

Santa Ana Street Car Project: A Study in Local Transit Planning



*Model: Santa Ana Street Car
(City of Portland)*

1. SUMMARY

In launching one of the largest transportation projects in Santa Ana history, the Santa Ana City Council approved a \$4.85-million consultant agreement to begin planning and technical analysis. This venture may ultimately require \$300 million in additional public funding.¹

Cordoba Corp., the consultant firm selected by the City Council was rated as the least qualified by the City's own panel of experts.

¹OCTA Board of Directors Action: Go Local Step One Screening and Step Two Recommendations

Based on public statements, published reports, government fair practice guidelines and the Santa Ana City Code of Ethics and Conduct, the Orange County Grand Jury has found that the award of this vital agreement was fraught with political and administrative inconsistencies. Further, the selection process lacked transparency and gave little assurance that the bidder rated most qualified was awarded the contract.

Gateway Connection

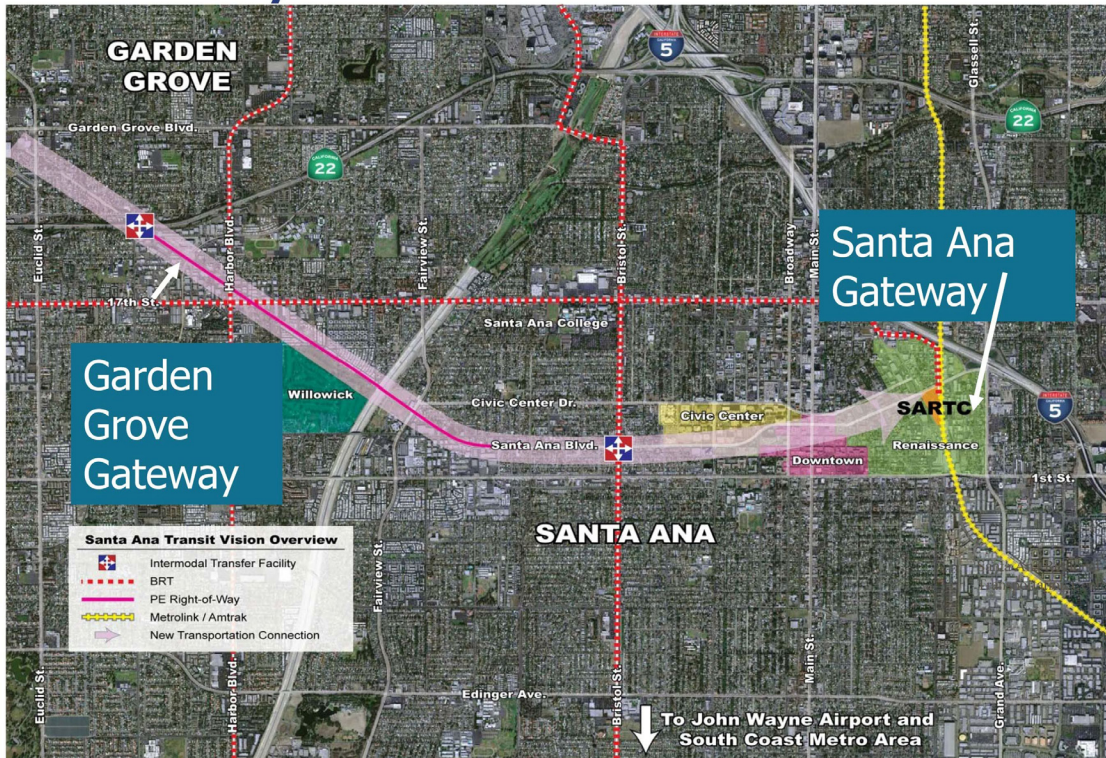


Fig. 1 Proposed Santa Ana Street Car Route

Elected officials set aside their own procedures, overruled the findings of an expert panel and ignored Santa Ana City staff recommendations regarding the best qualified applicant. All of this was mismanaged behind closed doors, shielded from public review and input.

This Grand Jury report tracks the evaluation and decision making process followed by the City of Santa Ana in selecting the Cordoba Corp. to direct this planning effort. The report focuses on the administrative and political actions taken by the City leadership in awarding this contract.

2. REASON FOR STUDY

The actions taken by the City Council and staff could have serious consequences for the City of Santa Ana as the planning for the Santa Ana Street Car is only one step in a long-term project that could change the transportation patterns for the area over the next decades. The community must pay close attention to the decision making process, the awarding of future contracts and the implementation of this transportation plan. Failing to do so could have disastrous results for future transportation alternatives.

Santa Ana Street Car Project: A Study in Local Transit Planning

Based on these concerns, the Grand Jury felt compelled to investigate the overall process for awarding of this major consulting agreement. Key findings include:

- The process for awarding the final consulting agreement for the Street Car Project contract was seriously flawed.
- Elected City Officials violated the intent and specific provisions of their June 2, 2008 adopted Code of Ethics and Conduct², as well as provisions of AB 1234, the Government Transparency and Fair Practices Act³.
- These same City leaders failed to provide transparency and public input into the contract award possibly violating the intent if not the substance of the Ralph M. Brown Act.⁴
- Over 90% of the funding for planning the Santa Ana Street Car came from Orange County Transportation Authority administered sales tax funds (Measure M). OCTA provided limited oversight for award of this contract.

3. METHOD OF STUDY

The Grand Jury reviewed copies of all available documents and materials regarding the award of the Street Car Project agreement including:

1. City Council and Transportation Committee agendas, minutes, reports and all documents presented at public meetings when the Street Car Project was considered.
2. The Request for Proposal (RFP) detailing the requirements for the contract award.
3. All responses to the RFP.

4. A summary of the process used by a select panel of experts in evaluating and scoring each consultant group.
5. The scoring sheets and rating guidelines utilized in ranking the capabilities of each applicant including notes and written comments.
6. E-mails and other internal communications regarding the evaluation process and award of contract.

The Grand Jury interviewed:

- Santa Ana elected officials.
- Santa Ana administrative staff.
- Members of the expert evaluation panel.
- Administrators from the Orange County Transportation Authority.
- Professionals directly involved in local transportation planning.

These interviews provided essential information highlighting the apparent conflict between City staff and City Council regarding the Street Car Project, as well as apparent discord within the Council leadership related to the selection of the contract group.

Additionally, the Grand Jury researched local, state and federal guidelines regarding contract awards of this magnitude as well as City of Santa Ana Code of Ethics and Conduct, the Brown Act, and AB 1234, the Government Transparency and Fair Practices Act.

4. BACKGROUND AND FACTS

In February 2006, the Orange County Transportation Authority approved a four-step process called —Go Local— to fund city transit planning and projects. Measure M1 and M2 sales tax revenue would pay for these transportation projects, including a potential commitment of nearly \$1 billion.⁵

²Santa Ana City Council Resolution 2008-039: Code of Ethics and Conduct: Adopted June 2, 2008.

³State of California Political Reform Act: Govt. Code 87200 et al.

⁴Section 54950 et. Seq. Government Code: Open Meetings for Local Legislative Bodies.

⁵OCTA Board of Directors Meeting Minutes: February 27, 2006.

Santa Ana Street Car Project: A Study in Local Transit Planning

- Phase I: \$100,000 grants to 34 Orange County cities for transit needs assessment and development of a local transit vision.
- Phase II: Funding of project planning and analysis of alternative concepts emerging from the Phase I analysis for individual cities.
- Phase III: Project development and implementation, including preliminary engineering of Phase II projects which qualify through a competitive bid process for continued funding.
- Phase IV: Additional work on the Metrolink corridor to transform train stations into transportation centers.

4.1 Funding for Santa Ana Street Car Project

Phase I: OCTA funding included a \$100,000 grant award to the City of Santa Ana to develop an initial needs assessment and transit vision for the city. This grant was one of 34 similar grants totaling \$3.4 million awarded to cities throughout Orange County for “Go Local” transit proposals. This represented the first step in the proposed use of over \$1 billion in OCTA Measure M funds to implement transit connections with Metrolink throughout Orange County.

Santa Ana City officials awarded a sole-source contract to Parsons Brinkerhoff to complete the Phase I assessment. This \$100,000 OCTA grant was supplemented by over \$300,000 in city funds to enhance the needs assessment and to prepare a proposal for Phase II funding. Of this amount, \$25,000 was earmarked for an agreement with the Cordoba Corp. to oversee the final proposal for Phase II funding.

Phase II: On May 12, 2008, the OCTA Board of Directors allocated \$5.9 million to the City of Santa Ana for additional analysis for the modern street car project including:

- Detailed planning.
- Conceptual engineering.

- Analysis of alternatives.
- Financial planning.
- Environmental work.

In September 2008, the Santa Ana City Council approved a \$5.9 million cooperative agreement with OCTA to proceed with Phase II. State and federal environmental clearance would be required for the fixed-rail street car project from the Santa Ana Regional Transportation Center to Harbor Blvd.

In October 2008, Santa Ana City staff issued a Request for Qualifications to 14 consulting firms to solicit interest in participating in the Phase II analysis. Only three consulting firms showed interest.

On Dec. 1, 2008, the City of Santa Ana released an RFP to the three consultant groups: Parsons Brinkerhoff, Cordoba Corp., and David Evans and Associates. The RFP required documentation of the groups’ qualifications, relevant experience in completing similar projects, references, statement of staff capabilities, a detailed work plan and time line. Specific proposals regarding project cost and budget were submitted separately in sealed envelopes. Jan. 15, 2009, was the deadline for submission of proposals. Interviews for the three applicants were scheduled for Feb. 3, 2009.

4.2 Expert Panel Review of Request for Proposal

The Santa Ana Public Works Department established a panel of seven experts to review and score the three applicants’ bids. The panel included the City Managers of Santa Ana and Garden Grove, the Deputy CEO of the Orange County Transportation Authority, the Principal Engineer for Santa Ana, the Santa Ana Executive Director of Community Redevelopment and Housing, Santa Ana Executive Director of Planning and the Public Works Director for Garden Grove. The panel members were selected for their knowledge of local transit needs, their technical expertise and their administrative skills.

On Feb. 3, 2009, the panel of experts met separately with each of the three applicants. The panel used a standardized scoring form in the evaluation

Santa Ana Street Car Project: A Study in Local Transit Planning

process. The following scores were attained, based on a 100-point scale.⁶

- Parsons Brinkerhoff/HDR 93.7
- David Evans/IBI 77.0
- Cordoba/URS 72.9

The scoring was as follows:⁷

The evaluation process clearly identified Parsons Brinkerhoff as the most qualified applicant. Grand Jury interviews with several expert panel members confirmed that PB was strongly endorsed by the expert panel as the most qualified.

At the conclusion of the evaluation process, the Santa Ana City Manager informed Mayor Miguel

	Parsons Brinkerhoff/ HDR	David Evans / IBI	Cordoba/ URS
Panel Member 1	98	84	94
Panel Member 2	100	66	62
Panel Member 3	102	86	76
Panel Member 4	88	82	80
Panel Member 5	84	60	52
Panel Member 6	88	75	68
Panel Member 7	96	86	78
Total	656	539	510
Average	93.7	77.0	72.9
Cost Estimate	\$7,040,496	\$5,966,932	\$6,372,740

After the rating of the applicants' professional competency, City staff opened these sealed bids:

- Parsons Brinkerhoff/HDR
\$7,040,496
- David Evans/IBI
\$5,966,932
- Cordoba/URS
\$6,372,740

Pulido that all three groups met the minimum qualifications. Several days later, City staff opened discussions with Parsons Brinkerhoff regarding their proposal.

4.3 Staff Recommendations re Consultant Agreement

Late in February 2009, a Request for Council Action was submitted by City staff recommending that the City Council execute an agreement with

⁶Consultant Evaluation Forms: January 29, 2009

⁷Ibid; January 29, 2009 Consultant Evaluation

⁸Ibid: January 29, 2009 Consultant Evaluation

Santa Ana Street Car Project: A Study in Local Transit Planning

PB to conduct the Go Local Program Phase 2 Santa Ana Street Car Project analysis. This request was not placed on the March 2, 2009, City Council agenda. There was no other mention of this staff recommendation and this request has never appeared on any subsequent City Council Agenda. Also, late in February, two of the three elected city officials who sit on the City Council's Transportation Subcommittee met with the President of the Cordoba Corp. at a local restaurant to discuss Cordoba's capabilities and work history.

4.4 Actions by the Santa Ana City Council Transportation Subcommittee

Rather than accept City staff recommendations regarding the Street Car Project at the March 2 City Council meeting, Mayor Pulido called a special meeting of the Transportation Subcommittee on March 16, 2009. Committee members included Mayor Pulido, Mayor Pro-Tem Claudia Alvarez, and Council member Vincent Sarmiento. The purpose of the meeting was to evaluate the three consulting groups based on an additional presentation by each of the groups. This meeting was unique in that:

- No minutes were taken.
- This was the only time the Transportation Subcommittee interviewed consultant teams for any City transportation project.
- Although discussion took place among committee members, there is no summary of that discussion.
- There is no record of public discussion or input during the proceedings.

A scheduled Santa Ana City Council meeting was held later that day, March 16, 2009. A review of the minutes of the City Council meeting showed no mention of the Transportation Subcommittee meeting that had been held earlier that day. There was no mention of a decision or report by the Transportation Subcommittee regarding re-evaluation of the consultant groups.

4.5 April 20 Santa Ana City Council Meeting

In preparation for the April 20, 2009 Santa Ana City Council meeting, the City Manager submitted a Request for Council Action asking for authorization "to negotiate an agreement with Cordoba Corporation to conduct the Go Local Program Phase 2 technical analysis for the Santa Ana and Garden Grove modern street car project identified in the Go Local Phase 1 Program, and return to City Council for final approval."⁹

In less than six weeks, the project had moved from a recommendation to award the \$4.85 million consultant agreement to Parsons Brinkerhoff—rated the best qualified candidate—to an award to the Cordoba Corp., rated the least qualified by the City's panel of experts.

During discussion of this issue at the April 20 Council meeting, the Mayor stated that a new "schematic had been developed" proposing participation in the agreement by all of the applicant groups, building on the strength of each. The Mayor did not explain when the "schematic" had been discussed, nor when it had been decided by the City Council. Mayor Pro-tem went on to say that a "hybrid" structure was based on interviews that the Transportation Subcommittee held with Parsons Brinkerhoff, David Evans and Cordoba at its March 16, 2009, meeting. However, the Grand Jury found no evidence that any recommendations or decisions were made at the March 16 Transportation Subcommittee meeting.

Also, the development of a new "schematic" and the concept of a hybrid model substantially changed the structure of the consulting contract and should have resulted in a new RFP bid process outlining the capability of each applicant group to meet the new requirements.

After some discussion, the City Council directed the City Manager to work with all three applicants to develop a "hybrid approach" to the consulting

⁹Santa Ana City Council Minutes: April 20, 2009.

Santa Ana Street Car Project: A Study in Local Transit Planning

agreement that would include the best capabilities of each. Staff was directed to bring back a revised proposal for Council consideration.

The “hybrid approach” apparently resulted from a series of behind-the-scenes meetings with little or no public input or oversight. In fact, the Transportation Subcommittee convened by the Mayor a month earlier to provide another level of review of the applicants failed to take any formal action and issued no minutes of its deliberations that would form the basis for City Council action.

After the April 20, 2009 City Council meeting, the City Manager and City staff spent over three months developing a new Request for Council Action detailing the composition of the new consultant team. This process added significantly to the delay in starting the Phase II process and pushed the application for Phase III and Phase IV funding even further behind schedule.

4.6 Aug. 3, 2009, Santa Ana City Council Meeting

On Aug. 3, 2009, the Santa Ana City Council executed a \$4.85 million agreement with the Cordoba Corp. to conduct the technical analysis for the Go Local Phase II program. Cordoba was designated the lead contractor, receiving 37.5% of the \$4.85 million, with another 37.5% going to its design partner, URS Corp. Cordoba was designated lead contractor, with the CDC/URS partnership receiving \$3.6 million (75% of the contract), even though it had been rated least qualified.

Despite the size of the contract and magnitude of the project, the award item was placed on the Council’s Consent Calendar at the Aug. 3 meeting and was passed with no discussion.

4.7 Code of Ethics and Conduct of the City of Santa Ana

In June 2008, the Santa Ana City Council adopted a strict Code of Ethics and Conduct to provide standards to elected and appointed city officials.

In response to the Grand Jury initial report, key city officials stated that, “We believe that the (Grand Jury) report should acknowledge that the City’s Ethics Code is expressly only a statement of values and goals and not a set of rules with any sort of enforcement purpose.” By this statement it appears that, ethical conduct by Santa Ana leaders is an ethereal goal, not an expected standard of performance.

The City Council actions in awarding the final Street Car Project planning agreement to the Cordoba Corp. violated the intent of the published Code of Ethics and Conduct. Applicable provisions include:

- Section 1, Item E. The Code of Ethics and Conduct is intended to provide high standards of conduct for all elected officials and members of appointed boards, commissions and committees.
- Section 1, Item F. The Code of Ethics and Conduct is intended to increase public confidence in City Government.
- Section 1, Item H. The Code of Ethics and Conduct represents a commitment by Santa Ana public officials to uphold a standard of integrity above and beyond that as required by law.

However, contrary to the adopted Code of Ethics and Conduct:

- Critical decisions regarding the \$4.85 million Street Car Project were made out of the public view with limited or no opportunity for public scrutiny or input. According to testimony received by the Grand Jury, Parsons Brinkerhoff was dropped as the lead candidate for the Street Car Project prior to the March 16 Transportation Subcommittee meeting. The Subcommittee discussed this change but made no record of discussion or findings. In fact, the Cordoba Corp. emerged as the favored contractor at the April 20 City Council meeting—again with no public review of the process or criteria used in elevating Cordoba as the preferred contract awardee.

Santa Ana Street Car Project: A Study in Local Transit Planning

- Santa Ana City Council members ignored the recommendations of their own panel of experts and used no stated criteria in awarding the contract to the lowest rated contract group. In fact, the Mayor indicated a preference for the Cordoba Corp. vision and led a reconsideration of all the bidders, leading to Cordoba receiving the final contract award.
- Elected City officials set up a private meeting with the President of Cordoba prior to the March 16, 2009, Transportation Subcommittee meeting. Also, several private discussions were held among City staff and Council members prior to the Aug. 3 Council meeting when the final contract was approved.

4.8 AB 1234: The Government Transparency and Fair Process Act

State Assembly Bill 1234 and enabling regulations provide expected standards for government officials in conduct of their duties. Key provisions include:

- Standards requiring government processes to be transparent to the public; making decisions in a public setting, and the public having an opportunity to weigh in on these decisions.
- Requirements for competitive bidding for public contracts, giving all qualified contractors the opportunity to do business with government agencies on an equal basis.
- A requirement that public officials exercise their powers free from personal bias—including biases that have nothing to do with financial gain or losses.
- Provisions that local political leaders not attempt to influence the decision on contract awards by holding private and pre-meeting discussions with staff or colleagues.
- Guidelines indicating that a public official should disqualify himself from a decision if there is any potential conflict of interest.

However, contrary to AB 1234 requirements, the Grand Jury found that:

- The scope of the contract changed from the form in the initial RFP to a “hybrid” model, but the City did not issue revised RFP detailing requirements of the new approach. The three applicants were not given the same opportunity to earn the contract award through an open bid process similar to the guidelines established by the December 2008 Request for Proposal.
- The Mayor indicated a preference for the Cordoba Corp. vision and led a reconsideration of all consultant groups, leading to Cordoba receiving the final contract award.
- A private meeting was held with the President of Cordoba and Transportation Subcommittee members prior to the March 16, 2009, subcommittee meeting.
- The Mayor, in his role as chair of the Transportation Committee and leader of the Santa Ana City Council, declared dissatisfaction with a key member of the Parsons Brinkerhoff consulting group during deliberations regarding award of the Phase II contract.
- Additionally, the Mayor failed to disqualify himself from the discussion and the decision-making processes re the Street Car Project at the March 16 Transportation Subcommittee and April 20 City Council meetings. However, he did declare a potential conflict at the Aug. 3 meeting when the final Phase II contract award was approved.

4.9 The Ralph M. Brown Act and Open Meetings

Chapter III, Section 2 of the Brown Act prohibits what are known as “serial meetings.” Such meetings are a series of communications, each of which involves less than a quorum of the legislative body but which taken as a whole involve a majority of the body’s members. The purpose of the serial meeting prohibition is “to prevent public bodies from circumventing the requirement for open and public

Santa Ana Street Car Project: A Study in Local Transit Planning

deliberation of issues.” The Act expressly prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices for the purpose of developing a concurrence as to action to be taken.

In the weeks after the March 16 meetings, City staff began working with the Cordoba Corp. to finalize the organizational structure of the consultant team. This included meetings, phone calls and contacts among City staff, Council members and Cordoba regarding possible development of a “hybrid” approach drawing upon strengths of the three applicants in developing a consolidated agreement.

Witnesses interviewed by the Grand Jury revealed that the City Manager’s close contact with all of the Council members during this period took place outside public view. The City Council may have come to a consensus on the Cordoba proposal by using the City Manager as an intermediary among all parties.

5. FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2009-2010 Grand Jury arrived at the following findings:

- F.1 *Inadequate RFP:* Santa Ana political leaders and administrative staff followed inconsistent and inadequate guidelines in developing the Request for Proposal and inadequate documentation in support of their final decision. The original RFP stated the scope of the project but did not include the transit vision of the Mayor and Council.
- F.2 *Recommendations of Expert Panel Ignored:* Santa Ana City staff created an expert panel to evaluate the capabilities of the three applicant groups but the findings from this evaluation were ignored in awarding the final contract. The contract was awarded to the lowest-rated bidder with a poorly documented process.

- F.3 *Mismanagement of Planning Funds:* The process for awarding the Phase II planning funds was mismanaged and compromised by miscommunications and lack of direction between City Council and staff.
- F.4 *The Project is Behind Schedule:* Delays in the contract process put the Santa Ana Street Car Project several months behind its original schedule which could affect future funding. There continue to be problems in meeting critical deadlines.
- F.5 *Lack of Transparency:* Elected City officials violated the intent and specific provisions of their Code of Ethics and Conduct as well as provisions of AB 1234, the Government Transparency and Fair Process Act. City leaders and elected officials failed to provide transparency and public input in the contract award, possibly violating the Brown Act.
- F.6 *Limited OCTA Oversight:* Over 90% of funding for the Santa Ana Street Car planning project came from Orange County Transportation Authority-administered sales tax funds (Measures M1 and M2). OCTA provided limited oversight for award of this contract, and use of funds. Similar projects funded with State or Federal taxes require aggressive oversight of grant awards

Responses to Findings F.1, F.2, F.3, F.4 and F.5 are required from the Santa Ana City Council and requested from the Santa Ana City Manager. Response to Finding F.6 is requested from the Orange County Transportation Authority.

6. RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2009-2010 Grand Jury arrived at the following recommendations:

Santa Ana Street Car Project: A Study in Local Transit Planning

R.1 The City of Santa Ana should develop specific guidelines in its RFP process, specifying all program requirements used to evaluate applicants, including the scope and vision of the leadership.

R.2 City Council should give full consideration to the findings of the duly appointed evaluation team and publicly disclose, with justification, at a Council meeting any deviation from the team's recommendation so as not to jeopardize public confidence.

R.3 The City of Santa Ana should develop guidelines to improve the awarding of contracts to better reflect the expectations of the elected officials and direct professional staff accordingly.

R.4 The City of Santa Ana needs to tighten procedures to assure compliance with the expectations and timelines of the agencies that grant funds to the City.

R.5 The City Attorney should conduct a retraining program for the City Council regarding the Ralph M. Brown Act, AB1234 and the City of Santa Code of Ethics and Conduct by June 1, 2010. The training programs shall be scheduled every two years thereafter including an emphasis on an open and transparent process.

R.6 OCTA should exercise stronger oversight in awarding planning and engineering contracts involving Measure M1 and M2 funds. Currently, OCTA utilizes 1% of Measure M funds for oversight of approved projects. This should be increased to allow for greater oversight of transportation contract awards consistent with State and Federal funding guidelines. to insure that Measure M funds are properly spent.

Responses to Recommendations R.1, R.2, R.3 and R.4 are required from the Santa Ana City Council and requested from the City Manager. Responses to Recommendation R.5 are required from the Santa Ana City Council and the City Attorney. Response to Recommendation R.6 is

requested from the Orange County Transportation Authority.

7. REQUIRED RESPONSES

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

§933.05

(a) For purposes of Subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore:

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.”