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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 14/1248

12 **COMMITTEE FOR A VIBRANT**
13 **DOWNTOWN – NO ON MEASURE M –**
14 **MAJOR FUNDING BY GREENHEART**
LAND COMPANY and RUSSELL
15 **MILLER**

STIPULATION, DECISION, AND ORDER

16 Respondents.

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18 **STIPULATION**

19 Complainant, the Fair Political Practices Commission (Commission), and respondents
20 Committee for a Vibrant Downtown – No on Measure M – Major Funding by Greenheart Land
21 Company and Russell Miller (Respondents) hereby agree that this Stipulation will be submitted for
22 consideration by the Fair Political Practices Commission at its next regularly-scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Respondents.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
6 to timely disclose a contribution in violation of Government Code section 84211, subdivisions (a), (c)
7 and (f), as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though
8 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing an administrative penalty in the amount of Two
11 Thousand Five Hundred Dollars (\$2,500). Respondents submitted with this Stipulation a cashier's check
12 in said amount, made payable to the "General Fund of the State of California," as full payment of the
13 administrative penalty that shall be held by the State of California until the Commission issues its
14 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
15 accept this Stipulation, the checks shall become null and void, and within fifteen (15) business days after
16 the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
17 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
18 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____
23 Galena West, on behalf of the Enforcement Division
24 Fair Political Practices Commission

25 Dated: _____
26 Robert Burke on behalf of Committee for a Vibrant
27 Downtown – No on Measure M – Major Funding by
28 Greenheart Land Company

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Dated: _____
Russell Miller, Treasurer

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Committee for a Vibrant Downtown – No on Measure M – Major Funding by Greenheart Land Company and Russell Miller,” FPPC No. 14/1248, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Committee for a Vibrant Downtown – No on Measure M – Major Funding by Greenheart Land Company (“No on M”) was a ballot measure committee in the City of Palo Alto. Measure M appeared on the 2014 general election ballot in the City of Menlo Park. Respondent Russell Miller (“Miller”) served as the treasurer for No on M.

The Political Reform Act (the “Act”)¹ requires a committee to timely disclose on its campaign statements all non-monetary contributions valued at \$100 or more that it receives. No on M violated the Act by failing to timely disclose a non-monetary contribution valued at \$31,030 that it received from Greenheart Land Company (“Greenheart”). As No on M’s treasurer, Miller is jointly liable for No on M’s campaign disclosure violations.²

SUMMARY OF THE LAW

Disclosing contributions on campaign statements

The Act requires a committee to file campaign statements disclosing the total amount of contributions the committee receives and providing information about the source of any contributions valued at \$100 or more.³ In an election year, a committee must file a pre-election campaign statement on or before October 5th that discloses the committee’s financial activity between July 1st and September 30th.⁴

Non-monetary contributions

Under the Act, a “contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment for which full and adequate consideration is not received by the giver.⁵ The definition of “contribution” includes any goods or services received by a candidate or committee at no charge or at a discount from fair market value.⁶ This type of contribution is commonly referred to as a “non-monetary” or “in kind” contribution.

¹The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² See Sections 83116.5 and 91006

³ Section 84211, subdivisions (a), (c) and (f)

⁴ Section 84200.7, subdivision (b)(1)

⁵ Section 82015

⁶ Regulation 18215, subdivision (b)(3)

SUMMARY OF THE FACTS

Measure M proposed to limited commercial office space in Menlo Park. Greenheart owned real property in Menlo Park that it planned to develop into a commercial center so Measure M would have negatively impacted Greenheart's development plans.

In June of 2014, Greenheart hired Godbe Corporation ("Godbe") to conduct a telephone survey to gage public sentiment about commercial development in Menlo Park. Greenheart paid Godbe \$31,030 for its services. The survey took place in July of 2014.

Based in part on the result of the Godbe survey, Greenheart officials created No on M to oppose Measure M. No on M filed a statement of organization on August 6, 2014. Greenheart then made a \$200,000 monetary contribution to No on M. Greenheart also made non-monetary contributions to No on M by paying for the Godbe survey, and paying a consultant \$2,500 for services the consultant provided to No on M. These three contributions from Greenheart were the only contributions No on M received for the election.

No on M used its funds to produce campaign literature and mailers opposing Measure M, and for slate mailers supporting certain candidates for city council in Menlo Park. No on M made use of the findings of the Godbe survey in its effort to oppose Measure M. No on M successful defeated Measure M in the general election.

No on M timely filed a pre-election campaign statement that covered all of its activity through September 30, 2014. The statement did not disclose receipt of the Godbe survey as a non-monetary contribution from Greenheart. Greenheart also did not timely disclose providing the Godbe survey to No on M on its major donor campaign statement for that period. No on M and Greenheart both filed amended statements disclosing the Godbe survey non-monetary contribution upon learning of the complaint in this case.

VIOLATION

Count 1 – Failure to timely disclose receipt of a contribution

No on M failed to timely disclose receipt of a non-monetary contribution valued at \$31,030 from Greenheart in violation of Section 84211, subdivisions (a), (c), and (f).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence

or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Failure to timely disclose receiving contributions of \$100 or more on campaign statements typically results in a penalty ranging from \$2,000 to \$3,000. For example:

- *In the Matter of Joe Yee, Friends of Joe Yee for City Council 2012, and Lynda Otto*, FPPC No. 12/820 (Commission approved stipulated decision on February 20, 2014): The respondents failed to disclose non-monetary contributions they received in the form of reduced rent for their committee headquarters. The reduction in rent totaled \$1,200 in value for one statement period and \$900 for a second statement period. The respondents agreed to pay a penalty of \$2,000 per count for two counts of failing to disclose receipt of contributions.
- *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652 (Commission approved stipulated decision on February 10, 2011). The respondents failed to disclose numerous contributions of \$100 or more over three statement periods. Respondent stipulated to three counts, one for each statement period and paid a penalty of \$2,500 for failing to disclose 21 contributions totaling \$22,388 in one statement period; \$2,500 for failing to disclose 21 contributions totaling \$11,650; and \$2,000 for failing to disclose two contributions totaling \$3,100.
- *In the Matter of Joshua Mitchell and Joshua Mitchell for Mayor 2012*, FPPC No. 13/138 (Commission approved stipulated decision on June 19, 2014). In one statement period the respondents failed to timely disclose 39 contributions of \$100 or more that totaled \$7,041.76. The respondents paid a penalty of \$3,000 for the violation.

The amount of the undisclosed contribution from Greenheart was larger than the comparable cases discussed above. But it was one contribution from a single source that went undisclosed, not multiple contributions from multiple sources. Further, Greenheart sponsored No on M so it's unlikely that No on M was attempting to conceal the contribution. Greenheart's support for No on M would have been apparent to any person who viewed either committee's campaign filings. However, because both No on M and Greenheart failed to timely disclose the non-monetary contribution, the large contribution was not disclosed to the public at all until after the election.

No on M and Greenheart both filed amended statements disclosing the contribution upon learning of the complaint in this case. No on M contends that because Greenheart paid Godbe to conduct the survey well before the formation of No on M, they overlooked the payment in preparing campaign statements.

PROPOSED PENALTY

After considering the factors listed in Regulation 18361.5, the penalties in prior cases, and other relevant factors, we propose a penalty of \$2,500.