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# CITY OF SANTA ANA

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August 16, 2010

The Honorable Kim Dunning  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

Dear Judge Dunning:

This letter is in response to the 2009-2010 Orange County Grand Jury Report entitled "Santa Ana Street Car Project." The City Council approved the content of this letter and the responses at their August 16, 2010 meeting and directed me to convey them on its behalf. Below are the Mayor's and City Council's responses to Findings F-1 through F-5 and Recommendations R-1 through R-5 as required by the report.

## POTENTIAL CONFLICT OF INTEREST/BIAS OF A GRAND JURY MEMBER

As a preliminary matter, the City Council wishes to raise the issue of potential conflict of interest on the part of one member of the grand jury whose presence and participation may have tainted the entire report. That member has been an active civic participant in Santa Ana for many years. He was serving as a city commissioner at the time this investigation began and was removed from his position by the City Council in October 2009 for reasons unrelated to this investigation or his membership on the Grand Jury. We believe that these along with other facts are sufficient grounds for the subject member to have been required to abstain from any participation in this investigation.

Many California grand juries have adopted formal rules and procedures for conducting their investigations and several include standards for abstention. Among the counties that have posted their grand jury procedures on their websites are: Humboldt, Imperial, Mariposa, Mendocino and Modoc Counties. At least two of these counties also rely upon the Grand Jury Resource Manual for California Courts-Model Guide for Civil Grand Jurors-2005 (the "Model Guide"). Under separate cover, the City staff has provided copies of these manuals for your review.

All of the guides in one way or another require a grand juror to abstain from participating in or influencing an investigation in which he/she is biased or otherwise has a conflict of interest. The Orange County website does not contain any reference to rules for abstention. The City Attorney

was informed by the Orange County Counsel that the Orange County Grand Jury does not have any such formal or published rules or standards.

The standard for abstention is best articulated in the Model Guide. In reference to abstention by grand jury members for conflict of interest, it states on page 8:

“Because of the grand jury’s extraordinary fact-finding powers and the sensitivity of many of its activities, grand jurors must be careful to avoid involvement in areas where an actual or perceived conflict of interest might exist. Avoiding conflicts and the appearance of conflicts is important for several reasons. It protects the integrity of the investigation; it protects the investigation of the grand jury as an institution; and it protects individual grand jurors from civil or criminal penalties.”

Additionally, the County of Mendocino 2009 Grand Jury Procedures Manual requires all grand jurors to sign a Code of Ethical Conduct. Among the obligations assumed thereunder, each grand juror agrees:

“I will disclose to the Foreperson and/or the entire Grand Jury, any potential conflicts of interest I may have or that may exist, either at the beginning of the term, or that may develop during the term of my service on the Grand Jury. When I have a conflict of interest, either real or perceived, I will abstain from investigations, discussions, voting and report writing on such matters. I will abide by any decision of the executive committee in matters concerning whether or not a conflict of interest exists.”

One of common grounds for abstention by grand jurors is bias. The Model Guide refers to conflict of interest for bias at pages 8 & 9:

“In addition to avoiding conflicts of interest, a grand juror must not have an identifiable bias regarding any actions that the grand jury may take. Bias is the prejudgment of essential facts that prevents a member of the grand jury from considering an issue objectively, including publicly expressing support or opposition on a specific matter. Having an educated opinion on an issue should not be considered as having a bias. The same disclosure and recusal that applies to a potential conflict of interest should apply to preexisting bias.”

The Humboldt County guide also clearly sets standards for abstention and the nexus between bias and abstention on Page 44 as follows:

“Members of the grand jury must avoid any appearance of personal bias or possible conflict of interest. Impartiality is an essential part of constructive investigation. Each grand juror should advise the foreperson of any potential conflict of interest or bias. When a grand juror has cause to believe that a matter

to be discussed or voted on would involve a bias, said juror should abstain from both discussing and voting on the matter. Appropriate counsel should be asked if there is any question in this matter.”

This situation is exacerbated by inconsistent statements and contradictory actions of the grand jury in this matter. In late September 2009, a member of the City Council was interviewed by members of the grand jury. At that time, the councilmember expressed concern about participation by the subject member. In response, the councilmember was told that the subject member would not participate due to his potential conflict of interest. In late October 2009, a city staff member and another councilmember were interviewed by members of the grand jury and the subject member actively questioned the city officials in both interviews. Because of the admonition given to witnesses not to disclose their testimony, the city staff member and second councilmember were neither aware that the other councilmember had already been interviewed nor that the subject member was supposedly recused from the investigation. It is worth noting that this grand jury member was removed from the city commission just days before the city staff member and second councilmember were interviewed.

Due to grand jury secrecy, we are not able to determine what further involvement the subject member had in the investigation or whether he sought or obtained advice on his participation. But merely based upon the inconsistent and contradictory actions of the Grand Jury recited in this letter and the standards imposed on grand juries in other counties, the Santa Ana City Council believes that this investigation and report are irreparably tainted by the participation by a member with a potential conflict of interest and potential bias.

## RESPONSES TO FINDINGS

**FINDING 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.

**RESPONSE:** We disagree wholly with the statement that staff followed inconsistent and inadequate guidelines in developing the Request for Proposal and inadequate documentation in support of their final decision. In fact, the City went beyond its normal procedure by first sending out a Request for Qualifications to pre-qualify firms. Request for Proposals were then sent out to those firms that were pre-qualified to perform the work.

We also disagree with the statement that the original RFP scope of the project did not include the Mayor and Council Transit Vision. On page 5 of the RFP, under Background, paragraph 3, the Council and the Mayor’s Transit Vision is clearly stated.

**FINDING 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.

**RESPONSE:** We disagree wholly. The City Council did not ignore the recommendation of the selection panel. Rather, it fully considered the panel's recommendation and instead proposed a hybrid team structure that could have included Parsons Brinkerhoff. Parsons Brinkerhoff (PB) had been recommended and retained previously for Step 1 of this process to prepare an initial needs assessment and transit vision for the City. As such, the City Council was fully aware of the strengths and weaknesses of PB's work product and project approach, which formed the basis for their desire to set this recommendation aside and go with a different firm to lead the team of consultants. As the final decision-making body on this contract, the City Council operated well within its rights.

**FINDING 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.

**RESPONSE:** We disagree wholly with this finding and believe the title is inaccurate and misleading. While this title implies that there is wholesale mismanagement of the project's funds, the text under this finding limits its criticism to the process for awarding this contract. As stated in our response to findings F.1 and F.2, the City's selection and award process went above and beyond the normal practice by conducting both a RFQ and RFP process. Furthermore, the selection process was more rigorous than usual with the convening of a selection panel by City staff, and further interviews with City Council's Transportation Committee. Given the importance and magnitude of this project, the extra steps and rigor seem appropriate, and it must be pointed out the final fee structure saved significant costs over the PB proposal.

Finally, to respond to this finding's inaccurate and misleading title, the project funding is being spent in direct alignment with the intent of Measure M's Project S criteria, and as a further check, there are regular meetings with OCTA, the project sponsor.

**FINDING 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.

**RESPONSE:** We disagree wholly with this finding. While it took six months to finalize and negotiate a contract, the project is currently on track to be completed by December 2011 to meet our original schedule. We have not missed any deadlines for funding opportunities. The City is planning to apply for preliminary engineering funding for the

M2 Call for Projects in the fall of 2010, and we are on schedule to meet critical milestone dates for future local and federal funding opportunities.

FINDING 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.

RESPONSE: We disagree wholly with this finding. In all three cases, the report erroneously relies upon inaccurate and misleading statements of the law. In fact, when the particular standards are evaluated, it is evident that either the law has no application to the facts in the report or the report is totally lacking of evidence to support the conclusion. Further, when reliance upon these resources is stripped from the report, the remainder lacks substance and is reduced to rumor and innuendo. As such, these sections and all references to their content should be stricken from the report.

Sections 4.7 through 4.9 of the Report as well as Finding F.5 rely upon three legal resources to support their conclusions: The City of Santa Ana Code of Ethics, AB1234 (California Government Code Sections 53234-53235.2) and The Ralph M. Brown Act (California Government Code Sections 54950-54960.5)

No City Code of Ethics Violation

Section 4.7 of the report states that the “. . . City Council actions in awarding the final . . . agreement to Cordoba Corp. violated the intent of the published Code of Ethics and Conduct.” In reaching this conclusion, the Grand Jury cited to non-existent sections of the Code of Ethics. The provisions that the report asserts are contained in the Code of Ethics are, in fact, merely preliminary findings of the City Council as part of the resolution adopting the Ethics Code. They are not part of the Code at all. The Santa Ana Ethics Code, a copy of which is attached to this letter, does not contain any standards or requirements that have any application to the subject matter of the report.

No AB1234 Violation

Section 4.8 attempts to establish that various aspects of the process violated specific State-imposed standards for transparency in governmental decision-making. The Report completely and materially misrepresents both the intent and the letter of what it describes as AB1234. Assembly Bill 1234, passed in 2005, primarily deals with standards for compensation and payment of travel expenses for various local officials, and arose from perceived abuses by several special districts in the state.

The only portion of AB1234 that even arguably addresses issues of ethics and transparency are Government Code Sections 53234 - 53235.2 which require local elected officials to receive biennial “ethics” training. Nothing in these sections, however, establish “standards for government officials in the conduct of their duties” as postulated by the report. Specifically nowhere in AB1234 are found the five bulleted requirements

for conduct or prohibited activities listed in the second paragraph of Section 4.7 of the report.

#### No Brown Act Violation

The most egregious misstatement by the Grand Jury in the report is the allegation in Section 4.9 that the City Council engaged in conduct that “possibly” violated the Brown Act. The Ralph M. Brown Act is a set of standards for the conduct of public meetings. At all times, Santa Ana city councils have complied fully with both the letter and intent of the Brown Act and the current City Council and City Manager are fully aware of the Brown Act standards regarding serial meetings and the limits of staff-Council communications.

The Report contains absolutely no facts to support the inference that the absence of a noticed meeting of either the Transportation Committee or the City Council between March 16 and April 20 meant that city officials facilitated inappropriate communications among members of the City Council for the purpose of developing a consensus regarding Cordoba, or otherwise. In regard to the speculation in the last paragraph of Section 4.9 about close contacts between the City Manager and members of the City Council during the time in question, we must point out that Section 54952.2(b)(2) of the Brown Act expressly permits “. . . an employee or official of a local agency, . . . [to engage] in separate conversations . . . outside of a meeting . . . with members of a legislative body in order to answer questions or provide information regarding a matter . . . , if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”

In the face of contrary statutory authority and in the absence of any material evidence, the Report engages in rank speculation when it states: “[w]itnesses 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.”

### RESPONSES TO RECOMMENDATIONS

RECOMMENDATION 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.

RESPONSE: The recommendation has been implemented. RFPs issued by the City include a detailed scope of work and identify the key factors to be evaluated in the selection process. These are standard provisions in RFPs. To reinforce this current practice, and to specifically address the Grand Jury’s recommendation, the City Council approved a policy at their May 3, 2010 meeting regarding RFPs/RFQs that clearly states

the requirement to identify project vision, scope and evaluation criteria. It should be noted that the RFP for the Santa Ana Street Car Project was very detailed in its description of the City's vision and expectations for work and schedule relating to the services solicited. Further, the selection criteria was clearly articulated in the RFP. Thus, we concur that RFPs should contain the information noted by the Grand Jury so that all applicants are equally informed at the onset of the process, and expectations are clearly defined.

RECOMMENDATION 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.

RESPONSE: The recommendation has been implemented. It should be noted that the City Council is the final decision making body authorized to approve consultant and project contracts that exceed \$25,000 in value. Although an evaluation panel and/or staff may make recommendations, the City Council is the final authority. City staff will continue to work together with the City Council, in the event modifications to the panel or staff recommendation are made, so that the City Council clearly articulate at a public meeting the reasons for making a different selection, if in fact they do so.

With regard to this specific project, there were several public meetings during which the selection of the consultant team was discussed. The City Council Transportation Subcommittee held a meeting on March 16, 2009, at which time they interviewed the three RFP finalists. On April 20, 2009, the City Council, at their regularly scheduled public meeting, directed the City Manager to negotiate a hybrid team of qualified consultants and return to the City Council for final approval. During this same meeting, the City Council specifically directed staff to work with Cordoba Corporation, Parsons Brinkerhoff, David Evans and Associates, IBI and URS (all prime or subconsultants who submitted proposals) to undertake Step 2 of the Go Local project. The final outcome was approved at a publicly held and noticed City Council meeting on August 3, 2009 where Cordoba Corporation was given lead status and instructed to work with David Evans, URS, HNTB, and LTK in a hybrid team approach. It should be noted that Cordoba Corporation is receiving less than 37.3% of the total compensation awarded under the approved contract.

RECOMMENDATION 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.

RESPONSE: The recommendation has been implemented. As stated in response #1, on May 3, 2010, the City Council modified its policy for the issuance of requests for proposals or qualifications to ensure that the City Council's policy direction is reflected better in the City's RFP processes. All major project and consultant service contracts will first be reviewed and approved by the City Council at a regularly scheduled City

Council meeting. The detailed scope of work for such services, as well as the intended selection process for the contract award will be stated. A copy of the approved City Council agenda item regarding this policy modification is attached.

With regard to the Santa Ana Street Car Project, the City Council did acknowledge its vision for the transit project in conjunction with the City of Garden Grove. This action is reflected in the approval of the Cooperative Agreement between the City and OCTA on September 2, 2008. From there, the RFP for the Go Local program consultant was issued. As mentioned previously, the RFP was very detailed and clearly articulated the City's vision for its proposed transit program.

RECOMMENDATION 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.

RESPONSE: The recommendation will not be implemented because it is not warranted. The City is extremely aware of and experienced in managing grant funds for various projects. Regular progress payments are provided to grant-funding agencies, such as OCTA. Further, OCTA staff participate in monthly project meetings with city staff and the consultant team undertaking the fixed guideway study. All project-related issues are discussed at these meetings, including schedules, funding, community outreach, etc. Since there have not been any issues with the current grant administration practices, the City will continue with our monthly meetings and prompt compliance with grant milestones.

RECOMMENDATION R-5: The City Attorney should conduct a retraining program for the City Council regarding the Ralph M. Brown Act, AB 1234 and the City of Santa Ana 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.

RESPONSE: As noted in the response to Finding F.5, we believe that this recommendation is not justified. As such, and for the reasons set forth below, the recommendation will not be implemented because it is not warranted. The City Council has met the legal requirements for biennial ethics training. The Grand Jury recommendation implies that, in spite of the required legal training, the City Council should receive additional training immediately from the City Attorney. With all due respect, we do not find this recommendation necessary or legally required at this point.



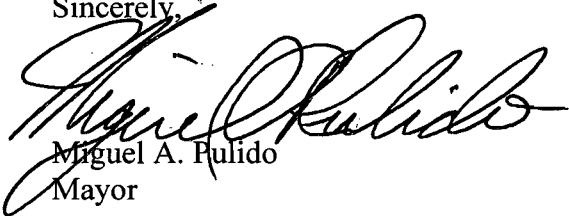
The Honorable Judge Kim Dunning

August 16, 2010

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In providing these comments and responses, the City Council and their members do not waive any legal remedies they may have related to the report and its preparation. Thank you for the opportunity to respond to the Grand Jury's report.

Sincerely,

A handwritten signature in black ink, appearing to read "Miguel A. Pulido". The signature is fluid and cursive, with the first name being the most prominent.

Miguel A. Pulido  
Mayor

**THE CITY OF SANTA ANA  
CODE OF ETHICS AND CONDUCT  
ADOPTED JUNE 2, 2008**

The people of the City of Santa Ana, at an election held on February 5, 2008, approved an amendment to the City Charter of the City of Santa Ana which states: "The City of Santa Ana shall adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees to assure public confidence in the integrity of local government elected and appointed officials." Consistent with the vote of the people, the following Code of Ethics and Conduct is hereby adopted by the City of Santa Ana to ensure effective and fair operation of the local government of the City of Santa Ana.

**I.**

**PREAMBLE**

It is the intent of this code to achieve fair, ethical, and accountable local government for the City of Santa Ana. The people of Santa Ana expect public officials, both elected and appointed, to comply with both the letter and the spirit of the laws of the State of California, the United States of America, and the Charter, Municipal Code, and established policies of the City of Santa Ana affecting the operations of local government. In addition, public officials are expected to comply with the provisions of this Code of Ethics and Conduct established pursuant to the expressed will of the people. All persons covered by this code will aspire to meet the highest ethical standards in the conduct of their responsibility as an elected or appointed official of the City of Santa Ana. This code addresses various aspects related to the governance of the City of Santa Ana and supplements, but does not supplant other laws and rules that prescribe the legal responsibilities of City officials. These include, but are not limited to, the Federal and State Constitutions, various provisions of the California Government Code (such as the Brown Act and the Political Reform Act), the Labor Code, laws prohibiting discrimination and harassment, and the City of Santa Ana Charter and Municipal Code. Elected and appointed officials are expected to be familiar with these laws to ensure that they exercise their public responsibilities in a proper fashion. This code is not designed to be used as a tool to remove appointed officials, as the City Council retains the right under the Charter and Municipal Code to remove appointed officials in accordance with those provisions. While it is not possible to anticipate and provide a rule of conduct and ethics for all situations that public officials may face, this Code of Ethics and Conduct is designed to provide a framework to guide public officials in their daily duties.

**II.**

**SCOPE**

The provisions of this Code of Ethics and Conduct shall apply to the Mayor and members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council or the Mayor or the Mayor and City Council, including any *ad hoc* committees. Further, the provisions of this Code of Ethics and Conduct shall only apply to these officials and members acting in their official capacities and in the discharge of their duties.

### **III. CORE VALUES**

Attitudes, words, and actions should demonstrate, support, and reflect the following qualities and characteristics for the well being of our community. The five core values and expressions that reflect these core values are as follows:

#### **INTEGRITY/ HONESTY**

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

#### **RESPONSIBILITY/PROTECTING THE PUBLIC'S INTERESTS**

- I do not accept gifts, services or other special considerations because of my public position.
- I excuse myself from participating in decisions when my or my immediate family's financial interests may be affected by my agency's actions.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual.
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

#### **FAIRNESS/ACCOUNTABILITY**

- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner;
- I make decisions based on the merits of the issue.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I work to contribute to a strong organization that exemplifies transparency and open communication.

#### **RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC**

- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.

- I work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed
- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I encourage full participation of all persons and groups; I am aware and observe important celebrations and events which reflect the values of our diverse population.

#### **PROPER AND EFFICIENT USE OF PUBLIC RESOURCES**

- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents.

#### **IV.**

#### **IMPLEMENTATION AND ENFORCEMENT**

City of Santa Ana elected and appointed officials of the various boards, commissions and committees have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. This code of ethics will be most effective when the elected and appointed officials are thoroughly familiar with it and embrace its provisions. Upon adoption of this code, all current elected or appointed officials shall be given a copy of the code and asked to affirm in writing that they have received the code, understand its provisions, and pledge to conduct themselves by the code. All new members of the City Council, upon election or reelection, and members of boards, commissions, and committees appointed by the City Council, upon appointment or reappointment, shall be given a copy of the code and are required to affirm in writing they have received the code and understand its provisions, and pledge to conduct themselves by the code. Additionally, all members of the City Council, boards, commissions, and committees, as part of their AB1234 training, shall be provided additional training clarifying the provisions and application of this code. The City Attorney, or his/her designee, shall serve as a resource person to those persons covered by the code to assist them in determination of appropriate actions consistent with the code. A periodic review of the code shall be conducted to ensure that the code is an effective and vital document. This Code of Conduct is intended to be a reflection of the community's values as articulated by the Mayor and City Council as they represent the will of the people of the City of Santa Ana.