

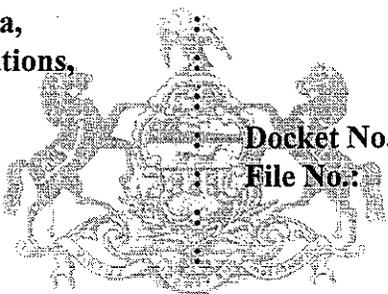
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations,

vs.

Response Dynamics,
Respondent.



Docket No.: 0004-98-00
File No.: 99-98-00754

DEPARTMENT OF STATE
PROFESSIONAL AFFAIRS

APR 24 9 44 AM '00

PROFESSORIAL AFFAIRS
APR 17 11 06:55

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and Response Dynamics ("Respondent") stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, *as amended* ("Act"), 10 P.S. §§ 162.1-162.24.
2. Respondent was registered with the Bureau as a professional solicitor from September 28, 1991 to July 8, 1996, registration number 9311.
3. On June 26, 1996 Respondent registered with the Bureau as a professional fundraising counsel, registration number 14133.

STIPULATED FACTS

4. The Respondent admits that the following facts are true:
 - a. Respondent is located at 2070 Chain Bridge Road, Suite 400, Vienna, VA 22182.

b. Respondent's registration with the Bureau as a professional fundraising counsel expired on July 3, 1999.

c. On July 5, 1999 Respondent renewed its registration.

d. The Commonwealth alleges that Americans for a Balanced Budget ("ABB") is a charitable organization under the Act and is located at 101 D Street SE, Washington, DC 20003.

e. ABB is not registered to solicit charitable contributions in Pennsylvania, nor has it ever been registered to do so.

f. Section 5(a) of the Act, 10 P.S. §162.5(a), requires a charitable organization soliciting contributions in Pennsylvania or having contributions solicited in Pennsylvania on its behalf to register with the Bureau prior to soliciting.

g. Section 8(d) of the Act, 10 P.S. §162.8(d) requires a professional fundraising counsel to file a copy of the contract with a charitable organization with the bureau at least ten working days prior to providing professional fundraising counsel services.

h. On October 22, 1990, Respondent signed a contract ("contract") with ABB to perform professional fundraising counsel services for ABB. A true and correct copy of the contract is attached and incorporated as **Exhibit "1."**

i. Respondent did not file its contract with ABB with the Bureau at least ten (10) working days prior to the performance of professional fundraising counsel services in the Commonwealth of Pennsylvania as required by 10 P.S. §162.8(d). To

date, Respondent has not filed its contract with the Bureau.

j. Clause 2.a. of Respondent's contract with ABB states: "The parties acknowledge and agree that the activity contemplated herein may result in the registration of the activity, and particularly the registration of the CLIENT (ABB) in various states. The CLIENT agrees to complete said registrations on a timely basis, and to provide proof of the registrations to the AGENCY. Failure to comply with state law registration requirements shall be grounds for termination of this Agreement by the AGENCY."

k. ABB did not provide proof of its registration to solicit charitable contributions in Pennsylvania to Respondent as required by its contract.

l. By letters dated September 20, 1994 and December 5, 1994, the Pennsylvania Office of Attorney General ("PA OAG") notified ABB of its need to register because ABB was soliciting charitable contributions in Pennsylvania without being properly registered to do so.

m. On January 11, 1995 the PA OAG requested that the Secretary of the Commonwealth issue a Cease and Desist Order prohibiting ABB from any further solicitation in Pennsylvania because ABB did not respond to any of the PA OAG's letters.

n. On January 19, 1995, the Secretary of the Commonwealth issued the requested Cease and Desist Order prohibiting ABB from soliciting any further contributions in Pennsylvania until such time as it duly registered with the Bureau.

o. The Cease and Desist Order was sent certified mail Article Number

Z 151 855 899 on January 19, 1995 and was received by ABB's counsel on January 24, 1995, as evidenced by Postal Form 3811 ("green card"). A true and correct copy of the Cease and Desist Order is attached and incorporated as **Exhibit "2."** A true and correct copy of the green card is attached and incorporated as **Exhibit "3."**

p. Respondent has indicated that ABB solicited at least 28,969 residents of Pennsylvania from November 15, 1990 to March 6, 1998 resulting in contributions equaling at least six hundred sixty-nine thousand six hundred forty-four dollars and thirty-eight cents (\$669,644.38).

ALLEGED VIOLATIONS

5. The Commonwealth alleges that by engaging in the foregoing activities Respondent violated Section 15(a)(1) and 17(a)(1) of the Act, 10 P.S. §§162.15(a)(1) and 162.17(a)(1), by failing to submit its contract with ABB to the Department for review at least ten (10) days prior to performing professional fundraising counsel services and by performing services for ABB in the Commonwealth without an approved contract, thereby operating in violation of the provisions of this Act.

PROPOSED ORDER

6. To address the concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and Respondent agree to the issuance of the following Order in settlement of this matter:

- a. Based upon the above referenced facts, the Secretary could find that the Respondent violated the Act at 10 P.S. §162.15(a)(1) and 162.17(a)(1).
- b. Respondent shall submit all contracts with charitable organizations

for the provision of fundraising counsel services in connection with charitable solicitations engaged in by said charitable organizations to the Bureau for review at least ten (10) days prior to performing professional fundraising counsel services for charitable organizations in the Commonwealth.

c. Respondent shall not represent, directly or indirectly, that by this Consent Agreement the Attorney General or Bureau of Charitable Organizations has sanctioned, condoned or approved any part or aspect of Respondent's activities.

d. Respondent is permanently enjoined from directly or indirectly participating in any activities within the Commonwealth of Pennsylvania in violation of the Act.

e. Nothing contained herein shall be deemed to constitute an admission by any party of any guilt or liability on the part of Respondent, nor any lack thereof, with regard to the merits of the allegations contained herein. This Consent Agreement represents a compromised settlement of a disputed claim. The Consent Agreement has been entered into by all parties for settlement purposes only.

ADMINISTRATIVE FINES

f. An **ADMINISTRATIVE FINE** of thirty thousand dollars (\$30,000.00) is levied upon Respondent. Respondent shall tender the full sum of thirty thousand dollars (\$30,000.00) with this executed Consent Agreement which shall be paid by **certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."**

PROBATION

g. Respondent agrees to submit itself to a two year period of probation.

The Respondent and the Commonwealth agree that the period of probation will be subject to the following terms and conditions:

(1) Respondent, its officer, agents, directors, trustees, and employees shall abide by and obey all rules, regulations and laws pertaining to the solicitation of funds for charitable purposes in this Commonwealth or any other state or jurisdiction in which Respondent holds a license, certificate, permit, or registration to solicit funds for charitable purposes or as a professional fundraising counsel.

(2) Respondent shall at all times cooperate with the Bureau and any of its agents or employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at its own expense written reports, records and verifications of actions that may be required by the Bureau or any of its agents or employees.

(3) If the Respondent fails to cooperate with the Bureau or any of its agents or employees, or if the Respondent fails to comply with the material terms and conditions of the period of probation, the Respondent may be deemed in violation of this

Consent Agreement and Order.

(4) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.

(5) Respondent shall notify the Bureau in writing, within twenty (20) days if it receives knowledge of the filing of:

(a) any criminal charges by this or any other jurisdiction against the Respondent, its officers, agents, employees, trustees, or independent contractors;

(b) any civil action pertaining to the Respondent's solicitation of funds for charitable purposes; or

(c) any administrative action by this or any other jurisdiction against the Respondent, its officers, agents, employees, trustees, or independent contractors pertaining to the solicitation of funds for charitable purposes.

(6) Respondent shall notify the Bureau by telephone within seventy-two (72) hours and in writing within ten (10) days of any change in the identity(ies) and/or address(es) of the officer, director, agent or employee responsible for Respondent's day-to-day affairs; along with the name(s) and/or address(es) of the officer, director, agent or employee responsible for Respondent's finances.

(7) Respondent and other persons shall cause any reports,

data or other information required to be filed with the Bureau under this Order, unless otherwise directed, at:

Bureau of Charitable Organizations
124 Pine Street, 3rd Floor
Harrisburg, PA 17101

VIOLATION OF THE SECRETARY'S ORDER OR CONDITIONS OF PROBATION

h. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the **TERMINATION** of the period of Probation and imposition of additional penalties as follows:

(1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms or conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary, or her designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which vacates the period of probation and imposes a sixty (60) day period of suspension on Respondent's registration as a professional fundraising counsel.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Bureau, together with a copy to Respondent's attorneys at 423 W.

Eighth Street, Suite 400, Kansas City, MO 64105 by facsimile or first class mail.

(4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of the conditions of probation, and move that the period of suspension be stayed until the Secretary or her designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Bureau of Charitable Organizations, 124 Pine Street, Suite 200, Harrisburg, PA 17101. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matter of law which the Respondent believes justifies a stay of the period of suspension. The Secretary or her designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or her designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing of the notification of the Preliminary Order, the Respondent's motion

shall be deemed denied.

(6) If a request for a formal hearing is received from Respondent a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary, or her designee, after such hearing makes a determination adverse to Respondent, the Secretary or her designee will issue a Final Order imposing any disciplinary measures she deems appropriate. The Secretary or her designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

(10) If the period of probation is terminated, Respondent shall still comply with all terms and conditions of probation during any active period of suspension, other than those terms and conditions pertaining to the active solicitation of funds for charitable purposes. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action

against Respondent.

(11) Nothing in this Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement; provided, however, the Bureau agrees to not re-open its investigation with regard to any Registration Statements on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omission of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

i. Upon successful completion of the term of probation, Respondent's registration will be restored to unrestricted status without further action.

j. This case shall be deemed settled and discontinued upon the Secretary's adoption of this Consent Agreement into an Order and the Respondent's successful completion of any ordered probation and/or other ordered discipline.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; the right to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for

a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

AGREEMENT NOT BINDING ON OTHER PARTIES

8. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if *a*) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or *b*) unless and until the Secretary issues the stipulated Order.

EFFECT OF SECRETARY'S REJECTION

9. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

ENTIRE AGREEMENT

10. This agreement contains the whole agreement between the parties; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES.

11. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors,

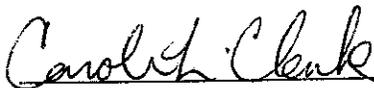
agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

AGREEMENT DOES NOT PREVENT COMPLETION OF CERTAIN OTHER INVESTIGATIONS

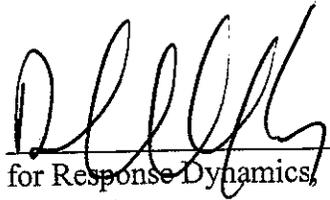
12. Respondent acknowledges that the Bureau may have other investigative files open on Respondent. This Consent Agreement shall cover all violations of the Act prior to and including December 31, 1999. Nothing in this Consent Agreement or the Order shall preclude the Bureau from completing those investigations and filing Orders to Show Cause or executing Consent Agreements with Respondent in those matters or violations occurring on or after January 1, 2000.

VERIFICATION OF FACTS AND STATEMENTS

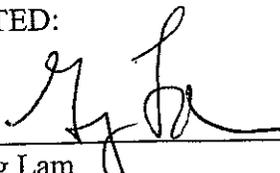
13. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.


Carole L. Clarke
Prosecuting Attorney
Bureau of Charitable Organizations

DATED: 4/19/00


for Response Dynamics,
Respondent

DATED:


Greg Lam
Copilvitz and Canter, P.C.
Attorney for Response Dynamics

DATED:

~~AGREEMENT~~

THIS AGREEMENT, made and entered into this 22nd day of October 1990, between RESPONSE DYNAMICS, INC., 2070 Chain Bridge Road, Suite 400, Vienna, Virginia, 22182 (hereinafter referred to as ("AGENCY"), and AMERICANS FOR A BALANCED BUDGET (hereinafter referred to as "CLIENT"). Said expressions to include the respective party's successors and assigns.

WHEREAS, the parties hereto are desirous of entering into an agreement, whereby the AGENCY would participate with the CLIENT in a full service development project, that would include strategic planning and program management.

WITNESSETH:

For and in consideration of the mutual covenants herein contained the sufficiency which is acknowledged as evidenced by the signatures of the parties hereto, it is mutually agreed as follows:

1. APPOINTMENT OF AGENCY. The CLIENT does hereby appoint and retain the AGENCY, on a nonexclusive basis to assist the CLIENT in carrying out in accordance with the terms of this Agreement a program combining appeals for support from and education of the public (the "Program").

- A. This appointment is on a nonexclusive basis and shall not be limited in any way to the use of any particular medium except as hereinafter set forth.
- B. It is contemplated that as a result of this appointment, the AGENCY will conduct research and prepare various

EXHIBIT

"1"

- 2 -

projects in proposal form for the CLIENT'S approval.

- C. The CLIENT agrees to provide background and information, and to participate as may be appropriate in the creation and review of proposals. The CLIENT shall designate, in writing, the individual(s) who shall have authority to approve the various projects.

2. AGENCY SERVICES. The AGENCY agrees to conduct research, and design and develop materials for use by the CLIENT in appeals, using all available means of medium. These appeals shall be designed to educate, enhance the name recognition of, and solicit support for the CLIENT.

A. The AGENCY shall oversee and coordinate on behalf of the CLIENT both the creative and technical aspects needed to complete a suitable appeal.

B. The AGENCY shall be authorized to use affiliated sources, as well as independent vendors in creating projects for approval by the CLIENT.

C. The AGENCY agrees to oversee, with CLIENT approval, the implementation of each approved project.

D. The AGENCY agrees to use a competitive bid process, where practical, and when using affiliated companies, to secure charges that are reasonable and standard for said services.

2.a. STATE LAWS. The parties acknowledge and agree that the activity contemplated herein may result in the registration of the activity, and particularly the registration of the CLIENT in various states. The CLIENT agrees to complete said registrations on a timely basis, and to provide proof of the registrations to the AGENCY. Failure to comply with state law registration requirements shall be grounds for termination of this Agreement by the AGENCY. In addition, thereto, the parties acknowledge and agree that there is a variance between the states that require registration, and as a result, certain provisions in certain states may be mandated. Attached hereto and marked Exhibit "C" is an addendum setting forth any such provision which may be mandated in a state requiring registration.

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3. TERM. This Agreement shall be for one year commencing with date of execution. This Agreement may be extended for additional one year terms by mutual written agreement.

4. CLIENT RESPONSIBILITIES. All materials used, copied and created, and expenses incurred, shall be subject to the review and approval of the CLIENT. Both the schedule and size of all prospect and house file solicitations shall be subject to review and approval of the CLIENT. All copy once approved becomes the so responsibility of the CLIENT. The CLIENT further agrees to indemnify the AGENCY against any and all claims that may arise from any governmental agency or private

5. ALLOCATION OF EXPENSES. The parties acknowledge and agree that a material element of the CLIENT's inducement to enter into this Agreement, is the opportunity to combine functions, to wit: program service, public education and advocacy, with the appeal for support in the various projects that will be created by the AGENCY.

A. The CLIENT shall be authorized to make said allocations all in accordance with applicable accounting standards.

B. To the extent it may be appropriate, the accountant of the CLIENT shall be given access to records or materials as may be reasonably required to make said allocations.

C. The AGENCY agrees to structure appeals in such a way as to combine said functions where appropriate and applicable.

6. AFFILIATED COMPANIES. The CLIENT acknowledges that the AGENCY had disclosed its affiliation with certain companies which may act from time to time, as vendors, materialmen or suppliers in the various projects that are created and recommended by the AGENCY. These affiliated companies are:

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- 4 -

Best Lists, Inc., Direct Response Data Management, Inc., Fulfillment Management Services, Inc., and Mid America Printing, Inc. The AGENCY agrees that all charges made by the affiliated companies, when used, shall be at the fair market value charged for comparable services from other companies. The CLIENT reserves the right to refuse the service of any affiliated company, provided the CLIENT replace the same with a vendor of comparable quality and equal or less pricing.

7. LIST FUNCTIONS. The CLIENT agrees that all list brokerage services used for services under this Agreement will be provided by Best Lists, Inc., which shall receive fair market compensation for said services.

- A. It is further agreed that the AGENCY may, from time to time, use lists owned by Best Lists, Inc., which shall be compensated for same at the market rate.
- B. In the event that jointly owned names shall be used and exchanged, the CLIENT agrees to be billed at the rate of one and one half cents (\$0.015) for each name used in the transaction.
- C. Upon request from the CLIENT, the AGENCY shall obtain the CLIENT'S approval of lists to be used for direct mailings under this Agreement.

8. COMPENSATION OF AGENCY. Each of the parties acknowledge that the AGENCY will be providing a wide range of services in the nature of research, testing, strategic planning and program management, all of which shall be compensable provided that the CLIENT provides prior written approval of such services.

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- A. Direct mail shall be compensated at the rate of fifty dollars (\$50.00) per one thousand (1,000) fund raising requests posted.
- B. Telemarketing shall be compensated on an hourly basis, per line hour, at rates agreed to from time to time throughout this Agreement.
- C. The above-noted charges shall include compensation for research and preparation by the AGENCY, but shall be separate and apart from expenses incurred with affiliated and non-affiliated vendors.
- D. The AGENCY will not initiate telemarketing activities without the prior written consent of the CLIENT. Said consent shall not be unreasonably withheld.
9. *fun* ESCROW. The CLIENT agrees to enter in a caging and escrow agreement with an independent, suitable firm. *in*
- A. The escrow agreement shall incorporate the terms of this Agreement, where applicable.
- B. The escrow agreement shall provide for payment of obligations in the following order:
- (i) Monthly guaranty payment to the CLIENT to the extent not paid directly by the AGENCY;
 - (ii) Expenses advanced by AGENCY;
 - (iii) Postage;
 - (iv) Fees of AGENCY;

(v) Fees of affiliated companies (as set forth in paragraph 6):

(vi) Fees of third party vendors; and

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(vii) ~~CLIENT~~. All funds remaining thereafter shall be divided equally, to-wit: fifty percent (50%) to the CLIENT and fifty percent (50%) to the AGENCY. This provision shall apply

C. The escrow agreement shall be subject through 11/30/91 only. to the approval of the AGENCY. Consent shall not be unreasonably withheld.

D. All invoices shall first be reviewed by the AGENCY. Those recommended for payment shall be provided to CLIENT. The CLIENT agrees to promptly review same for approval and deliver to the

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escrow with instructions for payment. The CLIENT shall have ten (10) days within which to approve said invoices, and failure to do so shall be deemed to be an affirmative act of approval.

10. RESPONSIBILITY FOR PAYMENT OF OBLIGATIONS. The AGENCY

assumes full responsibility for the payment of all vendors,

suppliers, the escrow agent and any other liabilities to third parties ~~arising~~ specifically authorized or approved by the AGENCY that arise out of the Program. The AGENCY shall indemnify

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and hold harmless the CLIENT (including its officers, directors and employees) ~~from all liabilities, costs and expenses~~ harmless therefrom.

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(including attorney's fees) arising out of the Program or a breach by the AGENCY of any of its obligations under this Agreement.

11. FINANCIAL RECORDS. The AGENCY and CLIENT each shall be entitled to inspect any and all financial records of the other with respect to receipts and disbursements relating to this Agreement, and to do so at such reasonable times as either party may, from time to time, request.

12. LIST OWNERSHIP. The parties acknowledge that throughout the term of this Agreement and any extension hereof, that the parties will be engaged in donor acquisition and donor

renewal, and it is contemplated that substantial new donors will be acquired.

- A. Any donor file contributed by CLIENT shall remain the sole and exclusive property of the CLIENT.
- B. All donors acquired during the term of this Agreement as a part of the Program (the "Program Donors") shall be the joint property of the parties herein.
- C. At the expiration of the initial and/or extended term of this Agreement, each of the parties shall be entitled to the unrestricted use of the names of the Program Donors.
- D. During the term of this Agreement, CLIENT shall coordinate with the AGENCY the CLIENT'S use of the names of the Program Donors so as not to unreasonably interfere with the use of such names as part of the Program.

~~During the term of this Agreement, the AGENCY shall not, without the prior written consent of the CLIENT, sell, rent or exchange the names of the Program Donors on its own behalf to any organization which is engaged in addressing similar social or political issues to the CLIENT.~~

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~~During the term of the Agreement the AGENCY shall coordinate with the CLIENT the AGENCY'S use of the names of the~~

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M

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~~Program Director shall not~~
unreasonably interfere with the use of *M*
~~the name of the Agency of the Program.~~

13. CONFIDENTIALITY.

A. The CLIENT agrees to hold in confidence all results achieved under this Agreement.

(i) This Agreement of confidentiality shall be modified to the extent that the CLIENT shall be required to provide same to any appropriate government agency. The CLIENT shall immediately notify and provide the AGENCY with a copy of any such request, and provide a copy of all information thereafter provided.

(ii) The CLIENT will not divulge any results or ideas created by the AGENCY to any other non-profit or for-profit organization without the express written consent of the AGENCY.

B. Except as required by law or incident to the performance of this Agreement, during and after the term of this Agreement, the AGENCY shall hold in confidence and not disclose to any third party any information regarding

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the AGENCY, including its methods of conducting business, or any information regarding the program.

- C. Except as may be incident to the performance of this Agreement, the AGENCY shall not commercially use the CLIENT'S name. The AGENCY shall not utilize the CLIENT'S name in the marketing of the Program Donor list on its own behalf either during or after the term of this Agreement.

14. OWNERSHIP OF MATERIAL. All material created during the term of this Agreement for and on behalf of the CLIENT, shall be and remain the sole and exclusive property of the AGENCY during the term hereof, and during any extended term. After the expiration of the term of this Agreement, the CLIENT shall be permitted to utilize such materials.

km ~~15. UPON TERMINATION. The CLIENT agrees that upon termination of this Agreement, for any reason other than a default by the AGENCY, the AGENCY shall be permitted to continue to make mailings to the Program Donor list in the name of the CLIENT until all outstanding invoices or obligations due the AGENCY and/or affiliated companies shall be paid in full. Such post termination mailings shall be subject to approval by the CLIENT both with respect to content and scheduling, such approval not to be unreasonably withheld. SEE PAGE 12~~ *Dr*

16. GOVERNING LAW. This Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Virginia.

17. NOTICE OF BREACH AND OPPORTUNITY TO CURE. Either party which believes the other is in breach of this Agreement,

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shall provide written notice for a claim of breach that shall set out the specifics of the alleged violation. Said letter will also contain the required action to set the breach aside. The party claiming breach shall give the party allegedly breaching this Agreement no less than ten (10) days to cure the breach, or commence action to end same. At the end of ten (10) days, or the specified period, whichever is longer, should the party claiming breach still believe that said default has not been satisfactorily cured, then the matter shall be submitted to binding arbitration as set forth in the arbitration clause below. This Paragraph 17 shall not apply to a breach of the payment obligation of the AGENCY set forth in Paragraph 20 below.

18. **BINDING ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or any alleged breach thereof, shall be settled by arbitration in Northern Virginia in accordance with the rules of the American Arbitration Association. The parties herein, by their signatures hereto, agree that the determination of said arbitrator shall be binding and final. The prevailing party shall be entitled to reimbursement of reasonable attorney's fees if same shall be employed with respect to arbitration. It is agreed between the parties herein, that one arbitrator will be used, who shall be selected by the respective party's representatives. If an agreement cannot be reached as to an arbitrator, then the parties herein agree to be bound by the recommendation of the American Arbitration Association.

19. **WAIVER.** The failure of either party to this Agreement to object or take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement, shall not be construed as a waiver thereof of any future breach, or subsequent wrongful conduct.

20. ~~GUARANTEED PAYMENT.~~ The AGENCY guarantees that the CLIENT shall receive during the initial term of the Agreement a minimum payment of One Hundred Twenty Thousand Dollars (the "Guaranteed Payment"). The Guaranteed Payment shall to the extent of available funds be disbursed from the escrow contemplated in Paragraph 9 in equal installments of five Thousand Dollars (\$5,000) each with the first payment due on December 1, 1990, the second payment due on December 15, 1990 and one additional payment due on the first and fifteenth day of each subsequent calendar month until the Guaranteed Payment has been paid in full. To the extent such funds are not disbursed from the escrow, they shall be paid to the CLIENT directly by the AGENCY. Any payments by the AGENCY shall be treated as expenses advanced by the AGENCY for purposes of reimbursement from the escrow.

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~~If any installment payment is not made within five (5) days after it is due, the CLIENT may, at its sole option, terminate this Agreement at which time the entire unpaid balance of the Guaranteed Payment shall become immediately due and payable with interest to accrue on the unpaid balance until ~~at the rate of twelve percent (12%) per annum.~~~~

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21. DONOR TAPES. Every ninety (90) days during the term of this Agreement and within thirty (30) days after the termination of the Agreement, the AGENCY shall furnish to the CLIENT a 9 track, 1600 BPI magnetic tape with data sheet (tape and dump layout) containing updated information on all donors and other respondents to the Program, including complete name, address and donation history.

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~~22. NONCOMPETITION. During the term of this Agreement, the AGENCY shall not provide services similar to those being provided to the CLIENT under the terms of this Agreement to any organization which is involved in addressing similar social or ~~the CLIENT.~~~~

M

23. QUALITY OF SERVICE. The AGENCY warrants that the services performed by it under this Agreement will proceed with promptness and diligence and will be executed in a first class workmanlike manner in accordance with the highest professional standards in the industry and to the CLIENT'S reasonable satisfaction.

24. MODIFICATION. This Agreement contains the entire understanding by and between the parties herein. All other agreements are merged hereto. This Agreement may not be modified or changed, in whole or in part, other than by agreement in writing and duly signed by the respective parties hereto.

25. AUTHORIZATION. Each party hereto does expressly warrant that this Agreement has been reviewed by such party, and that the signature hereon has been fully authorized for entry into this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have affixed their hands seal on the day and year first above written.

RESPONSE DYNAMICS, INC.

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15. The CLIENT agrees that upon the termination of this Agreement, the AGENCY shall be permitted to continue to make mailings to the donor list compiled in the name of the CLIENT until all outstanding invoices or obligations due the AGENCY or owed by it, and/or due affiliated companies, shall be paid in full. Such post-termination mailings shall be subject to approval by the CLIENT, both with respect to content and scheduling, but said consent shall not be unreasonable withheld.

By *[Signature]*
Authorized Representative
"AGENCY"

AMERICANS FOR A BALANCED BUDGET

A

By *[Signature]* 10/22/90
Chairman
Authorized Representative
"CLIENT"

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It is further agreed by and between the parties, that paragraph 12 shall be modified by this provision to provide that in event of termination of this Agreement with debt due, then in that event, the delivery of the list to the CLIENT may be withheld by the AGENCY, at its sole discretion, until such time as all debts arising out of the program have been satisfied.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

SECRETARY OF THE COMMONWEALTH

CERTIFIED MAIL #19806 Z 151 855 899
RETURN RECEIPT REQUESTED

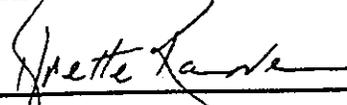
IN THE MATTER OF AMERICANS FOR A BALANCED BUDGET

ORDER

AND NOW TO WIT, THIS 19TH DAY OF JANUARY, 1995, THE ACTING SECRETARY OF THE COMMONWEALTH HAVING FOUND THAT AMERICANS FOR A BALANCED BUDGET IS NOT REGISTERED WITH THE DEPARTMENT AS A CHARITABLE ORGANIZATION, HAS FAILED TO RESPOND TO THE OFFICE OF ATTORNEY GENERAL'S REQUESTS FOR REGISTRATION AND THAT THE ORGANIZATION HAS SOLICITED FUNDS WITHIN THE COMMONWEALTH WHILE IT WAS NOT REGISTERED; IN ACCORDANCE WITH THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT, THE ACT OF DECEMBER 19, 1991, NO. 1990-202, HEREBY ORDERS AMERICANS FOR A BALANCED BUDGET TO CEASE AND DESIST FROM SOLICITING FUNDS OR PROPERTY IN THIS COMMONWEALTH UNTIL SUCH TIME AS IT HAS DULY REGISTERED. THIS ORDER SHALL TAKE EFFECT IMMEDIATELY.

BY ORDER:
DEPARTMENT OF STATE

BY:


ACTING SECRETARY OF THE COMMONWEALTH

THIS ORDER MAY BE APPEALED BY REQUESTING A HEARING, IN WRITING, WITHIN TEN(10) DAYS OF THE DATE OF THIS ORDER IN ACCORDANCE WITH TITLE 2 OF THE PENNSYLVANIA CONSOLIDATED STATUTES (RELATING TO ADMINISTRATIVE LAW & PROCEDURES).

EXHIBIT

"2"

on the reverse side?

SENDER:

- Complete items 1. and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mail piece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mail piece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee. **700**

3. Article Addressed to: **AMERICANS FOR A BALANCED BUDGET**
C/O J. CURTIS HERGE, ESQUIRE
8201 GREENSBORO DRIVE, SUITE 200
MCLEAN, VA 22102

4a. Article Number **1-20-95**
1256
2151 855 899

Service Type

Registered Insured **BA**

Certified COD **C&D**

Express Mail Return Receipt for Merchandise

7. Date of Delivery **1/24/95**

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

6. Signature (Agent)
James W. Miller

Is your RETURN AD

PS Form 3811, December 1991 * U.S.G.P.O.: 1992-307-530

DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE

RECEIVED

95 JAN 30 AM 10:25

BUREAU OF CHARITABLE ORGANIZATIONS

Print your name, address and

Department of State
 Bureau of Charitable Organizations
 P.O. Box 8723
 Harrisburg, PA



EXHIBIT

"3"



**IN THE MATTER OF THE PROFESSIONAL
FUNDRAISING COUNSEL REGISTRATION HELD BY
RESPONSE DYNAMICS,
FILE NO.: 99-98-00754**

ORDER

AND NOW, to wit, on this 19th day of April 2000, the terms of paragraph 6 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER



Kim Pizzigrilli
Secretary of the Commonwealth