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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. 1513, "Ralph M. Brown Act" 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 the particular findings and recommendations as follows:

**RESPONSES TO FINDINGS**

F1: The Respondent disagrees with the finding. The Board members of the Rodeo-Hercules Fire District are all in compliance with the requirements of AB 1234 ethics and government transparency training, codified in California Government Code section 53235. A significant portion of the AB 1234 training curriculum is instruction on the Brown Act, and its provisions. All of the members are familiar with the Brown Act's requirements.

F2: The Respondent disagrees with the finding. California Government Code section 54954.2(a)(1) provides that at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. Respondent contends that its meeting agenda descriptions, including those for closed session items that specifically followed the "Safe Harbor" agenda descriptions codified in California Government Code section 54954.5, were identified correctly and accurately. Furthermore, Respondent contends that it has complied with California Government Code section 54954.2(a)(2), which provides that no action or discussion can be

undertaken on any item not appearing on a posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of the legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. The Fire Chief routinely provides a brief report on his own activities on behalf of the District. Board members are also permitted to make announcements and brief reports on their own activities on behalf of the District. Both of these items are identified in accordance with the Brown Act.

Pursuant to community concerns and needs, Respondent contends that it has made efforts to make its meeting agendas more descriptive, while staying within the Brown Act's requirements. Respondent will continue to refine its Board meeting agendas to be responsive to community needs and concerns, while remaining -- as it was and will continue to be -- in compliance with the Brown Act.

F5 Respondent disagrees with this finding. Respondent contends that there was an adequate number of copies of the employment agreement in question available for the members of the public who were in attendance at Respondent's meeting of October 8, 2014. Furthermore, if there were requests for additional copies (Respondent cannot recall whether such a request was made during the meeting), staff would have made more copies immediately; that is Respondent's routine custom and practice. Respondent's meetings are well attended by District firefighters, who are happy to assist members of the public with anything they need or request during Respondent's meetings, be it more chairs, climate control, or additional copies of agendas or documents.

F7 Respondent partially disagrees with this finding. Respondent agrees that closed sessions are held closer to the end of its regular meeting agendas. Respondent disagrees with the portion of the finding that Respondent's placement of the closed session limits opportunity for public comment on the outcome of matters decided in closed session. Respondent plainly and clearly announces on its agendas in writing, and orally at the beginning of the meetings that public comment is welcome on any item on the agenda. Respondent clearly identifies that it will reconvene in open session after closed session to make any legally required announcements out of closed session, and to complete the remainder of its regular meeting agenda. The public is welcome to comment on any closed session agenda item before Respondent's Board convenes in closed session. The public is welcome to stay (albeit outside of the closed session room), and re-enter the regular meeting when it reconvenes in open session to hear announcements and comment on any items on the agenda after the closed session concludes and Respondent's Board reconvenes in open session. In short, public comment is welcome on closed session items before Respondent's Board enters into closed session, and after Respondent's Board reconvenes in open session, including on any agenda item to be heard or acted upon at that time.

F8 Respondent disagrees with this finding. Respondent contends that all legally required reports of reportable actions taken in closed session have occurred in accordance with California Government Code section 54957.1(a) and (b), including how each of Respondent's Board members voted on actions taken during those closed sessions. While it is true that the meeting minutes of October 8, 2014 on one particular item, the appointment of Charles Hanley to the position of Fire Chief, do not specifically state how each member voted, Respondent's General Counsel did orally report out the vote when the Board reconvened in open session, and would sign a declaration or testify truthfully to the same should he be so required.

F9 Respondent partially disagrees with this finding. Respondent does have staff to keep a website updated. However, that staff person is currently out on medical leave. Respondent is currently analyzing how best to keep its website updated.

## **RECOMMENDATIONS**

R1 The recommendation requires further analysis. The analysis involves what impacts, if any, an annual training requirement would have on the District's finances and operations. Respondent anticipates that the matter will be prepared for discussion in the next six months.

R2 The recommendation will not be implemented because it is not warranted. Agendas are drafted by the Chair, in consultation with the Fire Chief. They are reviewed for Brown Act compliance by the District's General Counsel, whose law practice includes a significant amount of Brown Act advice and compliance for various public agencies throughout the State. Respondent believes that between its staff, and its General Counsel, meeting agendas already comply, and will continue to comply with the Brown Act in the future.

R3 The recommendation requires further analysis. The analysis involves what impacts, if any, maintaining a website of the District's minutes and agendas would have on the District's finances and operations. Respondent anticipates that the matter will be prepared for discussion in the next six months.

R4 The recommendation requires further analysis. The analysis involves what impacts, if any, maintaining such a link on the District's website would have on the District's finances and operations. Respondent anticipates that the matter will be prepared for discussion in the next six months.

R5 The recommendation will not be implemented because it is not reasonable. Respondent's website is a limited public forum that has specific time, place and manner restrictions inherent to it. It is not reasonable for Respondent to change its website's status as a limited public forum for this particular purpose. However, pursuant to Respondent's response to R4 above, Respondent will prepare for discussion an analysis of the impacts of including a link for citizens to post concerns about possible Brown Act infractions.

R6 The recommendation will not be implemented because it is not warranted. Respondent already reviews and votes upon its budget each year through a lengthy three month / three step process that involves a preliminary budget hearing in June, Respondent Board's budget committee reviews in July and August, and a final budget hearing that occurs in September. All large financial commitments are presented and vetted during this process. In addition, because of the District's size and internal control procedures, virtually all contracts go before Respondent's Board for review and approval anyway. An additional step that extends review periods for contracts involving large financial commitments (which is without parameter or qualification) is unnecessary, and worse, could cause the District to be less than efficient with public dollars, especially since such resources are limited.

R7 The recommendation will not be implemented because it is not warranted and not reasonable. Rarely, if ever, are supporting documents provided to the Board in closed session. If any were provided, which is not usual, they would most likely be provided as attorney-client privileged / confidential communications, and attorney work-product, which would make them exempt from disclosure. In accordance with the California Public Records Act, Respondent would and will make available to requesters all responsive non-exempt public records provided to Respondent's Board.

R8 The recommendation requires further analysis. Respondent's Board would like to study such a change to its policies and procedures. Therefore, the matter will be prepared for discussion in the next six months.

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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