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September 10, 2015

**Via Email and U.S. Mail**

Sherry Rufini  
Foreperson  
2014-2015 Contra Costa County  
Civil Grand Jury  
725 Court Street  
P.O. Box 431  
Martinez, CA 94553 - 0091

**Re: Response to Grand Jury Report No. 1512, "The Rodeo-Hercules Fire District Chief's Employment Agreement" by the 2014-2015 Contra Costa County Civil Grand Jury**

Dear Ms. Rufini:

In accordance with California Government Code section 933.5(a), the Rodeo-Hercules Fire District ("Respondent") responds to each finding and recommendation as follows:

**RESPONSES TO FINDINGS**

F1: The Respondent disagrees with the finding. The Fire Chief's employment agreement was properly identified on the agenda for the October 8, 2014 meeting. The Fire Chief's employment agreement was due to expire in 17 days. To facilitate maintaining continuity and given that Respondent's Board had not directed staff to search for a new fire chief, rather than enter into a new employment agreement, the terms of the current employment agreement were amended. Therefore, the agenda item for the matter properly identified that the Fire Chief Contract was the main point of discussion, and that it was an amendment to the employment agreement with the current Fire Chief. It was not a new employment agreement with a new person or the current Fire Chief.

F2. The Respondent disagrees with the finding. To limit the inquiry and thus the finding to just an analysis of Respondent Board's actions taken at one meeting is misleading and questionable. This finding makes patently unfair assumptions regarding the motivations and commitment to public service of the individuals who participated in the actions on October 8, 2014. For example, the Civil Grand Jury unfairly assumes that based solely on

Respondent Board's actions of October 8, 2014, the individual Board members who took the actions did not understand the fiscal or operational impacts of their decision, did not take adequate time for consideration of Respondent's finances, and by implication breached a duty. Respondent absolutely disagrees with this finding, and its implication because it is based on actions taken at one Respondent Board meeting, and clearly discounts the time, study, and reflection individual Board members did at previous Board meetings and on their own time outside of Board meetings when each Board member considered Respondent's fiscal and operational realities in relation to not only the employment agreement, but all of the other issues and matters that affect the District.

Furthermore, Respondent contends that based on the Civil Grand Jury's stated methodology (page 2 of Grand Jury Report 1512), it is impossible for the Civil Grand Jury to make an informed finding -- more than 7 months after Respondent took the action -- that pursuant to the Respondent's actions at the October 8, 2014 meeting Respondent's Board members did not take adequate time to consider the fiscal and operational impacts upon the District of the amendments to the Fire Chief's employment agreement. This finding is flawed because the execution of the methodology that made the finding is incomplete and misleading. According to the methodology, the Civil Grand Jury claims to have interviewed RHFD Board of Directors members, past and present. This statement is ambiguous because the Civil Grand Jury did not interview two current Board members who were present at the Board meeting when the action was taken. Based on the methodology, the Civil Grand Jury interviewed present Board members, two of which were at the October 8, 2014 meeting, past Board members who may or may not have been present at the October 8, 2014 meeting (no clarification is provided on this point), and one current Board member who had not yet been elected to the Board to participate as a Board member at the October 8, 2014 Board meeting. Therefore, Respondent disagrees with this finding because the execution of the Civil Grand Jury's methodology was flawed.

Respondent suggests that this finding might be meaningful if the Civil Grand Jury interviewed all of Respondent's Board members, past and present, who were actually present and serving as Board members at the October 8, 2014 Board meeting. If that occurred, then the Civil Grand Jury might arguably be able to meaningfully ascertain Respondent Board's understanding of the fiscal and operational impacts upon Respondent of the amended employment agreement. Alas, this did not occur. Respondent finds it insulting to its Board of Directors, and its individual Board members, both past and present, commitments to the District and their public service that the Board's deliberative processes are questioned in such an incomplete, flawed, and haphazard manner.

F3 Respondent partially disagrees with this finding. Respondent contends that the finding is too broad and that Respondent Board's agendas have complied with the Brown Act before, during, and since the October 8, 2014 meeting. Respondent takes issue with the statement that "Brown Act violations appear to continue to be a problem for RHFD." First, RHFD has not violated the Brown Act. Interested persons have alleged Brown Act violations. But no civil or criminal court of competent jurisdiction has held or found that

Respondent, Respondent's Board, Respondent's Board Members, or Respondent's staff violated the Brown Act. In short, Respondent contends it has not ever and will never, willfully or otherwise, violate the Brown Act. The Respondent absolutely respects the Brown Act, and its requirements. This respect was demonstrated at Respondent's April 8, 2015 meeting. During the agenda item "Confirmation of Agenda," a public speaker alleged Brown Act non-compliance related to certain agenda items. Out of respect for the Brown Act, and in an abundance of caution on the advice of counsel, Respondent amended its April 8, 2015 meeting agenda to remove some of the items that were alleged by the public speaker as not "in compliance" with the Brown Act. This was all done to avoid violating the Brown Act. Respondent agrees with the finding in that because the Board is weathering financial difficulties (accurately described in the Civil Grand Jury's report, page 3) resulting in reductions of staff persons and thus staff time, the agenda for the April 8, 2015 meeting did not get to Respondent's legal counsel in time for review prior to its regular posting, which could have mitigated or addressed the allegations. Processes are in place so that in the future this does not occur again.

F4 Respondent partially disagrees with this finding. Respondent may consider, at a future Board meeting, correcting the October 8, 2014 Board meeting minutes to reflect how each individual Board member voted in closed session to approve the appointment of Charles Hanley to Fire Chief pursuant to Item 17, CLOSED SESSION, sub-item D, Public Employee Appointment, Fire Chief. After closed session on October 8, 2014, and after Respondent's Board reconvened in open session, Respondent's General Counsel orally reported out the votes of each of Respondent's Board members that were taken on action items in closed session. On the matter of public employee appointment, Fire Chief, the Board voted 4 ayes, and 1 nay, with Directors Bartke, Mills, Moulton, and Chair Williams voting aye, and Director Prather voting nay. Respondent disagrees with the finding in that the amendments to the Fire Chief's employment agreement were, in accordance with California Government Code section 54957.6, voted upon in open session; the minutes accurately reflect the action taken. The Board of Director's Rules and Procedures, Section 2.4, provide that minutes of the proceedings of the Board are kept by the Board Secretary. The Board Secretary, by and through the Board's administrative services officer or designee, keeps action minutes to reflect the Board's proceedings.

F5 Respondent partially disagrees with this finding. Respondent agrees that the terms of the Chief's employment did change, and are accurately reflected in the amendments approved from 2010 to 2014. Respondent disagrees with the word "substantial," because it is vague and suggests a negative connotation is associated with the number of amended terms in a particular contract. Respondent contends that all of the amended terms were negotiated for and are in the best interests of both parties, which is consistent with the Respondent's commitment to engage in interest based bargaining with Local 1230, the main bargaining group within Respondent's jurisdiction, as well as its unrepresented employees.

F6 Respondent disagrees with this finding. Respondent contends that all of the amended terms were negotiated for and are in the best interests of the parties, which is consistent with

the Respondent's commitment to engage in interest based bargaining with its bargaining groups, and its unrepresented employees.

## RECOMMENDATIONS

R1 The recommendation requires further analysis. Given that the Fire Chief's current employment agreement expires at the end of December 2015, Respondent believes that no later than within the next six months (if not sooner) will Respondent consider its options, including but not limited to re-opening negotiations, regarding the Fire Chief's current employment agreement. Any negotiations will be properly noticed and placed on Respondent Board's meeting agenda under closed session pursuant to California Government Code sections 54954.5(f), and 54957.6. If a new or amended employment agreement comes before Respondent, it will be acted upon in open session.

R2 The recommendation has been implemented. Respondent already complies with the Brown Act, and has put processes in place, including review of Board meeting agendas by its General Counsel, to insure that it occurs.

R3 The recommendation has been implemented. Respondent already complies with the Brown Act, and has put processes in place, including review of minutes by its General Counsel, to insure that it occurs.

R4 The recommendation has not yet been implemented, but will be in the next four months. It is anticipated that Respondent will receive Brown Act training at its August Board meeting.

Very truly yours,



Richard D. Pio Roda, at the direction of the Board of Directors and  
on behalf of Chair Beth Bartke

District Counsel  
Rodeo-Hercules Fire District

RDP:BOARD

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