  
(858) 453-4100 x2101  
mzaslav@salk.edu

TRG WORKPLACE INVESTIGATIONS conducted investigations for Salk Institute for Biological Studies that involved complaints alleging employee misconduct.

4. Jason Neely  
Human Resources Business Partner  
ResMed Inc.  
9001 Spectrum Center Blvd., San Diego, CA 92123  
858.836.6618  
Jason.Neely@resmed.com

TRG WORKPLACE INVESTIGATIONS conducted an investigation for ResMed Inc. that involved complaints alleging employee misconduct.

5. John Boggs  
Attorney-Partner  
Law Firm of Fine, Boggs & Perkins LLP  
80 Stone Pine Rd., Suite 210, Half Moon Bay, California 94019  
650.712.8908  
jboggs@employerlawyers.com

TRG WORKPLACE INVESTIGATIONS has conducted numerous investigations for clients of Law Firm of Fine, Boggs & Perkins LLP that involved complaints alleging employee misconduct.

SECTION 4: TECHNICAL APPROACH

1. Review files

TRG WORKPLACE INVESTIGATIONS will request that SANDAG identify a contact person, who is unlikely to be involved in the investigation, and to whom we can request documents and to schedule interviews. At the outset of the investigation, we will request that, to the extent possible, all documents in the five categories referenced on page 3 of the RFP be provided to us in electronic format. Prior to conducting any interviews, we will thoroughly review all documents. As we review the documents provided, we will identify other documents that we want to review. Through review of documents, we likely will identify witnesses we want to interview, in addition to those witnesses that SANDAG has identified. We will endeavor to complete our initial review of documents as soon as practicable.
2. Develop interview list and conduct interviews

TRG WORKPLACE INVESTIGATIONS will request that SANDAG identify those staff who may have information pertinent to the matters under investigation. Attachment A to the RFP states that SANDAG estimates there will be approximately 20 witness interviews. If that estimate is based on a list compiled by SANDAG, we will request the list of names. As just stated above, through review of documents, we likely will identify other witnesses we want to interview, in addition to those witnesses that SANDAG has identified. Based on the interviews conducted, we will identify still other persons we want to interview.

TRG WORKPLACE INVESTIGATIONS will make strategic judgments to determine the order in which witness interviews are conducted. It is our preference that our SANDAG contact person assist us with scheduling the interviews. The interviews can be conducted in a designated office or conference room or office, or at TRG WORKPLACE INVESTIGATIONS' offices located in the Scripps Ranch area of San Diego. We prefer that the latter if there are privacy concerns.

TRG WORKPLACE INVESTIGATIONS will make judgments as to which persons Ken or Robert will interview, based on efficiency and areas of inquiry. Unless there are extenuating circumstances, none of the interviews will be conducted jointly by Ken and Robert.

At the outset of each interview we request the interviewee to read and sign the TRG WORKPLACE INVESTIGATIONS' "Workplace Investigation Ground Rules" form. This form states that we are an outside attorneys retained to conduct a neutral, impartial investigation; explains we are not establishing an attorney-client relationship with the interviewee; requests that the interviewee cooperate with this investigation by providing truthful complete information; confirms that their employer will not retaliate against any employee who participates in the investigation process; informs the interviewee (s)he can take breaks upon request; establishes that the interview is confidential; and requests the interviewee neither communicate to anyone the substance of the interview or attempt to influence the investigation by trying to persuade others to support a particular viewpoint.

During the interview, TRG WORKPLACE INVESTIGATIONS's investigator will take detailed written notes, electronically record the interviews, or do both. Our standard operating procedure is to take notes only. However, we will abide by SANDAG's preference, if any. The investigator will allow the witnesses, a meaningful opportunity to tell their side of the story, and to identify other witnesses and documents that we should consider. We will follow up accordingly and as appropriate. If written notes are taken, then when the questioning is completed the investigator will read the notes to the interviewee virtually verbatim to allow the latter the opportunity to clarify, modify, and change the information in those notes. We will modify our notes accordingly as the purpose of the notes is to accurately reflect the information obtained during the interview.

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3 Attachment H includes TRG WORKPLACE INVESTIGATIONS' "Workplace Investigation Ground Rules" form.
After questioning is completed and the notes have been reviewed with the interviewee for accuracy, the investigator will request the person interviewed review and sign TRG WORKPLACE INVESTIGATIONS’ “Workplace Investigation Acknowledgment” form. This form requests the interviewee confirm that she provided truthful, complete information; was given a full opportunity to provide whatever information she felt was necessary or important, and was informed that subsequent to the interview she may directly contact the investigator to provide additional information; confirms that the investigator reviewed his notes with the interviewee; his or her understanding that the investigation is confidential; and his or her understanding that retaliation due to participation in the investigation is prohibited by the employer’s policies.

3. Develop conclusions based on investigation results as relates to the forecasting model overstating revenues

Upon TRG WORKPLACE INVESTIGATIONS’s completion of acquiring evidence, reviewing documents, and consulting experts (if any), we will promptly evaluate the facts and come to reasonable factual conclusions. Based on what we deem relevant, reliable evidence, we will draw conclusions as to whether staff members knew before the election that the forecasting model overstated the projected Measure “A” revenues, when they knew, who (if anyone) they informed of the erroneous revenue projections, whether management responded appropriately once informed of the erroneous revenue projections, and whether this information was purposely withheld from the public until after the public voted on Measure “A”.

4. Prepare a written report regarding conclusions

TRG WORKPLACE INVESTIGATIONS will prepare a thorough detailed written report to SANDAG. Our report will identify our investigation procedures, the issues investigated, the witnesses interviewed, the documents reviewed and the relevant information obtained from them, summarize (in detail) the information obtained from each witness, provide our findings of fact and conclusions about the allegations, and make recommendations to SANDAG’s Board of Directors. Our findings of fact and conclusions will be supported by relevant, reliable evidence. The report will include an assessment of the credibility of witnesses as may be relevant to the findings and conclusion reached.

5. Public Reports and Presentations

At the request of the SANDAG Board of Directors, TRG WORKPLACE INVESTIGATIONS will present our investigation report and conclusions at public Board meetings, and, upon request from the Board, respond to press inquiries regarding the investigation process and findings.

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4 Attachment II also includes TRG WORKPLACE INVESTIGATIONS’ “Workplace Investigation Acknowledgment” form.
6. Additional review and follow-up services as requested by the Board

TRG WORKPLACE INVESTIGATIONS will be available to provide such additional services as requested by SANDAG

SECTION 5: COST PROPOSAL

See, Attachment A.

SECTION 6: REQUIRED SUBMITTAL DOCUMENTS

1. See, Attachment B - Certifications.


3. See, Attachment D – Conflict of Interest Statement.

SECTION 7: SAMPLE CONTRACT

See, Attachment E.

ADDITIONAL ATTACHMENTS

Attachment F is TRG WORKPLACE INVESTIGATIONS’ CV, and includes articles on investigation practices authored by Ken Rose and Robert Rose.

Attachment G has Ken Rose’s and Robert Rose’s CVs.

Attachment H includes TRG WORKPLACE INVESTIGATIONS’ “Workplace Investigation Ground Rules” and “Workplace Investigation Acknowledgment” forms

Please address all communications in this matter to the undersigned. Should you have any questions about these matters, please do not hesitate to contact me.
ATTACHMENT A
<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Investigator</th>
<th>Estimate of Hours</th>
<th>Hourly Rate</th>
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<td>Review files, documents, emails, other communications regarding scope of work</td>
<td>Ken Rose and Robert Rose</td>
<td>45</td>
<td>$300</td>
<td>$13,500</td>
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<td>2</td>
<td>Develop interview list and conduct interviews. Estimated Interviews: 20</td>
<td>Ken Rose and Robert Rose</td>
<td>100</td>
<td>$300</td>
<td>$30,000</td>
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<td>3</td>
<td>Develop conclusions based on investigation results.</td>
<td>Ken Rose and Robert Rose</td>
<td>Included in item #4</td>
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<td>40</td>
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<td>10</td>
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<tr>
<td>6</td>
<td>Additional review and follow-up services as requested by the Board. Estimated Not to Exceed Hours: 80</td>
<td>Ken Rose and Robert Rose</td>
<td>70</td>
<td>$300</td>
<td>$21,000</td>
</tr>
<tr>
<td>7</td>
<td>All Other Direct and Indirect Costs: itemized below¹</td>
<td>Ken Rose and Robert Rose</td>
<td>N/A</td>
<td>Lump Sum</td>
<td>$10,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total Proposed Price</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$89,500</strong></td>
</tr>
</tbody>
</table>

**COST PROPOSAL--TRG WORKPLACE INVESTIGATIONS’ RESPONSE TO SANDAG’S RFP SOLICITATION NO: 5005172**

¹ Other Direct and Indirect costs: Forensic consultants/experts: $9500; Automobile use, photocopying: $500
ATTACHMENT B - CERTIFICATIONS

The Proposer certifies that

(A) It ☑ has ☐ has not

(Check One)

☐ participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1)

prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor);

(B) The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(D) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
(E) The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

(F) Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:

- Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Do not have a proposed debarment pending; and
- Have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
- Are not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed 3/24/17 (date), at [San Diego] (state).

Name of Firm: The Rose Group, LLC
Printed Name: Kenneth J. Rose
Title: President
Signature: [Signature]
Date: 3/24/17
ATTACHMENT C
## ATTACHMENT C - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<table>
<thead>
<tr>
<th>1. Type of Federal Action</th>
<th>2. Status of Federal Action</th>
<th>3. Report Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ a. contract</td>
<td>□ a. initial filing</td>
<td>□ a. initial filing</td>
</tr>
<tr>
<td>□ b. grant</td>
<td>□ b. material change</td>
<td>□ b. material change</td>
</tr>
<tr>
<td>□ c. cooperative agreement</td>
<td>□ d. loan</td>
<td>For Material Change Only:</td>
</tr>
<tr>
<td>□ d. loan</td>
<td>□ e. loan guarantee</td>
<td>Year __________ quarter __________</td>
</tr>
<tr>
<td>□ e. loan guarantee</td>
<td>□ f. loan insurance</td>
<td>date of last report __________</td>
</tr>
</tbody>
</table>

Name and Address of Reporting Entity:

- □ Prime
- □ Subawardee Tier __________ (if known)
- Congressional Dist (if known) __________

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

<table>
<thead>
<tr>
<th>6. Federal Department/Agency:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>7. Federal Program Name/Description:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>8. Federal Action Number, if known:</th>
</tr>
</thead>
</table>

| 9. Award Amount, if known: |
| $ |

| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): |
| (if individual, last name, first name, MI): |

| 11. Amount of Payment (check all that apply): |
| $ __________ | □ actual □ planned |

| 12. Form of Payment (check all that apply): |
| □ a. cash |
| □ b. in-kind; specify: nature __________ value __________ |

| 13. Type of Payment (check all that apply): |
| □ a. retainer |
| □ b. one-time fee |
| □ c. commission |
| □ d. contingent fee |
| □ e. deferred |
| □ other; specify: __________ |

| 14. Brief Description of services performed or to be performed and dates of ser, including officers, employees, or members contacted, for payment indicated in item 11: (attach Continuation Sheets SF-LLL-A if necessary) |

| 15. Continuation Sheets SF-LLL-A attached: □ Yes □ No |

16. Information requested through this form is authorized by title 31 U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:**

**Print Name:**

**Title:**

**Telephone No.:**

**Date:**

**Authorized for Local Reproduction Standard Form - LLL**
ATTACHMENT D
ATTACHMENT D – CONFLICT OF INTEREST STATEMENT

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq., nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity’s interest are, or may be, adverse to the Board’s interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

I have no conflict of interest to report.

I have the following potential conflict of interest to report:

<table>
<thead>
<tr>
<th>Description of Potential Conflict(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
</tbody>
</table>
I hereby certify that the information set forth above is true and complete to the best of my knowledge.

<table>
<thead>
<tr>
<th>Name of Firm:</th>
<th>The Rose Group, LLC, The Rose Workplace, FNL.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name:</td>
<td>Kenneth Rose</td>
</tr>
<tr>
<td>Title:</td>
<td>President</td>
</tr>
<tr>
<td>Signature:</td>
<td>L. Rose</td>
</tr>
<tr>
<td>Date:</td>
<td>3/6/17</td>
</tr>
</tbody>
</table>
ATTACHMENT E
ENGAGEMENT AGREEMENT FOR WORKPLACE INVESTIGATIONS BETWEEN TRG WORKPLACE INVESTIGATIONS, A DIVISION OF THE ROSE GROUP, APLC AND __________

Scope of Representation

TRG WORKPLACE INVESTIGATIONS, a division of The Rose Group, APLC ("TRG") is pleased that __________ (the Client") has decided to retain TRG to conduct a workplace investigation. In performing this investigation, TRG is the Client's agent with the authority to act in the place of Client in its dealings with third parties limited to the scope of this retention. TRG’s services are provided under an attorney-client relationship. Unless waived by the Client, TRG’s communications with Client are privileged.

Unless otherwise agreed in writing, TRG is not preparing a report to bear on an employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. Accordingly, it is the parties' intention that TRG is not act as a Consumer Reporting Agency as defined by the Federal Fair Credit Reporting Act ("FCRA") and that TRG’s report, if any, not be either a consumer report or an investigative consumer report. Client agrees that the information provided by TRG will not be disclosed to third parties except as required or permitted by law. However, if it is determined that under applicable law TRG’s services are subject to the FCRA, Client agrees it will comply with pertinent provisions of the FCRA; e.g., "After taking any adverse action based in whole or in part on [a report of the investigation], the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information ... need not be disclosed." Client might also have obligations under the California Civil Code related to the information it obtains from TRG. TRG suggests that Client consult with its regularly retained counsel concerning its obligations, if any, under the California Civil Code.
Subject to the foregoing, as appropriate, the scope of TRG’s representation of the Client may expand from the work described above (a) as specifically agreed in writing or (b) to the extent of work actually rendered and billed.

The Retainer

TRG is not requesting an initial retainer deposit at this time. However, depending on the nature and extent of the services which will be required, TRG may require a retainer deposit at a later time based on probable fees and expenses to be incurred.

TRG’s Fees and Billing Policy

Unless otherwise agreed to, TRG’s legal fees are based on how much time is spent on the Client’s matter. The Client agrees to pay an hourly rate of $300.00 per hour for work performed by Kenneth Rose or Robert Rose. Should TRG engage other attorneys or paralegals to provide services for the Client, the hourly rates of such other attorneys or paralegals will be based on agreement between TRG and the Client. From time to time, TRG reviews and may increase hourly rates. If the hourly rate is increased, the new rate will be indicated on the Client’s next bill. Legal fees may also reflect the substantial value of specialized work product prepared by TRG prior to the engagement but which has been adapted for the Client’s use. Said fees will be greater than those which would be charged for the actual time spent making the adaptation, but substantially less than those that would be charged if all of the time spent creating the underlying work product was reflected on the Client’s bill.

TRG will bill the Client for reasonable and necessary individual expenses of less than $500 which TRG incurs in connection with our representation of the Client. TRG will provide the Client with additional details on these and any expenses upon request. Invoices for out-of-pocket expenses, such as court fees, online research fees, long-distance telephone charges, deposition transcripts, expert witness fees, courier and messenger services, any postage over one dollar, outsourced photocopies, car rental, and travel and lodging expenses, etc. will be billed at the actual cost incurred by TRG. In house photocopying, will be billed at 15¢ per page. Automobile mileage will be billed at the then current IRS rate per mile.

TRG will forward to the Client invoices from vendors in amounts more than $500 and will expect that the Client will promptly pay the vendors directly. Failure to make prompt payments could adversely affect our relationships with the vendors and hinder our ability to successfully represent the Client.

TRG will bill the Client for our services and expenses and the Client agrees to pay our statements upon presentation. Our billings, together with communications with the Client through telephone conversations, emails, meetings, letters, facsimiles and copies of significant documents, serve to inform the Client of the work being performed by TRG on the Client’s behalf. TRG strongly encourages the Client to contact Kenneth Rose
promptly should the Client have any questions or concerns about hourly billing rates, hours charged, billing practices, or expenses.

If the Client requests or requires any changes to the format of TRG’s billings, including the amount of detail or itemization of our work, or if the Client has concerns with the accuracy or amount of any billing to the Client, the Client agrees to notify TRG in writing within 60 days of receipt of the billing of any such concern, request, requirement or objection. Upon the expiration of the 60-day period, all billings not previously objected to in writing shall be deemed accepted and a part of this written agreement.

In certain circumstances, a court or arbitrator might order payment of costs or attorney fees by one party to the other. If any such fees or costs are paid to us, they will be credited against the amount the Client owes to TRG, but the Client will remain liable for any unpaid portion of our bills. If a court awards fees or costs against the Client, in favor of the opposing party, the Client will be responsible for payment of that amount separately from, and in addition to, any amounts due us. In the event a recovery is obtained, TRG will have a lien for all unpaid attorney fees and costs advanced on all claims and causes of action that are the subject of the representation under this agreement and on all proceeds of any recovery obtained whether by settlement, arbitration award, or court judgment.

The Client’s Duty to Provide Information and Cooperate with TRG

TRG, as the Client’s attorneys, strives to provide the highest quality of services, and TRG expects from our clients the highest degree of cooperation and assistance. The Client agrees to fully respond to any inquiries TRG makes, and to provide us with requested written materials or documents in a timely manner, and otherwise provide us with any and all information necessary for our representation of the Client. Failure to provide such information could prejudice and ultimately reduce the effectiveness of TRG’s representation of the Client.

Further, TRG makes every effort to ensure there are no conflicts of interest among our clients. For this purpose, TRG asks that the Client submit to us a list of all subsidiary or affiliated entities and the Client’s parent Client, and identify any other person or entity involved in the Client’s matter that the Client has reason to believe has, or has had, a relationship with TRG. Please update this information as changes occur.

Insurance Coverage Issues

There may be times when the matter for which TRG is retained involves claims that may be covered by insurance. Because such matters are outside the scope of TRG’s representation, specific questions of insurance coverage should be directed to the Client’s insurance professional or other counsel, unless otherwise agreed. TRG recommends that the Client do so promptly.
Insurance coverage and payment issues are expressly the responsibility of the Client, unless otherwise specifically agreed to by TRG in writing. At the Client's instruction, TRG will cooperate with the Client's insurance carrier and insurance professionals by providing information regarding the Client's claim and copies of the Client's billings, but insurance companies, rightfully or wrongfully, sometimes dispute the issue of coverage and the amount, if any, they are willing to pay their insureds' independently retained counsel. In addition, insurance carriers sometimes impose delays before payment or apply different billing standards and methods than used by TRG.

Accordingly, TRG will bill fees and costs directly to the Client, and payment will be due from the Client on a current basis, whether the Client's insurance carrier eventually reimburses the Client. An insurance Client's determination of what it will pay for TRG's services, whether greater or lesser than billed, is a matter of contract between TRG and the insurance Client and its insured and does not affect the amount due to TRG.

Indemnity

Because the purpose of our engagement is to meet Client's obligations under law, we ask that Client agree to the following limited indemnity language. Client agrees to indemnify, defend, and hold TRG and its attorneys, harmless from all claims, suits, demands, losses and expenses, including reasonable attorneys' fees, accruing or resulting to all persons, firms or other entity on account of any damage or loss to any and all persons, firms or any other entity arising out of TRG's performance or non-performance of its obligations under this Agreement, unless an error or erroneous omission by TRG causes such damage or loss. The Client shall not indemnify TRG for any matter involving a claim by the Client of professional negligence, or any matter for which TRG shall have been adjudicated to have acted in bad faith or engaged in willful misconduct or any conduct outside the scope of its retention under this Agreement.

No Guarantee

No law firm or attorneys, including TRG and its attorneys, can guarantee the outcome of any legal dispute. Thus, although TRG may offer an opinion about possible results regarding any matter in which TRG represents or advises the Client, TRG does not and cannot guarantee any result. Moreover, TRG cannot predict in advance what the total amount of fees will be for our services. The Client acknowledges that TRG has made no promises about the outcome, including the costs and expenses of litigation, and that any opinion offered or budget provided by TRG or any of its attorneys will not constitute a guarantee.

Termination of Representation

TRG does not foresee any circumstance that would lead to termination of our attorney-client relationship, other than completion of all anticipated tasks on the Client's behalf. However, the law allows a client the right to terminate the representation of an attorney or law firm at any time. Subject to TRG giving the Client reasonable notice for the Client
to arrange alternative counsel, TRG reserves the right to discontinue work on pending matters or terminate our attorney-client relationship at any time that a statement remains due and unpaid 60 days after it has been sent, at any time when TRG feels our relationship with the Client puts us in violation of the Bar’s ethical principles and standards or the applicable Rules of Professional Conduct, or at any time termination of the relationship is required or permitted by law.

All files and/or documents retained at TRG relating to the Client’s representation are and remain the Client’s property, as the client, except for TRG’s internal and/or administrative documents, such as attorney time sheets. The Client may have access to these materials at any time, and upon termination of our representation, the Client may withdraw these materials with prior written notice. TRG reserves the right to photocopy the client’s files at The Client’s expense. TRG reserves the right to destroy all files ten years after the cessation of representation in a matter unless the Client requests their return. In the event the Client chooses to change representation to any attorney outside TRG, a written notice authorizing the transfer of the Client’s files must be submitted. TRG reserves the right to retain photocopies of any of these documents.

If a Dispute Arises Between the Client and TRG

TRG appreciates the opportunity to serve as the Client’s attorneys and looks forward to a professional and mutually beneficial relationship. In the event the Client becomes dissatisfied with any aspect of our relationship including, for example, the quality or adequacy of our representation or the fees charged, TRG encourages the Client to bring such concerns to our attention immediately. It is TRG’s belief that most problems can be resolved by good faith discussion between us. Nevertheless, it is always possible that a dispute may arise which cannot be resolved by discussion between TRG and the Client. If a dispute exists between us, the Client and TRG agree that the dispute will be submitted to arbitration, as follows:

A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any controversy between TRG and the Client regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person to hear and determine the dispute. If the parties cannot agree, then the Superior Court of San Diego County shall choose an impartial arbitrator whose decision shall be final and conclusive on all parties. TRG and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05. The cost of the arbitration, excluding legal fees and costs, shall be borne by the losing party or in such proportion as the arbitrator shall decide. The parties shall bear their own legal fees and costs for all claims. The sole and exclusive venue for the arbitration and or any legal dispute, shall be San Diego County, California.
B. STATE BAR FEE ARBITRATION

Notwithstanding subparagraph A above, in any dispute subject to the jurisdiction of the State of California over attorney’s fees, charges, costs, or expenses, Client has the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, as set forth in California Business and Professions Code Section 6200, et seq. Those procedures permit a trial after arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. If, after receiving a notice of client’s right to arbitrate, Client does not elect to proceed under the State Bar fee arbitration procedures, and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous subparagraph A. Because each party is giving up a right, Client is encouraged to have an independent lawyer of Client’s choice review these arbitration provisions before agreeing to them. By initialing below, Client and TRG confirm that they have read and understand subparagraphs A and B above, and voluntarily agree to binding arbitration. In doing so, Client and TRG voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client is advised that Client has the right to have an independent lawyer of Client’s choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

_______ (Client initial here)  KJR  (Attorney initial here)

Acknowledgment of this Agreement

Please acknowledge this agreement by signing and returning it to us, keeping a signed copy for the Client’s records. TRG appreciates the confidence the Client has in us. TRG looks forward to serving the Client.

APPROVED, ACCEPTED, AND AGREED TO THIS ________ DAY OF
____________________________________, 2017

Name of Client
BY: ____________________________________

ADDRESS: _________________________________
ATTACHMENT F
TRG WORKPLACE INVESTIGATIONS,

a division of The Rose Group, APLC

Kenneth J. Rose, Esq.  
E-mail: krose@rosegroup.us

Robert H. Rose, Esq.  
E-mail: rrose@rosegroup.us

APRIL 2017

INVESTIGATION SERVICES

TRG WORKPLACE INVESTIGATIONS
A Division of The Rose Group, APLC
10021 Willow Creek Road, Suite 200, San Diego, CA 92131
1415 K Street, NW, 6th Floor, Washington, DC 20005
Phone 619-822-1088  Fax 708-575-1495

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THE ROSE GROUP, APLC

The Rose Group, APLC [www.rosegroup.us] is a boutique employment/HR law and consulting firm with offices in San Diego, California and Washington, D.C.

The Rose Group’s consulting services, provided through our TRG WORKPLACE INVESTIGATIONS division, focus on workplace investigations. In addition to workplace investigations, The Rose Group’s consulting services include expert witness testimony, employment law training, and auditing employment and wage/hour law policies and practices.

The principals of The Rose Group are employment law specialists Ken Rose and Robert Rose.

TRG WORKPLACE INVESTIGATIONS

TRG WORKPLACE INVESTIGATIONS is a division of The Rose Group, APLC. Through TRG WORKPLACE INVESTIGATIONS, The Rose Group enhances our capabilities to conduct thorough and unbiased internal workplace investigations for private, public and non-profit employers of all sizes, in any location in California or elsewhere in the United States. TRG WORKPLACE INVESTIGATIONS conducts workplace investigations in a wide array of industries, and for corporations, non-profits, and public sector entities.

The principals of TRG WORKPLACE INVESTIGATIONS, employment law specialists Ken Rose and Robert Rose, undertake high-level sensitive investigations that are best handled by an independent seasoned employment law specialist, who could become a
witness in subsequent judicial proceedings. We are available to testify at depositions and trial about the investigations.

TRG WORKPLACE INVESTIGATIONS conducts thorough and unbiased internal workplace investigations of the following types of conduct:

- **EEO Complaints**: Investigate whether unlawful harassment, discrimination or retaliation has occurred.

- **Employee Misconduct**: Investigate whether there is a reasonable, good faith and honest basis to believe that misconduct occurred and that "just cause" or "good cause" exists for taking adverse employment action.

- **Unethical Conduct**: Investigate whether employees have engaged in alleged or suspected unlawful and/or unethical conduct for which the employer or management officials can be held responsible.

- **Wage Law Complaints**: Investigate claims that employer has violated State and Federal wage laws including claims for overtime, employee misclassification and failure to provide mandated meal and rest breaks.

- **Whistleblower Complaints (pre and post litigation)**: Investigate complaints by internal whistleblowers who report alleged misconduct and unethical or illegal activity by the company and fellow employees or superiors within their company. The role of the independent investigator in whistleblower cases has grown in importance as Congress and the States continue to create new whistleblower/retaliation causes of action.

Ken and Robert’s legal training, interpersonal and interview skills, temperament, extensive employment law knowledge, and experience litigating employment lawsuits provide the framework for investigations that are high quality, thorough, unbiased, and performed promptly. Performing an effective investigation allows employers to make informed decisions, greatly reduces the likelihood of litigation, and can significantly limit an employer’s liability for the underlying conduct. Properly investigating can be critical to key defenses should related litigation ensue.

TRG WORKPLACE INVESTIGATIONS is routinely hired by private and public sector employers as the result of referrals from their go-to employment litigation defense firms, who do not conduct investigations to avoid disqualification from defending related litigation.

Our investigations are structured to avoid conflicts of interest, and preserve attorney-client and work product privileges. Employers who retain TRG WORKPLACE INVESTIGATIONS’ independent investigators eliminate the appearance of impropriety and minimize the likelihood for accusations of a pre-determined outcome being made by the
complainant or subjects of the investigation. Our engagement agreements are written to preserve attorney-client and work product privileges, leaving the employer with latitude to determine whether and when to waive those privileges. TRG WORKPLACE INVESTIGATIONS can conduct investigations in both English and Spanish.

We take pride in being available 24/7 when necessary. Our investigators have a track record of conducting investigations on short notice and otherwise accommodating time sensitive requests from the employers who engage their services.

EXAMPLES OF WORKPLACE INVESTIGATIONS CONDUCTED BY TRG WORKPLACE INVESTIGATIONS

1. Investigated several complaints (some anonymous) alleging sexual relationships between supervisors and subordinates, resulting favoritism and hostile work environment, corporate ethics violations, financial improprieties, and self-dealing.

2. Investigated complaint against general manager alleging harassment/hostile work environment based on age, retaliation for making prior complaint and financial improprieties.

3. Investigated complaint against sales manager and co-workers alleging sex discrimination, sex harassment/hostile work environment, and financial improprieties.

4. Investigated complaint alleging reverse sex discrimination, sexual harassment/hostile work environment, retaliation for prior complaints, and improper withholding of wages.

5. Investigated complaint against Executive Director of non-profit alleging national origin discrimination and harassment, retaliation, defamation, and interference with efforts to find new job.

6. Investigated complaint alleging racial discrimination and denial of earned commission compensation.

7. Investigated complaint alleging retaliation for supporting co-worker’s complaint made to corporate headquarters regarding local general manager, and hostile work environment.

8. Investigated complaint alleging managing director discriminated against female professional staff by denigrating their performance and restricting advancement while favoring male professionals.

9. Investigated complaint alleging unethical business practices by sales department and retaliation against complainant for opposition to practices.
10. Investigated complaint that new general manager discriminated against line managers who are Asian.

12. Investigated complaint alleging same-sex sexual harassment and retaliation

13. Investigated complaint alleging religious discrimination and proselytizing.

14. Investigated complaint alleging racial discrimination by job applicant who was not hired.

15. Investigated complaint against general manager alleging workplace bullying and retaliation.

16. Investigated complaint alleging age discrimination.

17. Investigated complaint alleging that facility general manager engaged in favoritism and used employees to perform personal services for him.

16. Investigated complaint by salesperson alleging age discrimination.

17. Investigated a complaint by an employee of a public agency alleging age discrimination.

18. Investigated a complaint by an employee of a public agency alleging retaliation due to making whistleblower-type complaints.

19. Investigated the “hotline” complaints alleging management engaged in favoritism, intimidation, and improprieties.

20. Investigated a complaint by a male employee of a public agency alleging sex harassment, gender discrimination and retaliation.

21. Investigated wage and hour practices after employee complaints.

22. Investigated employee complaint alleging retaliation/discrimination due to Union affiliation and nepotism.


24. Investigated office employee’s allegations of hostile and intimidating work environment and bullying.

25. Investigated complaint of alleged sexual harassment and retaliation.
OUR INVESTIGATORS

About Ken Rose

Ken Rose is the founder and President of The Rose Group, TRG WORKPLACE INVESTIGATIONS, and Rose Mediation. Ken has practiced employment and labor law for more than 36 years. Prior to founding The Rose Group, Ken was a shareholder at Littler Mendelson.

Through Rose Mediation, Ken serves as mediator in legal disputes, most particularly employment law matters including: wrongful termination, wage and hour, class actions, breach of contract, discrimination, harassment, retaliation, and misappropriation of trade secrets/unfair competition cases. Rose Mediation’s website is www.rosemediation.us.

Ken’s other services include representing multinationals in cross border employment law matters, workplace investigations, expert testimony, employment law training, and auditing employment policies. Ken is one of the few U.S. lawyers experienced in assisting multinationals with employment law issues at their operations in foreign countries.

Ken also serves as a Judge Pro Tem for the California Superior Court and mediator for the California Department of Fair and Employment and Housing.

Ken is admitted to practice law in California, Maryland, and the District of Columbia. Ken received his law degree from the George Washington University Law School in 1976. He received his college degree from the Cornell University School of Industrial and Labor Relations in 1972.

Ken is a member of the ABA’s Sections on Labor and Employment Law and International Law, and the International Bar Association.

Ken is the author of Lawful Hiring: A Primer for California Employers, R&J Legal Publishers, and co-authored the International Handbook on Contracts and Employment (U.S. chapter), International Bar Association. Ken has numerous articles in professional journals.

Ken has received many honors with recognition for his legal expertise, employment law experience, integrity and overall professional excellence, including:

• AV- Preeminent, Martindale-Hubbell Peer Review Ratings.

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February 2017

• Mediator of the Month-March 2013, Attorney Journal-San Diego Edition

• San Diego Super Lawyers and Southern California Super Lawyers


• San Diego Magazine 2015 Top Lawyer

• Southern California’s Top Rated Lawyers, American Lawyer Media.


• Top Rated Lawyers - Labor & Employment, The American Lawyer and Corporate Counsel.

Ken is a Judge Pro Tem of the California Superior Court. He is a member of the American Bar Association, California Bar Association and San Diego County Bar Association Sections on Labor and Employment Law.

About Robert Rose

Robert H. Rose received his law degree from The George Washington University Law School in 2011. He graduated cum laude in 2007 from the Georgetown University School of Foreign Service, with a Bachelor’s degree in International Politics.

Prior to joining The Rose Group, Robert gained extensive experience working in securities litigation at Quinn Emanuel Urquhart and Sullivan, and as a legal analyst at Fortune 500 company Oracle. He has also worked on cases related to employment law, whistleblower claims and international torts.

In addition to employment law, Robert’s practice includes international trade law and alcoholic beverages law.

Robert is fluent in Spanish and conversational in Italian. Robert is called upon to conduct interviews of employees who are primarily Spanish speaking.

FEES

Negotiable hourly or fixed fee, plus out-of-pocket expenses.

REFERENCES

Provided upon request.
When Should Employers Use Independent Employment Law Specialists To Conduct Workplace Investigations

By Ken Rose and Robert Rose, The Rose Group APLC and TRG Workplace Investigations

May 19, 2016

More and more, employers are finding themselves facing the need to conduct internal workplace investigations. The purpose of a workplace investigation should be to give the employer's decision makers an unbiased understanding of relevant evidence, together with the investigator's good faith determination of credibility of the complainant, the accused, and other witnesses—sufficient to make appropriate personnel decisions.

The most common reason that employers are compelled to conduct an investigation is because an employee has lodged a complaint alleging employment discrimination, harassment, or retaliation. The federal and California anti-discrimination laws explicitly require employers to conduct a "prompt, thorough, and impartial investigation" of complaints alleging sexual harassment. See, e.g., California Gov. Code § 12940(k); EEOC Policy Guidance on Current Issues of Sexual Harassment, EEOC Notice No. N-915-050. Additionally, employers will want to conduct investigations of alleged employee misconduct or ethical violations, whistleblower complaints that report illegal activity occurred, or even their own compensation practices to determine if they comport with the rigorous federal and State wage and hour laws.

A neutral investigator's prompt, thorough, and effective workplace investigation allows for proper risk assessment, may deter costly and protracted litigation that is more likely to be brought in the absence of an investigation, and can provide a roadmap for a successful defense in the event that a lawsuit is filed concerning the subject matter covered by the investigation. Indeed, employers can mitigate – or even avoid – legal liability for certain types of claims if they have conducted a good faith investigation using an experienced, knowledgeable, and impartial workplace investigator who investigated timely, and was fair and thorough. The California Supreme Court's opinion in Cotran v. Rollings Hudig Hall Internat., Inc., 17 Cal.4th 93 (1998) set forth three elements for determining good
cause in termination decisions based on employee misconduct, the second of which was whether the termination followed “an appropriate investigation and [was] for reasons that are not arbitrary or pretextual . . .”

Crucial blunders in workplace investigations, whether due to the investigator’s lack of skills or experience, lack of diligence, or appearance of a conflict of interest, are not uncommon and can expose an employer to avoidable liability. A poorly conducted investigation is of no value to the employer and can actually be a detrimental because it will be subject to attack for being disingenuous, cursory, and biased. The opinions issued by the California Court of Appeal in Nazir v. United Airlines, Inc., 178 Cal.App.4th 243 (2009), and Mendoza v. W. Med. Ctr. Santa Ana, 222 Cal.App.4th 1334 (2014), are illustrative.

Nazir stands for the proposition that the appearance of bias in a workplace investigation can backfire on the employer. In Nazir, the investigation was conducted by the plaintiff’s supervisor and a labor relations rep who reported to the supervisor. Their investigation found credible a complaint by a female employee that plaintiff had made several inappropriate comments about females to her and grabbed her by the arm. However, the “chink in the armor” was that the investigating supervisor had been the subject of complaints by plaintiff that the supervisor had failed to take action against co-workers who called him derogatory names and were disrespectful. The Court agreed with plaintiff that he is entitled to a trial at which he may be able to persuade a jury that the investigation was a sham that was used as a subterfuge to fire him due to his religion and national origin. The Court, referring to the supervisor and the labor relations rep, did not hide its contempt for the airline’s selection of investigators:

> “These, then were the persons to lead the [airline’s] investigation, a person who at least inferentially had an axe to grind, assisted by someone who ‘served’ him. Such an investigation can itself be evidence of pretext. As one Court of Appeal described it, such investigation could ‘exploit[] a disciplinary process predisposed to confirm all charges. And confirm it did, in an ‘investigation’ that can hardly be called ‘thorough.’”

Mendoza stands for the proposition that the lack of a thorough investigation, on which an adverse employment action is based, could be construed as evidence that the employer terminated the plaintiff in retaliation for filing a discrimination complaint. In Mendoza, the plaintiff complained that a recently-hired supervisor was sexually harassing him. The supervisor acknowledged that sexually inappropriate conduct occurred, but claimed that plaintiff consented to and even initiated it. The employer assigned a senior level supervisor to investigate. He conducted a brief investigation, interviewing only plaintiff and the alleged harasser. The hospital concluded that both employees violated its policies, and terminated both of them. Plaintiff sued, claiming the hospital discharged him in retaliation for making the sexual harassment complaint. The Court concluded that a jury could find evidence of substantial retaliatory motive based on the hospital’s less than thorough investigation. The Court pointed to the hospital’s limited investigation as “evidence suggesting that defendants did not value the discovery of the truth so much as a way to clean up the mess that was
uncovered when Mendoza made his complaint.” The Court slammed the employer for trying to take the easy path:

“At oral argument, defense counsel asked (perhaps rhetorically) just what employers were expected to do when faced with a scenario in which two employees provide conflicting accounts of inappropriate conduct. Our answer is simple: employers should conduct a thorough investigation and make a good faith decision based on the results of the investigation. Here, the jury found this did not occur. Hopefully, this opinion will disabuse employers of the notion that liability (or a jury trial) can be avoided by simply firing every employee involved in the dispute.”

Clearly then, because internal investigations can have serious ramifications for employers, the employer’s determination of who should conduct the workplace investigation is of paramount importance. Increasingly, employers are engaging independent employment law specialists, such as TRG WORKPLACE INVESTIGATIONS, to conduct workplace investigations of potentially consequential matters. TRG WORKPLACE INVESTIGATIONS has been brought in as outside investigators in the most sensitive of circumstances, which call for highly skilled, independent professionals whose judgment and integrity you trust implicitly.

So, when should an employer bring in independent outside employment law specialist to conduct a workplace investigation?

1. The employer has concerns that the matters to be investigated will be litigated, and thus the adequacy of the employer’s response to the complaint may become a legal issue.

Telltale signs include where the subject matter of the complaint involves sensitive matters such as sexual harassment, discrimination, retaliation, or whistleblowing; the complaining or accused employee has hired a lawyer; or the complainant filed a charge with a governmental agency such as the Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing. In these circumstances, the qualifications of the investigator and the quality of the investigation likely will become especially important to the employer’s defense of its actions. Typically, the employer will request a written investigative report, which can best be accomplished by outside attorneys using their legal training. A thorough written report can demonstrate to the jury that the employer took claims of inappropriate conduct seriously and sought the truth. Furthermore, the investigator must be available to assist in potential litigation by serving as a witness to testify about the investigation at a deposition and at trial.

2. The employer does not want to use its go to employment law defense firm to handle the investigation because it wants to avoid a conflict of interest that might bar that firm from being its defense counsel should litigation occur.

For a truly independent workplace investigation, the employer should look to hire an employment law specialist that does not provide regular employment law counsel to the employer. While it seems
logical for employers to want to have their regular go-to employment law defense firm conduct its workplace investigations, if litigation ensues, the attorney-investigator may become a witness in the litigation and then the employer's go-to defense firm will be conflicted out of representing the employer in the lawsuit. Retaining a separate law firm to do the investigation only, prevents this type of conflict of interest from developing.

3. **The investigator's impartiality may be challenged.**

   Internal human resources, and other personnel on the employer's payroll, while potentially competent to perform workplace investigations, may have an actual or perceived conflict of interest depending on the circumstances of the matter. This has the potential to seriously undermine the integrity of the investigation. In fact, questions of bias will almost always be raised and linger when using an internal investigator. The relationship between those internal personnel capable of performing workplace investigations with the complainant, accused, and/or witnesses might create a perception of bias that can impair the validity or credibility of the investigation. This concern is particularly acute when the complaint being investigated alleges misconduct by high-level employees or corporate officers. Using an independent employment law firm diminishes the appearance of bias.

4. **The employer wants the attorney-client and work product privileges to apply to the investigation, to the fullest extent consistent with applicable law.**

   An attorney-investigator's communications with the employer, as well as the investigation itself, generally are privileged and confidential until and unless the employer decides to act based on the investigation findings. However, if the employer relies on the investigation to support a decision, such as a termination, then the attorney client privilege and work product doctrine probably are waived from that point on should there be litigation challenging the underlying decision. Using an independent employment law firm to conduct the investigation under an attorney client engagement should allow the employer the latitude to maintain the confidentiality of the investigation until it decides to affirmatively make a decision predicated on the investigation findings.

5. **The employer lacks internal personnel with the necessary skill level, subject matter expertise, or experience, to conduct a thorough, and competent investigation.**

   What starts out as an apparently simple investigation may become more complex and sensitive as the allegations or facts are brought to light. An inexperienced investigator may not recognize the potential problems and could quickly be out of his or her depth. Using an independent employment law firm to conduct a workplace investigation is advantageous because the attorneys understand how to conduct investigations and should be thoroughly familiar with federal and state employment laws.

6. **The employer's internal personnel capable of performing unbiased workplace investigations are too busy to devote the concentrated effort needed to immediately conduct and complete a time intensive investigation.**

   Internal human resources, and other personnel on the employer's payroll competent to perform
workplace investigations may not in a position to “drop everything” they are working on (or planned to be working on) and devote nearly all of their time thereafter to conducting the investigation. Lack of diligence in completing an investigation can lead to an inference of lack of good faith, which could place the employer in a potentially worse position than if no investigation had been conducted at all. Lawyers are primed to jump on new matters quickly, and the employer can condition selection of the attorney investigator on immediate availability.

7. Bringing in an outside employment law firm sends a message that complaints will be taken seriously.

Investigations conducted by individuals from outside an employer’s organization often are able to conduct a more effective investigation because employees feel less constrained discussing workplace issues with them.
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TRG WORKPLACE INVESTIGATIONS is a division of The Rose Group, APLC. Our principals are employment law specialists Ken Rose and Robert Rose. We undertake high-level sensitive investigations that are best handled by independent seasoned employment lawyers. We have conducted numerous workplace investigations for private, public and non-profit employers of all sizes, throughout California or elsewhere in the United States. We are routinely hired by employers directly, or as the result of referrals from their go-to employment litigation defense firms. Our investigations allow employers to make informed decisions which may reduce the likelihood of litigation, and could significantly limit an employer’s liability for the underlying conduct. For more information about TRG WORKPLACE INVESTIGATIONS, please visit our new website, http://www.rosegroup.us/workplace-investigations.

Greetings Kenneth,

TRG WORKPLACE INVESTIGATIONS trusts you have had an enjoyable summer. We have been quite busy during the summer months conducting investigations covering a range of issues. We hope that you find our article on best practices for investigations to be informative and instructive.

BEST PRACTICES IN EMPLOYMENT INVESTIGATIONS

Prudent employers use workplace investigations as part of their risk management protocols. Any number of events can trigger the need for a workplace investigation. Investigations are used to determine the veracity of employee complaints, whether employee misconduct has occurred, and as a means to determine the employer’s potential exposure to discrimination, harassment, and wrongful
termination claims.

The manner in which investigations are conducted can significantly affect both the employers’ ability to defend against legal claims, as well as its employees’ trust and confidence in the investigation process. Employers’ demonstrated commitment to launching investigations when appropriate, and taking further action based on the results therefrom, are critical and can profoundly affect potential liability should litigation ensue.

Here are some best practices that we recommend employers follow when conducting any workplace investigation.

1. Investigate Complaints Promptly and Thoroughly

The investigation must be a genuine attempt to determine the validity of the complainant’s allegations, and to remedy any wrongdoing that is uncovered. A thorough and impartial workplace investigation, initiated promptly upon learning of the complaint, should be a critical component of the employer’s risk management practices. Promptly responding to a complaint, through an investigation, sends a message to the complainant and the accused that the employer’s complaint policies and procedures are not mere lip service.

Determining the scope and depth of the investigation will depend on the allegations, the employer’s policies, and the applicable State and federal laws implicated. The investigator’s approach will depend largely on the facts and circumstances of each case. The investigator will need the employer’s assistance to identify the issues to be investigated, witnesses, documents, and other potential evidence.

However, the scope of the investigation should be flexible. Not infrequently, the full extent of a complainant’s allegations, or possible misconduct, is not known at the outset. The investigation should evolve as the investigator learns of facts/issues that exceed the initial scope. If this occurs, the investigator should inquire if the employer wants to expand the scope.

One of the central goals of an employment investigation is to develop a clear and complete record that the investigation was properly performed. To ensure that the evidence is accurate and to support the ultimate findings, investigators need to properly document the investigation. Documentation must include records of what each witness stated during the interview—i.e., the investigator’s notes, written witness statements, tape recordings of the interviews, or some combination of these methods of recording.

2. Choose the Right Investigator for the Particular Investigation

It is fundamental that the employer assign an investigator who is properly trained, experienced, objective, skilled, and credible. Investigators should be thoroughly grounded in the concepts they are investigating and knowledgeable about both the applicable law and the employer’s internal employment policies. Good investigators must be able to develop an effective investigation plan.

The investigator selected should be someone who will not be inhibited from accurately reporting his or her findings to the employer— including "The Good, the Bad, and the Ugly." Investigators must be free to reach conclusions appropriate to the facts. The investigator should have nothing at stake in the result of the investigation. Exclude individuals who have more than a passing personal or professional relationship with the accused or the complainant.

In many cases, the investigation will be subject to discovery and the investigator may be
called upon to testify at a deposition or at trial. Therefore, it is important to choose an investigator who will be as eloquent, as he or she is competent, so that any testimony offered will be clear, confident, and convincing.

Employers should consider using outside investigators wherever high level employees are the subject of the investigation, the complained of conduct is vexing, or there are potential or actual threats of litigation. An outside attorney investigator, who is not the regular counsel to the employer, brings neutrality to the investigation and offers the option of protecting the investigation under the attorney-client privilege while the investigation is ongoing.

3. Maintain Confidentiality to Extent Possible Without Impeding Investigation

Confidentiality, as a general principle, must be a conscious element of every workplace investigation. Employers want to guard against investigations becoming public knowledge at the workplace.

Complainants, and even other witnesses, may request both anonymity and confidentiality as a condition to their cooperation with the investigation. But, strict confidentiality is not possible. Applying confidentiality policies to a workplace investigation entails walking around landmines. The best practice is to promise the complainant and witnesses that the employer will proceed with discretion and only share their information with those who have a “need to know.” The “need to know” group includes the employer’s HR staff or other employees involved in the investigation or in a decision making role. Furthermore, full confidentiality cannot be promised because, if related litigation is filed, the contents of the investigation may be deemed discoverable under the applicable State or federal rules of civil procedure and offered as evidence.

The investigator should advise those interviewed that they should not discuss an ongoing investigation with their coworkers. The reasons for such policies are obvious. Requesting that witnesses not discuss the investigation is consistent with representations made to complainants that the investigation information will only be shared with those with the “need to know.” Moreover, if witnesses discuss an ongoing investigation, hearsay and rumors, if not undue influence and intimidation, may take the place of facts, and the integrity of the investigation can be compromised.

A word of caution on enforcing confidentiality. The National Labor Relations Board (NLRB) has ruled that a blanket policy requiring confidentiality from employees, who participate in a workplace investigation, is an unlawful infringement with employee rights to engage in concerted activity under the National Labor Relations Act. See, Banner Health System, 362 NLRB No. 137 (June 26, 2015). This NLRB decision impacts non-union employers as well as employers with unionized workforces. According to the NLRB, employers can require employees to maintain the confidentiality of investigations only in limited circumstances where the employer can show that it has a “legitimate business justification that outweighs employees’ [NLRA] Section 7 rights.” But, exactly what those circumstances might be was left unclear. The NLRB’s Banner Health System decision has been appealed, and the appeal is pending before the U.S. Court of Appeals for the DC Circuit.

4. Maintain Fairness Throughout the Investigation Process

Investigations should be conducted in conformity to general notions of a fair process. The investigator selected must be even-handed and focused upon finding actual facts, rather than seeking to prove a pre-determined conclusion. Requisite fairness means that the investigator will be impartial in reviewing and weighing the evidence, as well as in reaching conclusions.

A fair investigation ensures that the investigator will allow the complainant, the accused, and
other witnesses, a meaningful opportunity to tell their side of the story. The complainant and the accused should be afforded the opportunity to identify witnesses and documents supportive of his/her version, and the investigator should follow up with interviews of new witnesses identified, as appropriate.

All witnesses should be apprised that the employer will not retaliate against any employee who participates in the investigation process.

5. **Presume that all Records Generated and Reviewed During the Investigation will be Discoverable**

Employers will want to affirmatively rely on their investigations as evidence that they acted promptly, fairly, and thoroughly, in response to employee complaints. However, if there is related litigation, employers must be prepared for the possibility that the correspondence, notes, recordings, documents, reports, and any other records, collected during an investigation, will have to be disclosed and the integrity of the investigation will be at issue. Therefore, employers should assume that all documents written and gathered during an investigation may be discoverable, and there will be limitations on the availability the attorney-client privilege and work product doctrine to preclude any scrutiny of the investigation, if there is related litigation.

6. **Obtain a Thorough Report from the Investigator**

Upon concluding the investigation, the investigator will report to the employer. The investigator must do more than simply collect the facts. There is an obligation to evaluate the facts and come to reasonable factual conclusions. In most cases, the investigator prepares a written report, summarizing the interviews and information from the documents reviewed, and provides conclusions about the allegations in the complaint. The report should provide the employer with the information necessary to make a determination about how to proceed.

Findings of fact and conclusions must be backed by relevant, reliable evidence, or those conclusions will be potentially defective and more difficult to defend. The report should include an assessment of the credibility of the parties or witnesses if relevant to the findings and conclusion reached.

7. **Take Appropriate Action Based on the Investigation Findings**

The employer’s decision makers should review the investigator’s report, and other relevant evidence, as appropriate. The results of the investigation should be communicated to the complainant and the accused. If the complaint is substantiated, the employer should determine the appropriate corrective action, up to and including termination; taking into account the policy or law violated and the severity of the conduct. Regardless of the outcome of the investigation, parties to the investigation should be reminded that retaliation against employees who make complaints or who participate in workplace investigations is strictly forbidden.

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**ABOUT THE ROSE GROUP**

The **Rose Group, APLC** was founded in June 2006 by San Diego, California-based employment law specialist Ken Rose. The Rose Group is a boutique law firm dedicated to providing cost-effective, practical advice and counsel to employers and executive level employees on domestic and international employment law matters and in related litigation. The Rose Group is often called upon to conduct sensitive workplace investigations. In addition, through Rose Mediation[www.rosemediation.us](http://www.rosemediation.us), Ken Rose serves as a neutral mediator and arbitrator in
employment law and other civil litigation matters. Ken Rose is listed in the 2014 Who's Who Legal: Management, Labour & Employment, as well as the 2015 San Diego Super Lawyers.

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APRIL 2017

Ken Rose's CV

Ken Rose is the founder and President of The Rose Group, A Professional Law Corporation, TRG Workplace Investigations, and Rose Mediation. Ken has practiced employment and labor law for 40 years.

The Rose Group is a global employment law and HR consulting firm, based in San Diego, California and Washington, D.C. Through The Rose Group, Ken represents employers and executive-level employees with regard to California, federal, and international employment law issues. Ken's other services include workplace expert testimony, employment law training, and auditing employment policies. Ken is one of the few U.S. lawyers experienced in assisting multinationals with employment law issues at their operations in foreign countries. Ken has particular expertise related to federal and California wage and hour laws. Further information about Ken can be found on Ken's LinkedIn page www.linkedin.com/in/rosegroup/en, and The Rose Group's website www.rosegroup.us.

Through TRG Workplace Investigations, Ken conducts thorough and unbiased internal workplace investigations for private, public and non-profit employers of all sizes. Ken's
Ken Rose's CV
April 2017
Page 2

legal training, interpersonal and interview skills, temperament, extensive employment law knowledge, and experience litigating employment lawsuits, provide the framework for investigations that are impartial, objective, thorough and prompt.

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• Top Rated Lawyers in Labor & Employment and Southern California’s Top Rated Lawyers, American Lawyer Media.

• Top Rated Lawyers Annual Guide to Labor & Employment, The American Lawyer and Corporate Counsel.
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Robert Rose’s CV

Robert Rose is a principal and employment law specialist with The Rose Group, A Professional Law Corporation, and its TRG Workplace Investigations division.

The Rose Group is a global employment law and HR consulting firm, based in San Diego, California and Washington, D.C. Through The Rose Group, Robert represents employers and executive-level employees regarding California, federal, and international employment law issues. Robert’s other services include workplace investigations, expert testimony, employment law training, and auditing employment policies. Further information about Ken can be found on The Rose Group’s website www.rosegroup.us.
Through TRG Workplace Investigations, Robert conducts thorough and unbiased internal workplace investigations for private, public and non-profit employers of all sizes. Robert’s legal training, interpersonal and interview skills, temperament, extensive employment law knowledge, and experience litigating employment lawsuits, provide the framework for investigations that are impartial, objective, thorough and prompt.

Robert received his law degree from The George Washington University Law School in 2011. He graduated cum laude in 2007 from the Georgetown University School of Foreign Service, with a Bachelor’s degree in International Politics.

Prior to joining The Rose Group, Robert gained extensive experience working in securities litigation at Quinn Emanuel Urquhart and Sullivan, and as a legal analyst at Fortune 500 company Oracle. He has also worked on cases related to employment law, whistleblower claims and international torts.

In addition to employment law, Robert’s practice includes international trade law and alcoholic beverages law.

Robert is admitted to practice law in California and the District of Columbia.

Robert is fluent in Spanish and conversational in Italian.

Outside of the office, Robert is an active soccer player, cyclist, and homebrewer.
ATTACHMENT H
WORKPLACE INVESTIGATION GROUND RULES

This document outlines the process for witness interviews during an investigation in which you have been asked to participate. This process will be reviewed with you orally, and through this writing.

1. My name is ______ Rose. I am with The Rose Group, APLC ("TRG"). TRG has been retained to conduct an investigation at the request of ______ (the "Company"). I am the investigator. I am not an employee of ______. I am an outside attorney/consultant hired to conduct a neutral, impartial investigation. Neither TRG nor I are entering into an attorney-client relationship with you or providing legal advice to you. Because I am not your personal attorney, I cannot give you any advice concerning your relationship with the Company.

2. The investigation concerns an employee complaint.

3. The Company asks that you cooperate with this investigation by providing truthful, complete information. Your employment relationship with the Company will not be affected by the information you provide—unless the Company determines you have engaged in misconduct. During our meeting, you may make whatever statements you feel are necessary or important. Because TRG is retained by the Company, you should assume that any information you disclose during the interview will be shared with the Company.

4. I would like to emphasize that I want to know only the truth. Please do not give me an answer you think I would like to hear; rather tell me only the truth.

5. During the investigation, you are free to take breaks whenever you like and to leave the room at any time.

6. This investigation is confidential—information obtained from you will only be reported to those who need to know. To retain the confidentiality of the investigation, I request you not communicate to anyone (other than your legal counsel or employee representative, if any) the information you provide. Particularly, please do not attempt to influence the investigation by trying to persuade others to support a particular viewpoint.

Your signature below acknowledges your receipt of this information.

__________________________
SIGNATURE

__________________________
DATE

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1415 K Street, NW, 6th Floor, Washington, DC 20005
Phone 619-822-1088 Fax 708-575-1495
WORKPLACE INVESTIGATION ACKNOWLEDGMENT

With respect to the workplace investigation at ____________, during which I was interviewed, I acknowledge the following:

1. During the investigation, I was free to take breaks whenever I liked and to leave the room at any time.

2. I was given a full opportunity to discuss the matter with the Investigator and was given the chance to provide whatever information I felt was necessary or important. I also understand that I may contact the Investigator to provide additional information if I wish to do so.

3. The notes taken by the Investigator were read to me and I was given the opportunity to clarify, modify, and change any of the information contained in those notes.

4. I acknowledge that I provided truthful, complete information to the Investigator and that the notes, as read to me, and as modified by me, are true and correct.

5. I understand this investigation is a confidential one. I will not talk to anyone (other than my legal counsel or non-employee family members) concerning the information that I have provided to the investigator. Further, I understand that retaliation is strictly prohibited by ____________’s policy and by law.

__________________________________________
PRINT NAME

__________________________________________
SIGNATURE

__________________________________________
DATE

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145 K Street, NW, 6th Floor, Washington, DC 20005
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March 24, 2017

San Diego Association of Governments

Kilpatrick Townsend’s RFP Response to SANDAG’s Independent Examination of Measure A Communications
Section 1: Executive Summary

Executive summary should be brief and include all contact information inclusive of the name, address, telephone number, title, and signature of the contact person for this procurement. The signatory shall also be a person with the official authority to bind the Firm.

Thank you for this opportunity to present Kilpatrick Townsend’s capabilities to SANDAG. We would welcome the opportunity to perform an independent examination, prepare a written report and make recommendations regarding Measure A communications.

San Diego Litigation Partner Nancy Stagg would be the contact person/client relationship attorney for this investigation and has authority to bind the Firm for this procurement. Ms. Stagg focuses her practice on complex commercial litigation and would perform investigative services as described below in Section 4.

Nancy L. Stagg
Partner
12730 High Bluff Drive, Suite 400
San Diego, CA, 92130
(858) 350-6156
nstagg@kilpatricktownsend.com
Section 2: Qualifications and Experience

Provide a summary of your firm's background, skills and experience in examination reviews, managing media requests, and overall performance of services associated with the scope of work. Experience shall include public agency investigative experience and general experience regarding both prosecution and defense of public agency clients. Include a detailed list of key personnel, their titles, and tasks to be assigned relative to the services identified in the scope of work. Provide a resume for all key personnel. At a minimum, key personnel shall include the lead investigator who will be required to present to the board and handle media requests.

Firm Background

Kilpatrick Townsend & Stockton LLP is a multinational business law firm with more than 650 attorneys in 18 offices worldwide. Kilpatrick Townsend has had an office in San Diego for more than 13 years, and our attorneys represent many technology, life sciences and other companies that make San Diego one of the most vibrant business sectors in the world. Our attorneys are highly skilled in conducting complex factual investigations of all kinds and in advising clients on the civil, criminal, regulatory and corporate governance repercussions of these inquiries. Our attorneys bring extensive trial and appellate experience and have represented individuals and companies in a wide range of matters, including complex internal investigations and related criminal, civil, and regulatory proceedings. Through our White Collar Crime and Internal Investigations team, we regularly deal with the U.S. Department of Justice (DOJ), U.S. Attorneys' Office, Securities & Exchange Commission, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), various federal Offices of Inspectors General, and state Offices of Attorneys General.

In addition, Kilpatrick Townsend has a dedicated e-Discovery team that can provide operational, legal e-discovery and document review services for our clients. The e-Discovery team consists of experienced and highly certified attorneys, paralegals, project managers and analysts stationed in offices across the U.S., and a document review center staffed by fully vetted low-cost document reviewers managed by team attorneys. The e-Discovery team has deep experience reviewing a wide variety of file types including emails, meeting minutes, calendar appointments, board reports, Microsoft Office files and others. Our attorneys work closely with the team's project managers to employ the latest in analytics technologies, when appropriate, to ensure document reviews are being conducted in the most efficient yet thorough manner possible. Further, our attorneys provide comprehensive daily reports that are invaluable to streamlining discovery, understanding the underlying facts and developing litigation strategy.

Finally, the specific team we propose to handle this assignment is experienced in managing media requests and high profile matters.
Key Personnel

Nancy Stagg and Raymond Aghaian are the two Kilpatrick Townsend attorneys who would serve as the key personnel handling this assignment. Nancy and Ray, experienced and accomplished litigation attorneys, would work together to review the key documents and other electronic information, prepare for the interviews, conduct the interviews and prepare the factual findings, prepare reports and recommendations, and respond to media requests. The specific process we propose to follow is described below in Section 4.

Irrespective of the factual findings of this investigation, the most important aspect of this investigation is public accountability. The citizens of San Diego County have to ultimately believe that the investigation was conducted independently, by uninterested, but highly qualified persons, without any political influence or pressure, or hope of future benefit. Our team is that team. Kilpatrick Townsend does not generally represent California public agencies and is not regularly involved in advising or counseling any of the SANDAG member entities or SANDAG Directors. And, as a Los Angeles County resident who could not have voted on Measure A, Ray will act as lead investigations counsel and bring additional credibility to the final report and recommendations.

See Appendix A for biographies and experience of the proposed key personnel.
Section 3: References

Provide three to five references from past and current projects for similar services. This should also include relevant past performance from the proposed team. References should include a description of services provided with the name, title, phone number and email for the contact person that can discuss the specific project and the performance of your firm.

Please note that we cannot provide references from clients for whom we have performed confidential investigations, given the sensitive and privileged nature of work performed. As to the handling of various civil litigation cases by Nancy Stagg, all of which included similar investigative tasks (such as reviewing and analyzing documents, interviewing witnesses, making factual determinations, preparing reports, making recommendations and responding to media requests), we provide several references:

<table>
<thead>
<tr>
<th>Name and Title</th>
<th>Contact Information</th>
<th>Description of Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bryan Keller, former General Counsel of Delaware North Companies, Inc.</td>
<td><a href="mailto:bkeller@calamar.com">bkeller@calamar.com</a> 716-693-0006</td>
<td>Multiple cases</td>
</tr>
<tr>
<td>Marc Merriweather, Group Vice President-Litigation of Wyndham Worldwide</td>
<td><a href="mailto:Marc.Merriweather@wyn.com">Marc.Merriweather@wyn.com</a> 973-753-7845</td>
<td>Multiple cases</td>
</tr>
<tr>
<td>Dennis Schoville, Owner of Dennis A. Schoville APC</td>
<td><a href="mailto:dennyschoville@gmail.com">dennyschoville@gmail.com</a> 619-235-0335</td>
<td>Chopra v. Schoville</td>
</tr>
<tr>
<td>Jill Martin, Assistant General Counsel Litigation and Employment of Trump Organization</td>
<td><a href="mailto:jmartin@trumpnational.com">jmartin@trumpnational.com</a> 310-303-3225</td>
<td>Multiple cases</td>
</tr>
</tbody>
</table>
Section 4: Technical Approach

Provide a narrative illustrating the approach to providing the deliverables for each task in accordance with the schedule identified in this RFP, which shall include but is not limited to: quality assurance methods, ability to meet proposed schedule, roles and responsibilities, and administrative approach.

Kilpatrick Townsend’s proposed technical approach differs from the schedule provided in the RFP to assure that the best investigative processes are followed. As a result, our technical approach adds in several additional scheduled tasks and includes repeating certain tasks if additional information is developed during the interview process. Key differences in our proposed approach are:

- Review any previously issued litigation hold memorandum and confirm all appropriate custodians and documents are included;
- Work with Board to implement an Investigations Sub-Committee and clear chain of command and communications;
- Perform document collection and create electronic database and chronology;
- Conduct any external research that may also be necessary (such as news articles, published Measure A analysis);
- Provide interim non-substantive status reports to the Investigations Sub-Committee;
- All interviews will be conducted jointly by two attorneys (Nancy and Ray) for quality assurance purposes and to conform to best investigative practice; and
- Additional rounds of document collection and additional or further witness interviews may need to be conducted after initial interviews are completed if new information is discovered.

We have provided a flow chart below which describes the proposed technical approach and process.

Nancy Stagg and Ray Aghaian would prepare for and perform all the witness interviews, and together they will draft, edit, review and finalize the written report, including recommendations, to provide for quality assurance. Ray will deliver the report to the Board and respond to media requests. Nancy will supervise the document collection team and manage any research needed, communicate with the Investigations Sub-Committee of the status and coordinate response to media requests. Both Ray and Nancy will be available to communicate with the Investigations Sub-Committee and Board as necessary.
1. Review collection protocols and timelines.

2. Compile relevant case information for collection.

3. Initial preliminary investigation.

4. Review all collected materials; perform research as necessary, create summary, create list of witnesses to be interviewed, prepare key events chronology, and prepare interview questions and protocol.

5. Schedule and conduct interviews with relevant persons identified in preliminary review.

6. Assess whether additional research is necessary and/or additional witnesses should be interviewed.

7. Provide full written report to the Board of Investigation sub-committee.

8. Draft report and supporting exhibits, including conclusion and recommendations.

9. Submit final report for Board of Investigation sub-committee.

10. Submit final report for Board of Investigation sub-committee.

11. Review final report with Board of Investigation sub-committee.

12. Submit final report for review and approval.

13. Address any follow-up media requests as may be requested by the Board of Investigation sub-committee.

14. Address any follow-up media requests as may be requested by the Board of Investigation sub-committee.

15. Address any follow-up media requests as may be requested by the Board of Investigation sub-committee.
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REDACTED – MARKED CONFIDENTIAL
REDACTED – MARKED CONFIDENTIAL
Appendix A: Resume of Key Personnel

- Nancy L. Stagg
  Partner

- Raymond O. Aghaian
  Partner
Nancy L. Stagg  
Partner  
San Diego | 858 350 6156  
NSTagg@KilpatrickTownsend.com

Services  
Litigation, Complex Commercial Litigation, Class Actions, Antitrust & Trade  
Regulation, Advertising Litigation, Alternative Dispute Resolution, Employment  
Litigation, Directors & Officers Litigation, Intellectual Property Litigation, Trade  
Secret, Appellate Litigation, Labor & Employment, Employment Litigation &  
Class Actions

Industries  
Hospitality & Gaming, Retail & Consumer Goods, Technology, Electronic  
Equipment & Software, Healthcare, Life Sciences & Technology, Advertising &  
Publishing, Banking & Credit Unions, Financial Services, Telecommunications,  
Manufacturing, Entertainment, Media & Sports

Nancy Stagg skillfully and efficiently solves her clients’ litigation problems — especially the toughest ones that keep them up at night. While remarkably successful in trial and appellate courts when it’s needed, Ms. Stagg’s greatest strength is in quickly sizing up the case at hand and developing an effective strategy to marshal the law and the evidence to her clients’ best advantage. Her genuine caring about her clients’ businesses, as well as her competitive nature, ensure clients get her best efforts — always. In addition to her substantial trial, arbitration and appellate experience, Ms. Stagg enjoys counseling corporate legal departments and business owners in the most effective ways to avoid potential litigation.

Ms. Stagg’s practice focuses primarily on the defense of consumer class actions and she heads the Class Actions team in California. She also handles a wide variety of complex commercial, employment and intellectual property litigation, including trade secret theft litigation. Her clients come from all over the world and range from privately-held family-owned businesses to some of the world’s largest publicly-traded companies.

Ms. Stagg is consistently recognized by her peers and clients for her skill, tenacity and insight. Ms. Stagg is listed in The Best Lawyers in America® in the areas of Commercial Litigation, Intellectual Property, Litigation, and Labor & Employment for 2017 and each of the nine years immediately preceding. She was recognized as a San Diego “Super Lawyer” for Business Litigation for 2017 and each of the ten years immediately preceding by Super Lawyers magazine and in 2009, Ms. Stagg was recognized as a “Top 25 Female San Diego Super Lawyer” by Super Lawyers magazine. She was named “Best of the Bar” by the San Diego Business Journal in 2014 and 2015. In 2013, Ms. Stagg was recommended by Legal 500 US in the areas of Media, Technology and Telecoms – Data and Privacy and in 2007, she was recommended by Legal 500 US IP and Legal 500 US Litigation in the area of Trade Secrets Advice and Litigation. She was named as one of San Diego’s “Top Ten” attorneys in 2006 by The Daily Transcript.

Ms. Stagg also gives back to the community. She was a finalist for the Mentor of the Year by the Stevie Awards for Women in Business, an honoree of the San Diego Business Journal’s Women Who Mean Business, an honoree of the San Diego YWCA Tribute to Women & Industry, and a two-time recipient of the Manuel Wiley Pro Bono Award for the State Bar of California in 1997 and 2013.
Prior to joining the firm, Ms. Stagg was a partner and litigation department office chair in the San Diego, California office of an international law firm. Ms. Stagg was also a principal in the San Diego, California office of an international intellectual property law firm where she was chair of its diversity initiative.

**Experience Highlights**

**Defended internet retailer in California privacy class action**
Represented an internet-based retailer on privacy issues associated with class action litigation under the California Invasion of Privacy Act. Case settled prior to class certification motion.

**Obtained order decertifying unfair competition and false advertising class action on damages**
After being brought in by client as successor counsel after initial class certification ruling, conducted post-certification discovery and obtained order decertifying a previously-certified three state class action as to damages.

**Quickly resolved TCPA class action for major hospitality chain**
Represented hospitality chain in connection with TCPA class action. Obtained judgment of dismissal after conducting initial investigation which showed plaintiff’s claims lacked merit.

**Obtained summary judgment for telecommunications provider in false advertising class action**
Represented telecommunications company in California class action alleging false advertising regarding description of fees and charges. Obtained summary judgment in favor of telecommunications company after statewide class initially certified. Judgment affirmed after appeal.

**Defeated class certification**
Represented a major hard drive manufacturer located in Silicon Valley in the defense of a consumer class action alleging defective hard drives and breach of product warranty. Defeated class certification and obtained summary judgment of dismissal in favor of manufacturer after successfully excluding plaintiffs’ liability expert.

**Defended Mental Health Parity Act class action**
Represented a large California health plan in defending alleged class action violations of the Mental Health Parity Act, alleged unfair business practices, and alleged violations of the Unruh Act in a class action brought in California Superior Court. Case settled prior to trial.

**Defended consumer goods company in California false advertising class action**
Represented internet-based floral company in defense of class action alleging false advertising over product description. Case resolved successfully prior to class certification motion.

**Obtained important published appellate ruling establishing rights for California trade secret defendants**
Represented a San Diego, California biopharmaceutical company and individual officers in the defense of a trade secret action brought by former employer. Successfully moved the trial court for a detailed trade secret statement from the plaintiff prior to providing the defendants’ responses to discovery related to the alleged trade secrets. In the published appellate opinion, established the right of California defendants in cases involving claims of misappropriation to obtain a trade secret statement with a higher level of particularity where the alleged trade secrets are in a highly specialized technical field.

**Prosecuted bioscience trade secrets case against former corporate officer**
Obtained TRO and preliminary injunction against former officer of California bioscience company in trade secret misappropriation action. Obtained forensic evidence establishing that the officer copied and then deleted files from computer after being served with a turnover order from the court. Case settled after issuance of preliminary injunction.
Defended scientist accused of breach of fiduciary duty
Defended scientist/officer/inventor accused by bankruptcy trustee for former employer of breaching his fiduciary duty in connection with new startup funding opportunity. Obtained summary judgment in bankruptcy court adversary proceeding.

Obtained judgment of dismissal for government sponsored financial services enterprise in consumer class action
Obtained judgment of dismissal (after severing case from multi-district litigation proceeding) for government sponsored financial services enterprise in connection with consumer class action alleging violations of TILA, RESPA and California consumer law statutes over forced place flood insurance policies.

Defended government sponsored financial services enterprise in multiple state class actions
Defended government sponsored financial services enterprise in connection with multiple state class actions filed by local officials seeking payment of transfer taxes for foreclosure document recordings. Obtained rulings (upheld on appeal) that no transfer taxes were due.

Defended non-profit student loan provider in two California consumer class actions
Defended non-profit student loan provider in connection with two California consumer class actions alleging invasion of privacy over allegedly unauthorized recording of telephone calls. Obtained dismissals of both cases.

Defended student loan provider with debtor claims alleging fraud and false advertising
Defended student loan provider in connection with California debtor claims alleging fraud and false advertising in connection with certain fees paid upon loan disbursement. Obtained dismissal prior to hearing on motion to amend to add class allegations.

Defended commercial bank in class action
Defended commercial bank in connection with class action alleging violation of California false advertising statutes over free gift reward program. Negotiated favorable settlement of case.

Wage and hour class action
Achieved favorable settlement for client in connection with defense of retail merchandising company in wage and hour class action.

Employment class action
Achieved favorable settlement for client in connection with defense of same-day delivery service in employment class action over drivers’ independent contractor status.

Defended semiconductor manufacturer in employment discrimination matter
Represented semiconductor manufacturer in connection with declaratory action regarding employee non-compete agreement. Obtained stay of action and negotiated favorable settlement for client.

Negotiated favorable settlement involving non-compete agreement
Represented semiconductor manufacturer in connection with declaratory action regarding employee non-compete agreement. Obtained stay of action and negotiated favorable settlement for client.

Speaking Engagements
Answering the Important Questions Asked of Experts, April 2015
The Top 5 Ethical Issues Facing In House Counsel (and What to Do About Them!), September 2013
Expectations of Privacy? Latest Developments in Data Security and Privacy, April 2013
You’ve Been Hacked: Protecting Your Company from Malicious Threats, May 2012
Publications


Professional & Community Activities
Southern District of California, Lawyer Representative Committee, Co-Chair
Southern District of California to the Ninth Circuit Judicial Conference, Lawyer Representative
American Inns of Court, William B. Enright Chapter, Master, Director, and President
San Diego County Bar Foundation, Director, Governance Sub-Committee, Member
U.S. District Court for the Southern District of California Merit Selection, Member
Appointment and Reappointment of Magistrate Judges, Panel Member
San Diego County Bar Association, Leadership Outreach Council, Member
Association of Business Trial Lawyers, San Diego Chapter, Board of Governors, Member
California Western School of Law, Board of Trustees, Member (1992-1993)
Litigation Counsel of America, Fellow
IP Institute, Founding Charter Member

Education
California Western School of Law, J.D., *cum laude* (1991)

Bar Admissions
California (1991)

Admissions
U.S. District Court for the Southern District of California
U.S. Court of Appeals for the Federal Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. District Court for the Eastern District of California
U.S. District Court for the Northern District of California
U.S. District Court for the Central District of California

Clerkships
U.S. Court of Appeals for the Ninth Circuit – Honorable David R. Thompson
Raymond O. Aghaian
Partner
Los Angeles | 310 310 7010
San Francisco | 415 273 4341
RAGhaian@KilpatrickTownsend.com

Services
White Collar Crime & Internal Investigations, Litigation, Complex Commercial Litigation, Cybersecurity, Privacy & Data Governance, White Collar Crime & Internal Investigations

Industries
Latin America, Retail & Consumer Goods

Ray Aghaian is an experienced trial lawyer and former federal prosecutor focusing his practice on white collar criminal defense, cybersecurity, complex civil litigation, and internal investigations. As a federal prosecutor with the Cyber & Intellectual Property Crimes Section of the U.S. Attorney’s Office in the Central District of California, Mr. Aghaian helped lead the U.S. Justice Department’s efforts in investigating and prosecuting an array of white collar crimes including cyber intrusions, copyright and trademark infringement, healthcare fraud, theft of trade secrets, bribery, mail, wire and bank fraud, money laundering, tax evasion, and mortgage fraud. He has also briefed and argued a number of cases before the U.S. Court of Appeals for the Ninth Circuit.

Mr. Aghaian was selected as one of the “Most Influential Minority Lawyers” in 2016 and one of the “Most Influential Lawyers in White Collar & Cyber Crimes Law” in 2015 by the Los Angeles Business Journal. Mr. Aghaian’s experience in the area of cybersecurity has been recognized by leading news outlets such as The Wall Street Journal and The Washington Post. He has also been recognized as a Top Southern California “Super Lawyer” for White Collar Criminal Defense by Super Lawyers magazine for the last four years and is recommended by Legal 500 in the area of Trade Secret Litigation. As federal prosecutor, Mr. Aghaian was nominated for the prestigious Attorney General’s Award, the highest award in the Department of Justice and has received numerous accolades from various federal law enforcement agencies including:

- Immigration & Customs Enforcement (ICE) Director’s Award for Excellence
- Special Recognition by FBI Director, Robert S. Mueller III
- Housing & Urban Development Inspector General’s Award for Excellence
- ICE Assistant Director’s Award for Excellence
- FBI Los Angeles Special Agent in Charge Award for Outstanding Service
- IRS-Criminal Investigations Los Angeles Special Agent in Charge Award for Outstanding Service
- Department of Labor Los Angeles Special Agent in Charge Award for Outstanding Service

Mr. Aghaian has represented numerous companies and corporate executives in a variety of internal investigations and white collar defense matters involving: bribery, the Foreign Corrupt Practices Act (FCPA), procurement fraud relating to government contractors, the False Claims Act, ITAR and related export control violations, the Lacey Act, and mis-branded and adulterated drugs in violation of FDA regulations, embezzlement and other related fraud under the federal mail and wire fraud statutes. Mr. Aghaian’s engagements in the areas of white collar criminal defense and internal investigations include:
• Representing one of the nation’s largest national laboratories in an internal investigation relating to one of the largest environmental disasters.

• Representing an international management and construction firm with more than $2 billion dollars of annual revenues in relation to an investigation of pending corruption charges against local officials.

• Obtaining a deferred prosecution agreement for a former president of a government contractor in relation to an alleged multimillion dollar criminal False Claims Act and obstruction of justice violations after criminal charges were brought forth by the government.

• Representing a Fortune 200 company in a government investigation involving allegations of export control violations.

• Obtaining dismissal of criminal proceedings in relation to violations of the Business & Professions Code after uncovering evidence of public corruption in relation to the arrest and initiation of criminal charges brought against the client.

• Representing a publicly traded aerospace company relating to an FBI investigation involving alleged ITAR violations.

• Representing a subject of a government investigation involving the $19 billion judgment against Chevron in the Lago Agrio litigation.

• Representing one of the largest aircraft ground handling companies in an internal investigation involving the arrest of employees in the dry-ice bombings in LAX.

• Obtaining dismissal of all criminal proceedings against a corporate officer involving allegations of embezzlement and accounting fraud amounting to approximately $800,000 after the arrest and execution of a search warrant.

• Representing an international insurance company with more than 1,800 employees and more than 1,000 independent brokers in an internal investigation involving fraud and breach of contract by vendors.

• Representing a defendant in post-trial proceedings and obtained a sentence of only three months incarceration after defendant was convicted on multiple counts of obstruction of justice and where co-defendant was sentenced to 24 months on the same counts of conviction. Thereafter obtained a stay of the sentence pending conclusion of appeal.

• Representing a manufacturer of health food, nutritional supplements, and cosmetic products against allegations for violations of The Lacey Act, false labeling, money laundering, and U.S. Customs violations.

• Representing a city council member in an FBI public corruption investigation (no charges filed).

• Representing a former corporate officer in relation to violations of the FCPA.

• Representing a target in the highly publicized Moreno Valley City Council federal corruption investigation.

• Defending a principal of a medical provider in relation to allegations of Medicare fraud and kickbacks involving the highest amount of false Medicare billings in a single healthcare fraud takedown in United States strike force history.

• Representing a former Los Angeles County public official in relation to potential charges of corruption and conflicts of interest violations (no charges filed).

• Representing a medical doctor involving allegations of obtaining miss-branded and adulterated drugs in violation of FDA regulations.

KILPATRICK TOWNSEND

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In the arena of complex civil disputes and litigation, Mr. Aghaian’s engagements include:

- Representing investors in a federal securities fraud lawsuit involving a $7 million media investment contract.
- Defending a property management company in a lawsuit, both as defendant and cross complainant, involving allegations of fraud and theft of trade secrets.
- Defending a professional fiduciary services provider in a lawsuit involving allegations of fraud and foreclosing media coverage of the alleged conduct.
- Representing investors of oil, gas, and mineral rights in a federal securities fraud investigation involving investments of $8 million.
- Representing a cable television network in a lawsuit involving breach of contract and injunctive relief against one of the largest cable operators in the United States.

Examples of some of Mr. Aghaian’s prosecutions and investigations as a federal prosecutor include:

- Leading the highly publicized multi-agency public corruption prosecution of an Assistant Chief Counsel at ICE on charges of bribery, obstruction of justice and tax evasion. As a result of securing a guilty verdict on every count at trial, Mr. Aghaian obtained one of the longest federal corruption sentences of a public official in United States history.
- Leading the prosecution of co-conspirators involved in one of the largest Medicare fraud schemes ever perpetrated by a single criminal enterprise amounting to approximately $160 million of Medicare fraud proceeds.
- Leading the prosecution of a multi-million dollar and multi-agency international cyber-crime scheme perpetrated by an international criminal enterprise resulting in the first arrest and prosecution of a defendant designated as a “Top International Criminal Organization Target.”
- Leading the prosecution of the theft and attempted sale of trade secrets in relation to the manufacture and production of commercial and military aircraft parts.
- Leading the prosecution of cyber-attacks launched against a celebrity rock and roll legend by members of an international cyber hacking group.
- Leading the prosecution of a corporate CEO/accountant for filing false corporate tax returns resulting in a $700,000 tax loss to the United States.
- Leading the prosecution of the sale of misbranded medication in violation of FDA regulations.
- Prosecuting a $29 million multi-agency mortgage fraud and bank fraud conspiracy orchestrated by a 100-employee brokerage firm.
- Prosecution of the importation and attempted sale of counterfeit designer apparel and jewelry from China exceeding a retail value of $20 million.
- Leading the prosecution of a defendant for making death threats against a federal judge.
- Appointed commissioner pursuant to Mutual Legal Assistance Treaties and assisted foreign law enforcement officials in international corruption prosecutions in the United States.
**Speaking Engagements**


Cybersecurity – A Legal Issue Disguised as an IT Problem, August 2016

Confidential Information and Law Firm Cybersecurity – Ethical Standard of Care for Clients, June 2016

Legal Quick Hit: Cybersecurity – A Legal Issue Disguised as an IT Problem, May 2013

Cybersecurity Risks, Opportunities and Solutions for Emerging Growth Companies, May 2016

Cybersecurity Law Conference, May 2016

In-House Counsel Forum on Compliance & Risk Management, April 2016

Cybersecurity and the Government Contractor in 2015, November 2015

Corporate Liability and Government Enforcement in the United States, November 2015

A Perspective from the Other Side, September 2015

Internal Investigations – Ethics in Action, August 2015

Stay Out of Trouble and Off the Radar: How to Maintain the Attorney-Client Privilege and Keep Investigators Away, September 2014

Navigating Today’s Cyber Environment: How Secure is Our Data?, June 2014

Cybersecurity Considerations for Unmanned Aircraft Systems, June 2014

Cybersecurity Considerations for Higher Education Institutions, May 2014

Cybersecurity Considerations for the 40 Act Group, May 2014

Cyber espionage, hacking and the Contractor in the Middle, May 2014

Fraud & Cybersecurity in Today’s Healthcare Industry, March 2014

Internal Investigation Basics, October 2013

Cybersecurity, October 2013

Cyber Investigations – Prophylactic and Post Breach Measures, October 2013

Hacking & Cyber Espionage, September 2013

Cybersecurity, August 2013

How Hackers Crack your IT Networks & Steal your Secrets: Perspectives from Penetration and Forensics Experts on Cybersecurity, July 2013

Discussion on White Collar Crime, May 2013

Counterfeit Parts, May 2013


Cybersecurity – Employees, Hackers, and the Advanced Persistent Threat, September 2012

Yahoo! Cyber Breach and Password Protection, July 2012

Navigating the Cyber Maze – Hacking, Compliance & Legislation, May 2012

Internal Investigations: Challenges and Ethical Dilemmas Facing In-House Counsel, April 2012

Perspective on White Collar Criminal Defense, February 2012

Criminal Investigation of Electronic Crimes, May 2010

Publications

“Special Report with Bret Baier,” Fox News Channel, May 2013


Education

University of California, Hastings College of the Law, J.D., Hastings International & Comparative Law Review, Member (2001)

University of California, Santa Barbara, B.A. (1997)

Bar Admissions

California (2001)

District of Columbia (2002)

Admissions

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the Southern District of California

U.S. District Court for the Northern District of California

U.S. District Court for the Central District of California

Clerkships

Supreme Court of California – Honorable Marvin Baxter
Appendix B: E-Discovery Flat Fee Pricing

Client Data

$450/gigabytes – 0 to 200 gigabyte

$400/gigabytes – 201 to 400 gigabyte

$350/gigabytes – 400 gigabytes

- Legal hold generation and tracking
- Collection (paper and electronic records)
- Pre-Processing and processing (de-nisting and de-duplication)
- Loading into Relativity review platform
- Search term generation
- Analytics (email threading, near duplicate detection, etc.)
- Hosting for 12 months
- Technology assisted review (excluding hours spent reviewing documents)
- User fees
- OCR, TIFF, PDF and load file creation
- Production
- Project management, predictive coding and forensic consulting fees
- CD/ DVD media creation

Incoming/Third-Party Data

$300/gigabyte

- Legal hold generation and tracking
- Loading into Relativity review platform
- Search term generation
- Analytics (email threading, near duplicate detection, etc.)
- Technology assisted review (excluding hours spent reviewing documents)
- Hosting for 12 months
- User fees
- OCR, TIFF, PDF and load file creation
- Production
- Project management, predictive coding and forensic consulting fees
- CD/ DVD media creation

Miscellaneous Services

- $10/gigabyte/month – Active data storage
- $75 to $275/hour – Document review (depending on type, experience and foreign language needs)
Appendix C: Certifications Form
ATTACHMENT B - CERTIFICATIONS

The Proposer certifies that

(A) It ☐ has ☐ has not
   (Check One)

participated in a previous contract or subcontract subject to the equal opportunity clause as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed all reports due under the applicable filing requirements. (Proposed prime consultants and subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such consultant submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor);

(B) The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not, directly or indirectly, induced or solicited any other Consultant to put in a false or sham proposal; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

(C) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(D) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
(E) The language of this certification will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) of $25,000 or more, and all subrecipients will certify and disclose accordingly; and except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:
  o Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
  o Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
  o Does not have a proposed debarment pending; and
  o Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
  o Is not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

(F) Proposer has contacted all subconsultants listed in the proposal and the subconsultants have advised the Proposer that they:
  o Are not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
  o Have not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
  o Do not have a proposed debarment pending; and
  o Have not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.
  o Are not included on the U.S. Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

If there are any exceptions to this certification, insert the exceptions in the following space:

__________________________________________________________________________

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on [date], at [city], [state].

<table>
<thead>
<tr>
<th>Name of Firm:</th>
<th>Kilpatrick Townsend &amp; Stockton LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name:</td>
<td>Nancy Stagg</td>
</tr>
<tr>
<td>Title:</td>
<td>Partner</td>
</tr>
<tr>
<td>Signature:</td>
<td>[signature]</td>
</tr>
<tr>
<td>Date:</td>
<td>March 24, 2017</td>
</tr>
</tbody>
</table>
Appendix D: Conflict of Interest Statement
ATTACHMENT D – CONFLICT OF INTEREST STATEMENT

Organizational and Financial Conflicts of Interest

1. A Consultant is eligible for award of contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial, or organizational conflict of interest.

2. Consultant represents that entry into a Contract for this RFP will not result in a conflict of interest prohibited by California Government Code Section 1090, et seq. nor will Consultant permit any conflict of interest prohibited by such statutes to arise during the performance of this Contract or for a period of one year thereafter. No member, officer, or employee of a local public body, during his tenure or for one year thereafter, may have any interest, direct or indirect, in this Contract or any proceeds from it. No member of or delegate to the United States Congress may have a share or part of this Contract or any benefit arising from it.

A potential conflict of interest may exist in any of the following cases:

1. The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity’s interest are, or may be, adverse to the Board’s interest with respect to the specific project covered by this contract.

2. The Proposer has a business arrangement with a member of the Board or a SANDAG employee or immediate family member of such Board member or employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former SANDAG employees, or their immediate family members.

3. The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the Board.

4. The Proposer, or any of its principals, because of any reason may be unable to provide objective advice to the Board.

Conflict of Interest Statement

X I have no conflict of interest to report.

____ I have the following potential conflict of interest to report:

<table>
<thead>
<tr>
<th>Description of Potential Conflict(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
</tbody>
</table>
I hereby certify that the information set forth above is true and complete to the best of my knowledge.

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Kilpatrick Townsend &amp; Stockton LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name</td>
<td>Nancy Stagg</td>
</tr>
<tr>
<td>Title</td>
<td>Partner</td>
</tr>
<tr>
<td>Signature</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>March 24, 2017</td>
</tr>
</tbody>
</table>
Appendix E: Sample Contract and Terms Of Retention
Introduction

This report provides an update on Senate Bill 1 (SB 1) (Beall), the Road Repair and Accountability Act of 2017, and Assembly Bill 805 (AB 805) (Gonzalez Fletcher), which would make various changes to the organizational, governance, and voting structures of SANDAG as well as modify the governance and authorities of the San Diego Metropolitan Transit System (MTS) and North County Transit District (NCTD).

Discussion

Senate Bill 1 - Road Repair and Accountability Act of 2017

On April 6, 2017, the California State Legislature passed SB 1, the Road Repair and Accountability Act of 2017. The urgency measure will take effect immediately upon signature by the Governor.

SB 1 is estimated to provide about $52.4 billion over the next decade, split equally between state and local investments, including several new funding streams that could benefit the San Diego region. Based on annual estimates provided by the Legislature, there will be about $1.5 billion for local streets and roads; $1.5 billion for state highway repair and maintenance; $769 million for transit operations and capital; $300 million for freight, trade corridors, and goods movement; $200 million available for self-help counties; and $250 million for a new Congested Corridors Program that specifically calls out the North Coast Corridor as an example project.

Details regarding several of the new funding streams is not yet available; in general however, the San Diego region typically receives about 8-10 percent of statewide funding, which could equate to approximately $400 - $520 million per year under SB 1. Of this amount, the League of California Cities estimates that cities and counties will receive about double what they currently receive per year for local streets and roads purposes. Staff will continue to monitor the development of the various funding opportunities and return to the Board of Directors with additional details as they become available.
According to the Governor’s office, the transportation funding package contains the following:

Fix Local Streets and Transportation Infrastructure:
- $15 billion in “Fix-It-First” local road repairs, including fixing potholes
- $7.5 billion to improve local public transportation
- $2 billion to support local “self-help” communities that are making their own investments in transportation improvements
- $1 billion to improve infrastructure that promotes walking and bicycling
- $825 million for the State Transportation Improvement Program local contribution
- $250 million in local transportation planning grants

Fix State Highways and Transportation Infrastructure:
- $15 billion in “Fix-it-First” highway repairs, including smoother pavement
- $4 billion in bridge and culvert repairs
- $3 billion to improve trade corridors
- $2.5 billion to reduce congestion on major commute corridors
- $1.4 billion in other transportation investments, including $275 million for highway and intercity-transit improvements

Ensure Taxpayer Dollars Are Spent Properly with Strong Accountability Measures:
- Constitutional amendment to prohibit spending the funds on anything but transportation
- Inspector General to ensure Caltrans and any entities receiving state transportation funds spend taxpayer dollars efficiently, effectively, and in compliance with state and federal requirements
- Provision that empowers the California Transportation Commission to hold state and local government accountable for making the transportation improvements they commit to delivering
- Authorization for the California Transportation Commission to review and allocate Caltrans funding and staffing for highway maintenance to ensure those levels are reasonable and responsible
- Authorization for Caltrans to complete earlier mitigation of environmental impacts from construction, a policy that will reduce costs and delays while protecting natural resources

The package is funded as follows:
- $7.3 billion by increasing diesel excise tax 20 cents
- $3.5 billion by increasing diesel sales tax to 5.75 percent
- $24.4 billion by increasing gasoline excise tax 12 cents
- $16.3 billion from an annual transportation improvement fee based on a vehicle’s value
- $200 million from an annual $100 Zero-Emission Vehicle fee commencing in 2020
- $706 million in General Fund loan repayments

Assembly Bill 805

Pursuant to Senate Bill 1703 (Peace, 2002), SANDAG, which was established as a joint powers agency in the 1970s, was designated as the San Diego Consolidated Transportation Agency. As a result, the organizational, governance and voting structures of SANDAG are prescribed by California statute.

On February 15, 2017, Assembly Member Lorena Gonzalez Fletcher introduced AB 805, which would make various changes to these provisions as well as modify the governance and authorities of MTS and NCTD. This report provides a summary of the major provisions included in this legislation.
SANDAG Board of Directors

SANDAG is governed by a 21-member Board of Directors composed of mayors, councilmembers, and county supervisors from each of the region's 19 local governments. Each jurisdiction appoints one primary member to the SANDAG Board of Directors, except for the City of San Diego and the County of San Diego, which have two members each.

If passed, AB 805 would require the mayor of each city and the Chair of the Board of Supervisors to serve as the primary representative on the SANDAG Board of Directors. The measure also prescribes that the president of the San Diego City Council would serve as its secondary representative.

Current law provides for appointments of alternate members to the Board of Directors, selected by a jurisdiction’s governing body. AB 805 also would provide for a first and second alternate; however, the “city or county” would make these selections rather than the governing body. “City or county” is not defined in the bill; therefore, it is unknown how this may impact how selections are made by the jurisdiction. In addition, it is not clear if AB 805 would impact the total number of alternates the City of San Diego and County of San Diego would be allowed to have.

Finally, current SANDAG statute subjects all Board members to recall by their respective governing bodies; if passed, AB 805 would remove this provision thereby providing no recall mechanism.

Officers of the Board of Directors

The SANDAG Chair and Vice Chair serve as the leadership officers of the Board of Directors. The Board may create additional officers and elect members to those positions; however, no member may hold more than one office. Pursuant to current SANDAG statutory authority, the Board has established annual terms of office for the Chair and Vice Chair positions.

The proposal included in AB 805 would require that the mayors of the largest city and the second-largest city alternate between serving as Chair and Vice Chair of the Board for four-year terms. (In terms of current population, the two largest cities in the region are the cities of San Diego and Chula Vista.) Additionally, the Board would be authorized to establish the term of office only for officers of the Board other than the Chair and Vice Chair.

SANDAG Voting Structure

With the exception of the Consent Agenda and when otherwise required by statute, all items before the Board of Directors currently require a majority tally vote (one vote per member agency jurisdiction) as well as a majority of the weighted vote of the member agencies present. The weighted vote is proportional to each jurisdiction’s population as a percentage of the San Diego County region and is limited to a total of 100 votes. Each agency must have at least 1 vote, no agency may have more than 40 votes, and there are no fractional votes.

The governing bodies of the City of San Diego and County of San Diego are authorized to determine how to allocate their weighted votes between their primary and secondary representatives. Historically, the City and County have split these votes equally between their two members.

1 Under current statute, consent items require a majority vote of the members present based on one vote per agency, otherwise known as a tally vote.
The weighted vote distribution is calculated based on the State Department of Finance estimates as of May 1 of each year. The current weighted vote distribution is as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>Weighted Votes</th>
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<tbody>
<tr>
<td>Carlsbad</td>
<td>3</td>
</tr>
<tr>
<td>Encinitas</td>
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<tr>
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<tr>
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<tr>
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<tr>
<td>San Diego A</td>
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<tr>
<td>San Diego B</td>
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<td>County of San Diego A</td>
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<tr>
<td>La Mesa</td>
<td>2</td>
</tr>
<tr>
<td>San Marcos</td>
<td>3</td>
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<tr>
<td>County of San Diego B</td>
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</tr>
<tr>
<td>Lemon Grove</td>
<td>1</td>
</tr>
<tr>
<td>Santee</td>
<td>2</td>
</tr>
<tr>
<td>Del Mar</td>
<td>1</td>
</tr>
<tr>
<td>National City</td>
<td>2</td>
</tr>
<tr>
<td>Solana Beach</td>
<td>1</td>
</tr>
<tr>
<td>El Cajon</td>
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<td>Oceanside</td>
<td>5</td>
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<tr>
<td>Vista</td>
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</table>

AB 805 would remove the tally vote and instead would require only a majority of the weighted vote of members present in order to act on any item. The bill also would mandate that the City of San Diego and County of San Diego allocate their weighted votes equally between their primary and secondary representatives, and it would remove the 40 vote per agency cap.

It appears that the weighted vote distribution under AB 805 would be modified as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>Weighted Votes</th>
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<tbody>
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<td>San Diego B</td>
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<td>County of San Diego A</td>
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<td>La Mesa</td>
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<td>San Marcos</td>
<td>3</td>
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<tr>
<td>County of San Diego B</td>
<td>7.58</td>
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<td>Lemon Grove</td>
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<td>Santee</td>
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<td>National City</td>
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<tr>
<td>El Cajon</td>
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<tr>
<td>Oceanside</td>
<td>5</td>
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<tr>
<td>Vista</td>
<td>3</td>
</tr>
</tbody>
</table>

**SANDAG Policy Advisory Committees**

SANDAG currently has five Policy Advisory Committees, which are described in Attachment 2. There are elected officials and designated representatives, as well as voting and advisory (non-voting) members on each of the Policy Advisory Committees. Except for the Executive Committee, voting members on the Policy Advisory Committees may be primary, secondary, or alternate members of the Board of Directors.

AB 805 would require that primary voting members on the Executive Committee and proposed new Audit Committee (described below) be the respective agency's primary representative to the Board of Directors.

Among its other responsibilities, the Transportation Committee currently is statutorily-required to provide a strong focus and commitment to meeting the public transit needs of the San Diego region, set transit funding criteria and recommend transit funding levels, and undertake transit responsibilities resulting from consolidation, as delegated by the board.
AB 805 would add to those responsibilities by requiring the Transportation Committee to develop an annual report that specifies the funds spent explicitly on public transportation and outlines the public transit needs, transit funding criteria, recommended transit funding levels, and additional work on public transit, as delegated to the Transportation Committee by the Board of Directors. The Board would be required to submit this report to the Legislature by July 1 of each year.

Auditing Procedures

As the consolidated agency, Public Utilities Code (PUC) Section 132354.1 requires that the SANDAG Board of Directors arrange for a post audit of the financial transactions and records of SANDAG to be made at least annually by a certified public accountant. Similarly, PUC Section 132104 states that SANDAG, as the San Diego County Regional Transportation Commission, shall cause a post-audit of the financial transactions and records of the Commission and of all revenues expended to be made at least annually by a certified public accountant.

The Executive Committee currently oversees the annual financial audit process for SANDAG and its three component units, which include the San Diego County Regional Transportation Commission, SourcePoint, and the Automated Regional Justice Information System. In accordance with this practice, the Director of Finance, utilizing an independent auditor, presents a Comprehensive Annual Financial Report to the Executive Committee and Board of Directors after the close of each fiscal year.

In addition, the TransNet Extension Ordinance created the TransNet Independent Taxpayer Oversight Committee (ITOC), which is composed of seven members of the public who have been selected to serve in specified areas of professional expertise. The ITOC is responsible for:

- Conducting an annual fiscal and compliance audit of all TransNet-funded activities using the services of an independent fiscal auditor to assure compliance with the voter-approved Ordinance and Expenditure Plan. This annual audit covers all recipients of TransNet funds during the fiscal year and evaluates compliance with the maintenance of effort requirement and any other applicable requirements.
- Preparing an annual report to the SANDAG Board of Directors presenting the results of the annual audit process. The report includes an assessment of the consistency of the expenditures of TransNet funds with the Ordinance and Expenditure Plan and any recommendations for improving the financial operation and integrity of the program for consideration by the Board of Directors.
- Conducting triennial performance audits of SANDAG and other agencies involved in the implementation of TransNet-funded projects and programs to review project delivery, cost control, schedule adherence and related activities.
- Participating in the ongoing refinement of the SANDAG transportation system performance measurement process and the project evaluation criteria used in development of the Regional Transportation Plan and in prioritizing projects for funding in the Regional Transportation Improvement Program.
- Reviewing ongoing SANDAG system performance evaluations.

Further, SANDAG employs a Principal Management Internal Auditor that performs various auditing activities in accordance with government auditing standards. The Internal Auditor plans, supervises, and oversees administrative, financial, operational, and management audits of SANDAG activities and programs; and provides recommendations for consideration in formulating policies and procedures.
establishing internal management controls, and improving operational and organizational performance. The Internal Auditor has unrestricted access to all SANDAG operations, activities, records, and personnel relevant to the performance of audit activities. In addition, the Internal Auditor has the authority to investigate any suspected fraud, waste, or abuse within SANDAG.

Language included in AB 805 would create a new Audit Committee, consisting of five voting members with two SANDAG Board members and three members of the public to be appointed by the Board of Directors. The committee would make a recommendation to the Board of Directors on the contract of the firm conducting the annual financial statement audits; appoint an independent performance auditor, subject to Board approval; and approve an annual audit plan required under AB 805.

The proposed independent performance auditor under AB 805 would conduct performance audits of all departments, offices, boards, activities, agencies, and programs of SANDAG; prepare annual audit plans; and investigate material claims of financial fraud, waste, or impropery within SANDAG. The independent performance auditor would serve a term of five years and could only be removed for cause.

In addition, AB 805 would provide the independent performance auditor with “the power to appoint, employ, and remove assistants, employees, and personnel as deemed necessary for the efficient and effective administration of the affairs of the office and to prescribe their duties, scope of authority, and qualifications.” It is not clear whether this authority would be limited to the functions of the auditor or apply to SANDAG in its entirety.

Finally, AB 805 would authorize the independent performance auditor to summon any officer, agent, or employee of SANDAG and examine him or her upon oath or affirmation for certain investigatory purposes. If implemented as written, it appears that this provision could obligate SANDAG, under certain circumstances, to provide employees with representation.

**Metropolitan Transit System**

AB 805 would incorporate statutory changes to the MTS governance structure and authorize the MTS Board to levy up to a half-cent sales tax for “public transit purposes” serving the MTS jurisdiction, if approved by a two-thirds vote of the public. While the current 15-member MTS Board of Directors is to be retained, AB 805 proposes several significant changes including, but not limited to, the following:

- Elimination of the Board-appointed chair: the mayors of the largest city and second largest city would alternate between serving as the MTS chairperson and vice chairperson every four years.
- Board Membership: The City of San Diego would continue to have four Board Members, one of which must be the mayor and the other three must be councilmembers. The City of Chula Vista would have two members, one of which must be the mayor and the other must be a councilmember. The cities of Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee would each continue to have one member however that member must be the mayor. The County of San Diego Board Member would be required to represent the supervisorial district with the greatest percentage of its area within the incorporated area of the County of San Diego within MTS jurisdiction.

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Under AB 805, “public transit purposes” includes the public transit responsibilities under the jurisdiction of the board as well as any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian accessway.
• Eliminates the Tally Vote: All actions by the Board would require an affirmative vote of the majority of the weighted vote of the members present. The proposal would eliminate the tally vote and remove the requirements associated with calling for the weighted vote. (Two members currently must call for the weighted vote for it to take place.)

• Modifies Weighted Votes: The proposal also would remove the cap on the City of San Diego’s weighted vote and assign half of the City’s weighted vote to the mayor; the other half would be evenly split between the three councilmembers. Currently, the City’s weighted votes are assigned evenly between its four members. The City of Chula Vista’s weighted vote would be divided evenly between the mayor and the councilmember.

**North County Transit District**

AB 805 would incorporate statutory changes to the NCTD governance structure and authorize the NCTD Board to levy up to a half-cent sales tax for “public transit purposes”\(^3\) serving the NCTD jurisdiction, if approved by a two-thirds vote of the public. AB 805 proposes the following changes to NCTD:

• Specifies the mayors of the respective cities, instead of council-appointed representatives, serve on the Board of Directors.

• Establishes that all official acts of the Board require the affirmative vote of the majority of the weighted vote of the members present based on the population of the respective cities and the population of the unincorporated parts of the County in NCTD’s jurisdiction.

**Next Steps**

Staff will continue to monitor the implementation of SB 1 and keep the Executive Committee and Board of Directors apprised of any new funding opportunities.

AB 805 has been scheduled for its first hearing by the Assembly Committee on Local Government on April 19, 2017. The proposal also has been referred to the Assembly Committee on Transportation; however, a hearing date has not yet been set.

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3 Under AB 805, “public transit purposes” includes the public transit responsibilities under the jurisdiction of the board as well as any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian accessway.
An act to amend Sections 120050.2, 120051, 120051.6, 120102.5, 125050, 125102, 132351.1, 132351.2, 132351.4, 132352.3, 132354.1, and 132360.1 of, to add Article 11 (commencing with Section 120480) to Chapter 4 of Division 11 of, to add Article 9 (commencing with Section 125480) to Chapter 4 of Division 11.5 of, and to repeal Sections 120050.5 and 120051.1 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL’S DIGEST

AB 805, as amended, Gonzalez Fletcher. County of San Diego: transportation agencies.

(1) Existing law provides for the consolidation of certain regional transportation planning, programming, and related functions in San Diego County from various existing agencies including the San Diego Association of Governments (SANDAG), the San Diego Metropolitan Transit Development Board, also known as the San Diego Metropolitan Transit System (MTS), and the North County Transit District (NCTD). Existing law provides for the consolidated agency, commonly known as SANDAG, to be governed by a board of directors of 21 city and county members selected by the governing body of each member agency.
This bill would require the mayor of each city to serve on the board of directors, except in the case of the City of San Diego, where the mayor and the president of the city council would serve. The bill would require the chairperson of the County of San Diego board of supervisors to serve on the board as one of the 2 members from the county board of supervisors. The bill would also revise the selection of alternate members of the board.

Existing law, in order for the SANDAG board to act on any item, generally requires a majority vote of the members present on the basis of one vote per agency as well as a weighted vote pursuant to a specified process, except in the case of consent items.

This bill would instead require a majority of the weighted vote of the board members present in order for the board to act on any item. The bill would also modify the weighted vote process.

Existing law provides for SANDAG to have 4 standing policy advisory committees named the executive, transportation, regional planning, and borders committees.

This bill would additionally provide for an audit committee with specified responsibilities, including the selection of an independent performance auditor. The bill would require SANDAG to submit an annual report to the Legislature, developed by its transportation committee, that outlines various matters related to public transit.

Existing law provides for the consolidated agency to prepare a regional comprehensive plan containing various elements, as specified.

This bill would require the regional comprehensive plan to address greenhouse gas emissions reduction rules and regulations adopted by the State Air Resources Board and associated emissions limits. The bill would also require the plan to identify disadvantaged communities. The bill would require the plan to include strategies relative to those matters.

(2) Existing law creates MTS and NCTD, with various public transit responsibilities in the southern and northern parts of the County of San Diego, respectively. Existing law provides for MTS to be governed by a board of 15 members, while NCTD is governed by a board of 9 members, with each board generally consisting of city and county representatives selected by member agencies. Existing law provides that the chairperson of the MTS board is a resident of the County of San Diego selected by the board, as specified.

This bill would generally require the city representatives on each board to be the mayor of the city, except in the case of the City of San
Diego, where 3 of the 4 members other than the mayor would be selected by the city council. The bill would provide for the city council of the City of Chula Vista to appoint a 2nd member. The bill would provide for the chairperson of the MTS board to be the mayor of the City of San Diego, alternate between the mayors of the 2 largest cities. The bill would require the member of the board of supervisors to be the member representing the district with the greatest percentage of its area within the incorporated area of the county within the MTS jurisdiction. The bill would also revise the process for selecting alternate members of the MTS board.

Existing law generally provides that official acts of the MTS or NCTD board require the affirmative vote of the majority of the members of the board, except that a weighted vote of the MTS board may be requested pursuant to a specified process.

This bill would create a similar weighted voting process for NCTD. The bill would require all official acts of the MTS or NCTD boards to require the affirmative vote of the majority of the weighted vote of the board members present.

Existing law authorizes various transportation agencies, including SANDAG, to impose a transactions and use tax for transportation purposes within its jurisdiction, subject to approval of \( \frac{2}{3} \) of the voters and various other requirements. Existing law provides for issuance of bonds backed by these tax revenues, as specified.

This bill would additionally authorize MTS and NCTD to individually impose a transactions and use tax within their respective portions of the County of San Diego, with revenues to be used for public transit purposes, as specified, serving their jurisdictions, and to issue bonds backed by these tax revenues, subject to similar requirements.

(3) By imposing additional requirements on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 120050.2 of the Public Utilities Code is amended to read:

120050.2. The board consists of 15 members selected as follows:

(a) One member of the County of San Diego Board of Supervisors, appointed by the board of supervisors.

(b) The mayors of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, and Santee.

(c) Three members of the City Council of the City of San Diego and one member of the City Council of the City of Chula Vista, each appointed by their respective city council.

(d) The chairperson of the board shall be the mayor of the city with the largest population.

(d) The mayors of the largest city and the second largest city shall alternate between serving as the chairperson and vice chairperson of the board every four years.

SEC. 2. Section 120050.5 of the Public Utilities Code is repealed.

SEC. 3. Section 120051 of the Public Utilities Code is amended to read:

120051. The member of the board of supervisors appointed pursuant to subdivision (a) of Section 120050.2 shall represent one of the two supervisorial districts with the greatest percentage of its area within the incorporated area of the County of San Diego within the area under the jurisdiction of the transit development board as defined in Section 120054.

SEC. 4. Section 120051.1 of the Public Utilities Code is repealed.

SEC. 5. Section 120051.6 of the Public Utilities Code is amended to read:

120051.6. The alternate members of the board shall be appointed as follows:

(a) The County of San Diego Board of Supervisors shall appoint any other county supervisor who qualifies for appointment pursuant to Section 120051 represents one of the two supervisorial districts with the greatest percentage of its area within the incorporated area of the County of San Diego within the area under the jurisdiction of the transit development board as defined in Section 120054.
districts with the greatest percentage of its area within the
incorporated area of the County of San Diego within the area, not
already appointed under Section 120051, under the jurisdiction
of the transit development board as defined in Section 120054 to
serve as an alternate member of the transit development board.

(b) The city councils of the cities specified in subdivision (b)
of Section 120050.2 shall each individually appoint a member of
their respective city councils not already appointed pursuant to
subdivision (b) or (c) of Section 120050.2 to serve as an alternate
member of the transit development board for each member of the
city on the board.

(c) At its discretion, a city council or the county board of
supervisors may appoint a second alternate member, in the same
manner as first alternates are appointed, to serve on the board in
the event that neither a member nor the alternate member is able
to attend a meeting of the board.

(d) An alternate member and second alternate member shall be
subject to the same restrictions and shall have the same powers,
when serving on the board, as a member.

SEC. 5.

SEC. 6. Section 120102.5 of the Public Utilities Code is
amended to read:

120102.5. (a) A majority of the members of the board
constitutes a quorum for the transaction of business. All official
acts of the board require the affirmative vote of the majority of the
weighted vote of the members present. However, any reference in
this division to a two-thirds vote of the members of the board shall
be deemed to mean the affirmative vote of two-thirds of the
weighted vote of the members present.

(b) In the case of a weighted vote, there shall be a total of 100
votes. Each member agency shall have that number of votes
annually determined by the following apportionment formula,
provided that each agency shall have at least one vote, and that
there shall be no fractional votes:

1. Compute, consistent with subdivision (d), the total population
of the cities and the county, and compute the percentage of this
total for each agency.

2. Boost percentage fractions in the case of each agency where
the total is less than one, to one, and then add to that number only
the whole numbers, excluding fractions, for all other agencies.
(3) If the total cumulative number under paragraph (2) is less than 100, add one vote each to the agencies that, prior to exclusion under paragraph (2), had the highest fractional amounts, but exclude from this allocation any agency whose fraction was boosted under paragraph (2), until a total of 100 votes is reached. 

(4) If the total cumulative number under paragraph (2) is more than 100, subtract one vote each from the agencies that, prior to exclusion under paragraph (2), had the lowest fractional amounts, until a total of 100 votes is reached, but in no case shall an agency have less than one vote.

(c) The City of San Diego shall allocate half of its weighted vote to the mayor of the City of San Diego, and the other half shall be divided equally between the three city council members. The City of Chula Vista shall allocate its weighted vote evenly between its two members.

(d) For purposes of subdivision (b), the population of the County of San Diego is the population in the unincorporated area of the county within the area of jurisdiction of the transit development board pursuant to Section 120054.

(e) The board shall adopt a policy and procedure to implement this section.

SEC. 6. SEC. 7. Article 11 (commencing with Section 120480) is added to Chapter 4 of Division 11 of the Public Utilities Code, to read:

Article 11. Transactions and Use Tax

120480. (a) A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory within the area of the board pursuant to Section 120054 shall be imposed by the board in accordance with Section 120485 and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if two thirds of the voters voting on the measure vote to approve its imposition at a special election called for that purpose by the board and Section 2 of Article XIII C of the California Constitution. The tax ordinance shall take effect at the close of the polls on the day of election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with Section 120483.
(b) If, at any time, the voters do not approve the imposition of the transactions and use tax, this chapter remains in full force and effect. The board may, at any time thereafter, submit the same, or a different, measure to the voters in accordance with this chapter.

120481. (a) The board, in the ordinance, shall state the nature of the tax to be imposed, the tax rate or the maximum tax rate, the purposes for which the revenue derived from the tax will be used, and may set a term during which the tax will be imposed. The purposes for which the tax revenues may be used shall be limited to public transit purposes serving the area of jurisdiction of the board, as determined by the board, including the administration of this division and legal actions related thereto. These purposes include expenditures for the planning, environmental reviews, engineering and design costs, and related right-of-way acquisition. The ordinance shall contain an expenditure plan that shall include the allocation of revenues for the purposes authorized by this section.

(b) As used in this section, “public transit purposes” includes the public transit responsibilities under the jurisdiction of the board as well as any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian accessway.

120482. (a) The county shall conduct an election called by the board pursuant to Section 120480.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of elections by a county.

120483. (a) Any transactions and use tax ordinance adopted pursuant to this article shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the board shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance. The costs to be covered by the contract may also include services of the types described in Section 7272 of the Revenue and Taxation Code for preparatory work up to the operative date of the ordinance. Any disputes as to the amount of the costs shall be resolved in the same manner as provided in that section.

120484. The revenues from the taxes imposed pursuant to this article may be allocated by the board for public transit purposes
consistent with the applicable regional transportation improvement program and the applicable regional transportation plan.

120485. The board, subject to the approval of the voters, may impose a maximum tax rate of one-half of 1 percent under this article and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. The board shall not levy the tax at a rate other than one-half or one-fourth of 1 percent unless specifically authorized by the Legislature.

120486. The board, as part of the ballot proposition to approve the imposition of a retail transactions and use tax, may seek authorization to issue bonds payable from the proceeds of the tax.

120487. Any action or proceeding wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this article or the issuance of any bonds thereunder or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced within six months from the date of the election at which the ordinance is approved; otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance, shall be held to be valid and in every respect legal and incontestable.

120488. The board has no power to impose any tax other than the transactions and use tax imposed upon approval of the voters in accordance with this article.

SEC. 7.

SEC. 8. Section 125050 of the Public Utilities Code is amended to read:

125050. There is hereby created, in that portion of the County of San Diego as described in Section 125052, the North County Transit District. The district shall be governed by a board of directors. As used in this division, “board” means the board of directors of the district. The board shall consist of members selected as follows:

(a) One member of the San Diego County Board of Supervisors appointed by the board of supervisors, which member shall represent, on the board of supervisors, the largest portion of the area under the jurisdiction of the district.

(b) The mayors of the Cities of Carlsbad, Del Mar, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista, and each new city that incorporates within the district boundaries.
SEC. 8.
SEC. 9. Section 125102 of the Public Utilities Code is amended to read:

125102. (a) A majority of the members of the board constitutes a quorum for the transaction of business. All official acts of the board require the affirmative vote of the majority of the weighted vote of the members of the board present. However, any reference in this division to a two-thirds vote of the members of the board shall be deemed to mean the affirmative vote of two-thirds of the weighted vote of the members present.

(b) In the case of a weighted vote, there shall be a total of 100 votes. Each member agency shall have that number of votes annually determined by the following apportionment formula, provided that each agency shall have at least one vote, and that there shall be no fractional votes:

(1) Compute, consistent with subdivision (c), the total population of the cities and the county, and compute the percentage of this total for each agency.

(2) Boost percentage fractions in the case of each agency where the total is less than one, to one, and then add to that number only the whole numbers, excluding fractions, for all other agencies.

(3) If the total cumulative number under paragraph (2) is less than 100, add one vote each to the agencies that, prior to exclusion under paragraph (2), had the highest fractional amounts, but exclude from this allocation any agency whose fraction was boosted under paragraph (2), until a total of 100 votes is reached.

(4) If the total cumulative number under paragraph (2) is more than 100, subtract one vote each from the agencies that, prior to exclusion under paragraph (2), had the lowest fractional amounts, until a total of 100 votes is reached, but in no case shall an agency have less than one vote.

(c) For purposes of subdivision (b), the population of the County of San Diego is the population in the unincorporated area of the county within the area of jurisdiction of the board pursuant to Section 125052.

(d) The board shall adopt a policy and procedure to implement this section.

SEC. 10. Article 9 (commencing with Section 125480) is added to Chapter 4 of Division 11.5 of the Public Utilities Code, to read:
Article 9. Transactions and Use Tax

125480. (a) A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory within the area of the board pursuant to Section 125052 shall be imposed by the board in accordance with Section 125485 and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if two-thirds of the voters voting on the measure vote to approve its imposition at a special election called for that purpose by the board. 

and Section 2 of Article XIII C of the California Constitution. The tax ordinance shall take effect at the close of the polls on the day of election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with Section 125483.

(b) If, at any time, the voters do not approve the imposition of the transactions and use tax, this chapter remains in full force and effect. The board may, at any time thereafter, submit the same, or a different, measure to the voters in accordance with this chapter.

125481. (a) The board, in the ordinance, shall state the nature of the tax to be imposed, the tax rate or the maximum tax rate, the purposes for which the revenue derived from the tax will be used, and may set a term during which the tax will be imposed. The purposes for which the tax revenues may be used shall be limited to public transit purposes serving the area of jurisdiction of the board, as determined by the board, including the administration of this division and legal actions related thereto. These purposes include expenditures for the planning, environmental reviews, engineering and design costs, and related right-of-way acquisition. The ordinance shall contain an expenditure plan that shall include the allocation of revenues for the purposes authorized by this section.

(b) As used in this section, “public transit purposes” includes the public transit responsibilities under the jurisdiction of the district as well as any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian accessway.

125482. (a) The county shall conduct an election called by the board pursuant to Section 125480.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of elections by a county.
125483. (a) Any transactions and use tax ordinance adopted pursuant to this article shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the board shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance. The costs to be covered by the contract may also include services of the types described in Section 7272 of the Revenue and Taxation Code for preparatory work up to the operative date of the ordinance. Any disputes as to the amount of the costs shall be resolved in the same manner as provided in that section.

125484. The revenues from the taxes imposed pursuant to this article may be allocated by the board for public transit purposes consistent with the applicable regional transportation improvement program and the applicable regional transportation plan.

125485. The board, subject to the approval of the voters, may impose a maximum tax rate of one-half of 1 percent under this article and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. The board shall not levy the tax at a rate other than one-half or one-fourth of 1 percent unless specifically authorized by the Legislature.

125486. The board, as part of the ballot proposition to approve the imposition of a retail transactions and use tax, may seek authorization to issue bonds payable from the proceeds of the tax.

125487. Any action or proceeding wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this article or the issuance of any bonds thereunder or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced within six months from the date of the election at which the ordinance is approved; otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance, shall be held to be valid and in every respect legal and incontestable.

125488. The board has no power to impose any tax other than the transactions and use tax imposed upon approval of the voters in accordance with this article.

SEC. 10.

SEC. 11. Section 132351.1 of the Public Utilities Code is amended to read:
132351.1. (a) A board of directors consisting of 21 members shall govern the consolidated agency.

(b) For purposes of this chapter, “governing body” means the board of supervisors, council, council and mayor where the mayor is not a member of the council, authority, trustees, director, commission, committee, or other policymaking body, as appropriate, that exercises authority over an entity represented on the board of the consolidated agency.

(c) All powers, privileges, and duties vested in or imposed upon the consolidated agency shall be exercised and performed by and through a board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and redelegated by the board, to any of the offices, officers, or committees created pursuant to this chapter or created by the board acting pursuant to this chapter.

(d) The board shall be composed of one primary representative of each city in the county and the chair of the San Diego County Board of Supervisors. However, the City of San Diego and the County of San Diego shall each have a primary and secondary representative, which for the City of San Diego shall be the mayor of the City of San Diego and the president of the city council. Except in the case of the City of San Diego and the County of San Diego, each director shall be the mayor of the governing body of his or her city. Each city or county shall also select one alternate to serve on the board when the primary or secondary representative, if applicable, is not available. The alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the representative for whom he or she is substituting. The alternate shall be a councilperson or supervisor, as applicable, of his or her governing body.

(e) Notwithstanding subdivision (d), in those years when the chair of the San Diego County Board of Supervisors is from a district that is substantially an incorporated area, a supervisor who represents a district that is substantially an unincorporated area shall be appointed to the board as the secondary representative. Alternatively, in those years when the chair of the San Diego County Board of Supervisors is from a district that is substantially an unincorporated area, a supervisor who represents a district that is substantially an incorporated area shall be appointed to the board as the secondary representative.
At its discretion, each city or county may select a second alternate, in the same manner as the first alternate, to serve on the board in the event that neither the primary representative nor the first alternate is able to attend a meeting of the board. This alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the primary representative.

The board may allow for the appointment of advisory representatives to sit with the board but in no event shall those representatives be allowed a vote. The current advisory representatives to the San Diego Association of Governments may continue their advisory representation on the consolidated agency at the discretion of their governing body. The governing bodies of the County of Imperial and the cities in that county may collectively designate an advisory representative to sit with the board.

SEC. 11.

SEC. 12. Section 132351.2 of the Public Utilities Code is amended to read:

132351.2. (a) A majority of the member agencies constitute a quorum for the transaction of business. In order to act on any item, the affirmative vote of the majority of the weighted vote of the members present is required.

(b) The governing body of the City of San Diego and the County of San Diego shall allocate its their weighted votes equally between its their primary and secondary members.

(c) For the weighted vote, there shall be a total of 100 votes, except additional votes shall be allowed pursuant to subdivision (f). Each member agency shall have that number of votes determined by the following apportionment formula, provided that each agency shall have at least one vote and there shall be no fractional votes:

1. Compute the total population of the San Diego region and compute the percentage of this total for each agency.
2. Boost percentage fractions in the case of each agency where the total is less than one, to one, and then add to that number only the whole numbers, excluding fractions, for all other agencies.
3. If the total cumulative number under paragraph (2) is less than 100, add one vote each to the agencies that, prior to exclusion...
under paragraph (2), had the highest fractional amounts, but exclude from this allocation any agency whose fraction was boosted under paragraph (2), until a total of 100 votes is reached.

(4) If the total cumulative number under paragraph (2) is more than 100, subtract one vote each from the agencies that, prior to exclusion under paragraph (2), had the lowest fractional amounts, until a total of 100 votes is reached, but in no case shall an agency have less than one vote.

(d) The weighted vote formula under subdivision (c) shall be recomputed every July 1.

(e) Any newly incorporated city shall receive one vote under the weighted vote procedure until the next recomputation of the weighted vote formula under subdivision (c), at which time the new agency shall receive votes in accordance with the recomputed formula. Until this recomputation, the total weighted vote may exceed 100.

SEC. 13. Section 132351.4 of the Public Utilities Code is amended to read:

132351.4. (a) The consolidated agency shall have five standing policy advisory committees named the executive, transportation, regional planning, borders, and audit committees. The responsibilities of the committees shall be established by the board. Committee membership may be expanded by the consolidated agency, and shall be selected in accordance with a process established by the consolidated agency. The membership shall be as follows:

(1) The executive committee shall consist of six voting members with board members representing east county, north county coastal, north county inland, south county, and the representative, or the representative’s alternate in their absence, from the City of San Diego and the county. The chairperson and the vice chairperson of the consolidated agency shall each be one of the six voting members.

(2) (A) The transportation committee shall consist of nine voting members with board members or alternates representing east county, north county coastal, north county inland, south county and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, a member of the board of the MTDB appointed by the board of the MTDB, a member of
the board of the NCTD appointed by the board of the NCTD, and a member of the San Diego County Regional Airport Authority appointed by the airport authority.

(B) Among its transportation responsibilities, the transportation committee shall provide a strong focus and commitment to meeting the public transit needs of the San Diego region, set transit funding criteria and recommend transit funding levels, and undertake transit responsibilities resulting from consolidation, as delegated by the board.

(C) The board shall provide a report, developed by the transportation committee, to the Legislature on or before July 1 of each year that outlines the public transit needs, transit funding criteria, recommended transit funding levels, and additional work on public transit, as delegated to the transportation committee by the board. The report shall specify the funds spent explicitly on public transportation. The report shall be submitted consistent with Section 9795 of the Government Code.

(3) The regional planning committee shall consist of six voting members with board members or alternates representing east county, north county coastal, north county inland, south county, and the mayor or a council member from the City of San Diego, and a supervisor from the County of San Diego.

(4) The borders committee shall consist of seven voting members with board members or alternates representing east county, north county coastal, north county inland, south county, the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, and a mayor, council member, or supervisor from the County of Imperial.

(5) The audit committee shall consist of five voting members with two board members and three members of the public to be appointed by the board. The audit committee shall oversee and direct the work of the independent auditor pursuant to subdivision (b) of Section 132354.1. The audit committee shall recommend to the board the contract of the firm conducting the annual financial statement audits and the hiring of the independent performance auditor and approve the annual audit plan after discussion with the independent performance auditor pursuant to subdivision (b) of Section 132354.1.

(b) The board may appoint other standing and ad hoc working groups to advise it in carrying out its responsibilities.
(c) No board member may serve as a member of more than two standing policy advisory committees at any one time, except those board members serving on the audit committee.

SEC. 13.

SEC. 14. Section 132352.3 of the Public Utilities Code is amended to read:

132352.3. The officers of the board are the chairperson and the vice chairperson. The mayors of the largest city and the second-largest city shall alternate between serving as chairperson and vice chairperson for four-year terms. The board may create additional officers and elect members to those positions. However, no member may hold more than one office. The term of office for any officers of the board other than the chairperson and the vice chairperson shall be established by the board.

SEC. 14.

SEC. 15. Section 132354.1 of the Public Utilities Code is amended to read:

132354.1. (a) The board shall arrange for a post audit of the financial transactions and records of the consolidated agency to be made at least annually by a certified public accountant.

(b) The audit committee shall appoint an independent auditor, subject to approval by the board, to perform audits of the consolidated agency, which shall include, but not be limited to, all of the following:

(1) Financial transactions report.
(2) Expenditure plan.
(3) Annual budget.
(4) Revenue forecasts.

(c) The independent auditor shall serve a term of five years, and may only be removed for cause.

(b) (1) The audit committee shall appoint an independent performance auditor, subject to approval by the board, who may only be removed for cause by a vote of at least two-thirds of the audit committee and the board.

(2) The independent performance auditor shall have authority to conduct or to cause to be conducted performance audits of all departments, offices, boards, activities, agencies, and programs of the consolidated agency. The auditor shall prepare annually an audit plan and conduct audits in accordance therewith and perform those other duties as may be required by ordinance or as provided
by the California Constitution and general laws of the state. The auditor shall follow government auditing standards. All officers and employees of the consolidated agency shall furnish to the auditor unrestricted access to employees, information, and records, including electronic data, within their custody regarding powers, duties, activities, organization, property, financial transactions, contracts, and methods of business required to conduct an audit or otherwise perform audit duties. It is also the duty of any consolidated agency officer, employee, or agent to fully cooperate with the auditor, and to make full disclosure of all pertinent information.

(3) The auditor shall have the power to appoint, employ, and remove assistants, employees, and personnel as deemed necessary for the efficient and effective administration of the affairs of the office and to prescribe their duties, scope of authority, and qualifications.

(4) The auditor may investigate any material claim of financial fraud, waste, or impropriety within the consolidated agency and for that purpose may summon any officer, agent, or employee of the consolidated agency, any claimant, or other person, and examine him or her upon oath or affirmation relative thereto. All consolidated agency contracts with consultants, vendors, or agencies will be prepared with an adequate audit provision to allow the auditor access to the entity’s records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public in accordance with the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Title 1 of the Government Code).

(c) The board shall develop and adopt internal control guidelines to prevent and detect financial errors and fraud based on the internal control guidelines developed by the Controller pursuant to Section 12422.5 of the Government Code and the standards adopted by the American Institute of Certified Public Accountants.

(d) The board shall develop and adopt an administration policy that includes a process to conduct staff performance evaluations on a regular basis to determine if the knowledge, skills, and abilities of staff members are sufficient to perform their respective...
functions, and shall monitor the evaluation process on a regular basis.

SEC. 15. SEC. 16. Section 132360.1 of the Public Utilities Code is amended to read:

132360.1. In preparing and updating the regional comprehensive plan, it is the intent of the Legislature that:

(a) The regional comprehensive plan preserve and improve the quality of life in the San Diego region, maximize mobility and transportation choices, and conserve and protect natural resources.

(b) The regional comprehensive plan shall address the greenhouse gas emissions reduction rules and regulations adopted by the State Air Resources Board pursuant to Section 38560 of the Health and Safety Code and the statewide greenhouse gas emissions limit set forth in Section 38566 of the Health and Safety Code and include strategies in that regard, including the establishment of aggressive nonautomobile modal share targets for the region.

(c) The regional comprehensive plan shall identify disadvantaged communities as designated pursuant to Section 39711 of the Health and Safety Code and include transportation strategies to reduce pollution exposure in these communities.

(d) In formulating and maintaining the regional comprehensive plan, the consolidated agency shall take account of and shall seek to harmonize the needs of the region as a whole, the plans of the county and cities within the region, and the plans and planning activities of organizations that affect or are concerned with planning and development within the region.

(e) The consolidated agency shall engage in a public collaborative planning process. The recommendations resulting from the public collaborative planning process shall be made available to and considered by the consolidated agency for integration into the draft regional comprehensive plan. The consolidated agency shall adopt a procedure to carry out this process including a method of addressing and responding to recommendations from the public.

(f) In formulating and maintaining the regional comprehensive plan, the consolidated agency shall seek the cooperation and consider the recommendations of all of the following:
(1) Its member agencies and other agencies of local government within the jurisdiction of the consolidated agency.
(2) State and federal agencies.
(3) Educational institutions.
(4) Research organizations, whether public or private.
(5) Civic groups.
(6) Private individuals.
(7) Governmental jurisdictions located outside the region but contiguous to its boundaries.

(g) The consolidated agency shall make the regional comprehensive plan, policies, and objectives available to all local agencies and facilitate consideration of the regional comprehensive plan in the development, implementation, and update of local general plans. The consolidated agency shall provide assistance and enhance the opportunities for local agencies to develop, implement, and update general plans in a manner that recognizes, at a minimum, land use, transportation compatibility, and a jobs-to-housing balance within the regional comprehensive plan.

(h) The consolidated agency shall maintain the data, maps, and other information developed in the course of formulating the regional comprehensive plan in a form suitable to assure a consistent view of developmental trends and other relevant information for the availability of and use by other government agencies and private organizations.

(i) The components of the regional comprehensive plan may include, but are not limited to, transportation, housing, water quality and supply, infrastructure, air quality, energy, solid waste, economy, and open space, including habitat. Performance standards and measurable criteria shall be established through a public process to ensure that the regional comprehensive plan is prepared consistent with these measures as well as in determining achievement of the regional comprehensive plan goals throughout its implementation.

(j) Any water supply component or provision of the regional infrastructure strategy regarding water supply contained in the regional comprehensive plan shall be consistent with the urban water management plan and other adopted regional water facilities and supply plans of the San Diego County Water Authority.
SEC. 16.  If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
OPERATIONS POLICY

Board and Policy Advisory Committees Responsibilities

Shown below are responsibilities for the Board of Directors and each of the five Policy Advisory Committees (Executive, Transportation, Regional Planning, Borders, and Public Safety). Selected responsibilities are delegated by the Board to the Policy Advisory Committees to allow SANDAG to effectively address key public policy and funding responsibilities. All items delegated to the Policy Advisory Committees are subject to Board ratification.

All functions not specifically delegated by the Board to a Policy Advisory Committee may be delegated to a Policy Advisory Committee on a one-time basis upon request by the Executive Director and approval by the Chair. Such actions shall be reported to the Board at its next regular meeting.

A. Board Responsibilities

1. Approve the Regional Plan, which merges the Regional Comprehensive Plan (RCP), the Regional Transportation Plan, and the Sustainable Communities Strategy as well as plan components and other regional plans (e.g., Regional Energy Plan, MHCP, etc.).

2. Approve Regional Transportation Improvement Program (RTIP) and corridor studies

3. Fulfill responsibilities of SB 1703 as consolidated agency

4. Fulfill the responsibilities of the San Diego Regional Transportation Commission (RTC)

5. Approve programming of funds (TDA, CMAQ, STIP, etc.)

6. Approve project environmental reports

7. Approve Overall Work Program and Program Budget

8. Approve amendments to the Program Budget and Overall Work Program and authorize contracts with consultants for amounts equal to or greater than the amounts to be determined for administrative and policy committee authorization.

9. Approve the annual legislative agenda

10. Provide policy direction through Policy Development Board meetings

11. Appoint Committees and Board officers
12. Delegate responsibilities to Policy Advisory Committees and ratify Committee actions. All items delegated to the five Policy Advisory Committees are subject to direct Board action upon request of any members.

13. Delegate responsibilities to Board Chair consistent with Board criteria. Conference sponsorships and proclamations are hereby delegated subject to current or subsequently approved criteria.

B. Executive Committee Membership and Responsibilities

The Executive Committee shall consist of six voting members with board members representing East County, North County Coastal, North County Inland, South County, and the representative, or the representative’s alternate in their absence, from the City of San Diego and the County. The Board Chair shall be one of the six voting members. The Chair and Vice Chair of the Board shall serve as voting members of the Executive Committee, unless both of these Board Officers are from the same subregion, in which case only the Chair shall serve as a voting member, the Vice Chair shall serve as an alternate, and the Chair shall select a non-overlapping primary member of the Executive Committee as its Vice Chair. Additionally, any Chair of any other Policy Advisory Committee who is not otherwise a member of the Executive Committee shall serve as an advisory, non-voting member of the Executive Committee.

1. Set agenda for Board. Any Board member requesting that an item be considered for inclusion on the agenda must present such request in writing to the Chairperson prior to the Executive Committee’s consideration of such agenda.

2. Review and recommend Overall Work Program and Program Budget

3. Approve amendments to the Program Budget and Overall Work Program and authorize contracts up to amount approved by the Board

4. Review and act on state and federal legislation

5. Comment on behalf of SANDAG or provide recommendations to the Board regarding comments on third party environmental documents

6. Act upon and evaluate dispute resolution

7. Advise on personnel actions

8. Act on behalf of Board when timing requires

9. Make policy recommendations to the Board

10. Perform other duties as assigned by the Board

11. Approve financial/contracting transactions, including selection of vendors, acceptance of funding, stipulations of any nature, and any resulting budget amendment up to $500,000, subject to increase by Board action.
12. Annually review a list of all the SANDAG lower-level committees and working groups to determine the need to maintain the committee or working group and approve any revisions in functions or membership.

13. Review all proposed amendments to the Bylaws or Board Policies and make recommendations to the Board regarding those amendments.

14. Conduct expedited reviews and approvals of Energy Working Group actions on an as-needed basis.

C. Transportation Committee Membership and Responsibilities

The Transportation Committee shall consist of nine voting members with board members or alternates representing East County, North County Coastal, North County Inland, South County and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, a member of the Board of the MTS appointed by the Board of the MTS, a member of the Board of the NCTD appointed by the Board of the NCTD, and a member of the San Diego County Regional Airport Authority appointed by the Airport Authority.

1. Provide oversight for consolidated transit responsibilities

2. Provide policy oversight for transportation plans and corridor and systems studies

3. Establish/approve transportation prioritization criteria, including for the Active Transportation Grant Program

4. Approve TDA and STA claim amendments and RTIP and STIP amendments

5. Recommend funding allocations to the Board

6. Approve transit operator budgets for funding

7. Approve Regional Short Range Transit Plan and Coordinated Human Service and Public Transportation Plan

8. Make recommendations regarding changes to Board Policy No. 018 (Transit Service Policy) and Board Policy No. 029 (Regional Fare Policy and Comprehensive Fare Ordinance)

9. Conduct public hearings as delegated by Board

10. Approve contracts for transit up to amount approved by the Board

11. Advise Board on other transportation policy-level issues

12. Recommend legislative program for transportation and transit
13. Approve financial/contracting transactions, including selection of vendors, acceptance of funding, stipulations of any nature, and any resulting budget amendment up to $500,000 for transportation items, subject to increase by Board action.

14. Convene closed sessions and make final decisions with regard to real property transactions related to transportation projects; however, this delegation does not include the authority to make a Resolution of Necessity or to commence litigation.

15. Conduct hearings and authorize additional public meetings when appropriate pursuant to Board Policy No. 025 to hear official testimony from the public regarding Comprehensive Fare Ordinance amendments.

16. Approve amendments to the Comprehensive Fare Ordinance.

17. Accept for distribution, hold public hearings regarding, and adopt/certify environmental documents where items can be approved through actions of the policy committee.

18. Approve loans of TransNet funds when such loans are incorporated into an RTIP amendment requiring an exchange of TransNet funds for funds from another source.

19. Provide oversight and approvals for Coordinated Transportation Services Agency (CTSA) matters and appoint Transportation Committee representative to the CTSA board.

20. Approve revisions to funding allocations for Federal Transit Administration Section 5311 funding.

21. Approve the TransNet compliance audits consistent with Board Policy No. 031 (TransNet Ordinance and Expenditure Plan Rules).

22. Provide input on project selection criteria for, and recommend projects for funding under, the TransNet Smart Growth Incentive Program and Environmental Mitigation Program.

23. Provide oversight for Service Authority for Freeway Emergencies (SAFE) responsibilities and related motorist aid programs.

24. Provide coordinated oversight with the Regional Planning Committee for recommendations on the preparation and implementation of components of the Regional Plan.

D. Regional Planning Committee Membership and Responsibilities

The Regional Planning Committee shall consist of six voting members with board members or alternates representing East County, North County Coastal, North County Inland, South County, and the mayor or a council member from the City of San Diego, and a supervisor from the County of San Diego.

1. Provide coordinated oversight with the Transportation Committee for recommendations on the preparation and implementation of components of the Regional Plan.
2. Recommend regional infrastructure financing strategies to the Board

3. Represent the Board for outreach and public information on the Regional Plan and its components

4. Advise Board on regional planning policy issues

5. Approve distribution of funds from the California Coastal Commission Beach Sand Mitigation Fund

6. Recommend project selection criteria for, and recommend projects for funding under, the TransNet Smart Growth Incentive Program and Environmental Mitigation Program

E. Borders Committee Membership and Responsibilities

The Borders Committee shall consist of seven voting members with board members or alternates representing East County, North County Coastal, North County Inland, South County and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, and a mayor, council member, or supervisor from the County of Imperial.

1. Provide oversight for planning activities that impact the borders

2. Provide oversight for the preparation of binational and interregional planning programs

3. Recommend border infrastructure financing strategies to the Board

4. Establish closer SANDAG working relations with surrounding counties and Mexico

5. Advise Board on binational and interregional policy-level issues

6. Review and comment on regionally significant projects in adjoining counties

F. Public Safety Committee Membership and Responsibilities

The membership, authority and responsibilities for this committee are set forth in Board Policy No. 026.

G. Distribution of Meeting Materials

1. All agendas for meetings of the Board of Directors, Policy Advisory Committees, and all other SANDAG legislative bodies covered by the Brown Act (Government Code § 54950 et seq.) shall be posted on the SANDAG Web site and copies of such agendas will be available for viewing by the public in the SANDAG business office reception area.

2. All closed session items shall be provided to appropriate Board and/or Policy Advisory Committee members prior to the closed session. Closed session meeting materials will be sent by a secure method and clearly labeled as confidential. If a representative will not be able to attend a meeting he/she should ensure the closed session materials are
forwarded to the appropriate alternate to review prior to the meeting. All closed
session meeting materials must be deleted or returned to the Office of General Counsel
at the end of the closed session.

H. Work Assigned to Staff

Requests for staff to perform work on a project that is not specified in the Overall Work Program or
Program Budget shall only be conducted following approval by the Board if the work is estimated
to exceed four hours of staff time.

Adopted January 2003
Amended November 2004
Amended January 2006
Amended December 2006
Amended January 2010
Amended December 2012
Amended October 2013
Amended March 2014
Amended November 2014
Amended December 2015
Amended January 2017
Greenhouse Gas Reduction Target Setting
Board of Directors — April 14, 2017

Background

- SB 375 requires CA Air Resources Board to consider new GHG reduction targets
- SANDAG technical stress tests: Joint MPO presentation at March ARB meeting
- SANDAG to recommended 2035 target to ARB
Meeting California’s Overall GHG Emissions Target

Advanced Clean Cars 4%
Low Carbon Fuel Standard 20%
Statewide SB 375 Targets 4%
Tire Pressure Program 1%
Ship Electrification 0%
Heavy Duty Aerodynamics 1%
Energy Efficiency and Conservation 16%
Million Solar Roofs 1%
Renewable Electricity Standard (20-33%) 13%
Solar Hot Water 0%
High Global Warming Potential (GWP) Gases 7%
Waste 2%
Cap-and-Trade Reductions 29%

Source: 2014 Scoping Plan (ARB)

Stress Tests: Adopted Land Use Plans

1999 Forecast

2013 Forecast

25-30% Per Capita GHG Reductions
**Technical Stress Tests**

- Seven stress tests conducted
  - Regional Plan scenario
  - Alternatives
    - Land use and advanced transit phasing
      - 0 to 2 percent additional per capita reduction
    - Pricing
      - 6 to 7 percent additional per capita reduction
      - Adds $150 to $180 per 1,000 miles of driving
    - Vehicle technologies
      - Approximately 20 percent additional per capita reduction
      - EV market penetration 4X faster than ARB estimates

**SB 375 Per Capita GHG Reduction Targets – Existing and Recommended**

- 2035 Target
  - Current Target: 13%
  - Recommended Target: 18%
Factors That Could Affect GHG Performance

- Could Improve Performance
  - Lower Income Estimates
  - SB1 Fuel Cost Increases

- Could Diminish Performance
  - Higher Vehicle Fuel Efficiency
  - Lower Cost of Fuel (Federal Estimate)
  - Slower Population Growth
  - Increasing Auto Ownership

Next Steps

- Continue statewide MPO coordination for possible uniform target
- Target recommendation to ARB – May 1, 2017
- ARB releases draft target setting staff report – spring/summer 2017
- SANDAG provides comments on draft targets – summer 2017
- ARB target approval – fall 2017
- SANDAG 2019 Regional Plan adoption – fall 2019
Recommendation

The Board of Directors is asked to:

(1) approve the 2035 per capita greenhouse gas (GHG) emission reduction target recommendation for the San Diego region of 18 percent; and

(2) authorize the Executive Director to submit the proposed target to the California Air Resources Board pursuant to Senate Bill 375 for its use in the GHG emissions reduction target setting process.
Dear members of the board, I have lived in the North County for over 30 years, and while riding a bike or walking, it has not been easy.

Let me explain, just today while bike riding on West Vista way a car made a right turn in front of me with out any hesitation or signal, or couple of weeks ago while waling in a cross walk I had to wait for vehicle to clear before I could cross, with the crosswalk light flashing. What I’m trying to tell you is that there is a struggle out there, and when you painted some areas for Bicycles, well it just a thought, because more than 70% of the drivers regard bikes and pedestrians AS A PROBLEM.

I enjoy whether walking or riding a bicycle in my neighborhood of Carlsbad, but beware of cars, trucks, or Suv because they Own the road.

It’s nice to see the cities have stripped some streets roads as bicycle paths, but the drivers I face have not recognized that pedestrians and bicycle riders have rite of way. Those white lines don’t mean much to guys doing forty or fifty mile per hour on some streets, they just want to get their way, and you the SANDAG just now started with some bike notices on Buses to see them. Wow this is a slow education process, because your cops don’t even recognize bike on the road, just try to get some help, and boy what a big deal it is for them to even talk to you. That’s right Oceanside cops could care less, just try to get some help, and it like they are doing you a favor, wow,

What I’m trying to say is the pedestrians and bicycle riders have little protection or help from cops out there and the your DMV laws are not helping because Law enforcement does not see us as worth bothering with. That’s right I have written to Your sheriff and boy yawn, go away they cant be bothered my traffic issues or concerns. So that leaves me with who needs cops I f I’m splattered on a cross walk or bike lane I don’t need their Help when I’m dead. So You think just maybe these cops can See Us more as some one deserving help when needed, and not in past tense.

And by the way if you guys think you are making headway in pedestrian and bicycle safety, just check the number of fatalities and tell us of your improvements.

Thanks a concerned citizen.

George Gwiazdowski
April 5, 2017

Re: SANDAGs Flawed Tax Revenue Projection and Measure A

Chair Roberts and SANDAG Board,

I am writing to register my emphatic support of the SANDAG Board Executive Committee’s decision to establish a subcommittee that will oversee the selection of an independent legal-investigative firm to examine and prepare a report on the alleged (reported) failure by the SANDAG executive team to acknowledge and act promptly to address a seriously flawed tax revenue projection, failure to remove that flawed projection in the recent Measure A that falsely claimed to raise an additional “18 Billion” in tax revenues ($3-4 Billion more than is reasonable to project), and failure to apprise the SANDAG Board of that devastating error. SANDAG’s executive team appears to have failed as administrator of one of the largest public funding entities in San Diego. The fact that all of this only surfaced because of brilliant investigative reporting by the Voice of San Diego reinforces the perception of the public that the executive team has self-implicated itself: despite that it had been fully-informed (repeatedly) by SANDAG staff and its new chief economist of the existence and enormity of this error nearly a year before the Voice articles broke, it made incredible excuses that it did not understand the implications of the error and took no actions to disclose and remedy the error until after the Board and public were apprised of the situation, as summarized in a new Voice article published April 5 and prior reporting:


Additional information contained in previous Voice articles can be found as follows:


The forecast error was embedded in SANDAG’s initial (2004) economic forecast projections for the TransNet Program funding that was used for project planning and financing (i.e., bonding). The error was discovered by SANDAG staff in late 2015, and yet SANDAG management knowingly incorporated that error into the revenue projections (that were to fund the various projects) in Measure A (Quality of Life Initiative) on last November’s ballot. SANDAG submitted formal paperwork to the San Diego Registrar of Voters to have the measure added to the ballot, and certified that all of the information/documents that were part of the filing were “true and accurate.” Given that we now know SANDAG’s executive team was fully aware that claiming “18 billion” would be raised by Measure A – not the most likely amount of $13-14 Billion - was highly questionable and likely neither true nor accurate), the ramifications for SANDAG’s existing commitments - and future projects in its long-term funding plans - are immense. The failure by the executive team to
recognize this and take necessary and reasonable actions before Measure A was submitted and put on the ballot is irresponsible, appears to be a failure of its administrative requirements and its ethical responsibilities (to the Board and public), and warrants formal actions. If warranted by the independent investigation report’s findings, the report should also include recommendations for what formal actions can/should be pursued according to all applicable laws and regulations.

For over a year, the SANDAG executive team appears to have dismissed the significance of the potential forecast error. In fact, well after all of that reporting, SANDAG published an OpEd by Chair Ron Roberts that attempted to explain the issue and implied that there may be no problem with the forecast - even though SANDAG had recently adopted a new, lower revenue projection model for its current budgeting – that action occurring within a few months after the public exposure of the error and prior to his OpEd.

On April 5 the Voice reported that Chair Roberts stated he would not have written his OpEd if he had known more about the issue. That comment is puzzling because all of the relevant “facts” had been reported previously in the series of Voice articles cited above. As of April 5, the SANDAG OpEd remained on the SANDAG website at: http://sandag.org/index.asp?newsid=934&fuseaction=news.detail. Given the misstatements in that OpEd, SANDAG should provide a revised, corrected version and post that on its website.

Major problems with the existing article are that it does not include relevant information, makes confusing statements and downplays potentially serious ramifications to San Diego taxpayers, such as:

1. Among the seemingly contradictory statements is that based on reporting by the Voice of San Diego (Voice), SANDAG staff discovered the potentially significant revenue forecast error over a year ago (late 2015), raised that issue to SANDAG’s new chief economist - who was alarmed at the discovery - and started working on to understand/revise its modeling. So, Staff and Management knew about the error and began to work to revise it in early 2016. And Staff/Manager presentations were prepared and apparently presented to the Executive Team. Yet, the OpEd carefully never references when SANDAG’s Executive Team was apprised of this (Voice suggests it was early in the process) and never indicates if anyone on the Board was apprised - informally or formally. It’s inconceivable to think that an error that would result in such a potentially devastating revenue shortage for current and future projects wasn’t fully reported to and discussed among the Executive Team and Board.

2. The OpEd claims that no one at SANDAG “understood” the significance of the error (for over 9 months?) - and then rhetorically answers the question about whether the revenues are overstated with the statement “Maybe, but we won’t know for sure till 2048.” That “explanation/excuse” completely overlooks the facts, as reported by the Voice, that SANDAG staff and managers clearly understood the huge ramifications on revenue forecasts. Also, SANDAG has decades of experience in modeling transportation system needs and revenues, forecasting housing needs, projecting population growth, etc. SANDAG’s statement about not understanding the implications of the flawed revenue projection is also contradicted by a simple figure (reported by Voice) that SANDAG staff had prepared in early 2016 that clearly showed the extremely aggressive and anomalous revenue projection from that failed model, as compared to historical and "realistic" revenue scenarios. The OpEd does not mention how actual revenues have fallen short of projected revenues during the years since TransNet was enacted in 1988, which would certainly have suggested the projection has been overly optimistic. SANDAG should fully address that kind of information in the correcting the OpEd.

3. Given all those indications of a failed revenue model/projected revenue shortfalls, it seems that SANDAG should have at least admitted those serious concerns - or even retracted its data/forecast that were the basis for Measure A - before the Measure was submitted to the County Registrar of Voters. If SANDAG could not decide to submit the ballot to reflect the reduced revenue projection, then it should not have submitted the ballot measure. The article makes it seem that there was so much confusion/uncertainty about the revenue that it could not do anything about what appeared to be misleading - if not false - information in the measure. As part of the submitted ballot measure, SANDAG was required to certify all the relevant associated documents were true and accurate. Given the known error in the projected revenues, it appears that the information was not true and accurate.

4. After the Voice articles in October 2016 - and more importantly only AFTER the public vote, SANDAG management, "rather than wait" (for SANDAG staff to update the model during FY 2017), had staff update the estimate. It did this within a month or so and reportedly merely used a combination of off-the-shelf national modeling methods to update its projection. That method projects $3.3 Billion less revenue than the $18 Billion through 2048. That is essentially what Voice reported in October as the deficit (from other SANDAG information the number was possibly $4B).

5. A significant statement that should be a BIG problem for SANDAG (and all San Diego County taxpayers) is that now SANDAG believes it will need state and federal dollars funding dollars at a match ratio of 3.4:1. This is a huge problem
since many state and federal programs require a 25% local match (which is a 3:1 ratio). That 0.4:1 shortfall is a funding gap that likely cannot be bridged, and it should force a total re-assessment of the SANDAG project list and priorities.

As reported recently by KPBS, in a response to the flawed revenue projection and likely reductions in Caltrans funding (http://www.kpbs.org/news/2017/mar/01/transportation-construction-going-strong-may-slow-/) SANDAG may adopt a "pay as you go" approach to funding its projects. [Gary Gallegos, the executive director of SANDAG, said 40 percent of the work promised under the 2008 TransNet sales tax has been done. But the last 60 percent will take longer. That is because, instead of borrowing against future tax revenue, the agency has adopted a “pay-as-you-go” strategy. “What that means is that you collect enough money 'til you can afford to build the project,” Gallegos said. “So you don’t borrow to build it now. So it takes longer.”]

That approach seems to be a short-sighted reaction to the identified, flawed SANDAG projection of revenues. Rather than adopting a limited "pay-as-you-go" approach, SANDAG – like any responsible major transportation/planning agency – needs to be able to borrow against reasonable future (tax) revenues, such as through issuing bonds, to construct and adapt the region's transportation infrastructure to meet changing transportation needs. That requires a competent and innovative management team, operating with full transparency, hiring and listening to competent staff, and placing the public’s needs and interests ahead of all others.

This letter highlights the most egregious problems and failings of the current SANDAG executive team’s management. San Diego needs a regional transportation agency that operates with transparency and utilizes the most appropriate and forward-looking tools to create a truly functional, world-class transportation system network. Our region has neither and it appears that significant changes within SANDAG are needed to achieve those necessary conditions.