NOVATO FIRE DISTRICT
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June 12, 2015

The Honorable Faye D'Opal
Presiding Judge
Marin County Civil Grand Jury
3501 Civic Center Drive, Suite 275
San Rafael, CA 94903

Dear Judge D'Opal,

Attached are the official responses of the Novato Fire Protection District to the findings and recommendations of the Grand Jury's report titled, "Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency". Our responses to the findings and recommendations were approved by the Novato Fire Protection District Board of Directors at their meeting on June 3, 2015.

Sincerely,

Mark Heine
Fire Chief

Cc: President Brad Beedle, Novato Fire Protection District Board of Directors
Mr. Riley Hurd III, Esq., Ragghianti/Freitas LLP
President Katie Rice, Marin County Board of Supervisors
Foreperson Jack Nixon, Marin County Civil Grand Jury

Novato Fire Protection District

Board of Directors' Responses to - "Pension Enhancements: A Case of Government Code Violations and a Lack of Transparency"

FINDINGS

F1. The Employers appear to have repeatedly violated Cal. Gov't Code § 7507 by using the same actuarial evaluation report for many different pension increases and by failing to publicly disclose those increased costs before adopting them. The evaluations did not review the proposed increases for each individual bargaining unit; the Employers continued using the evaluation after years had passed. These factors appear to have contributed to the current unfunded liabilities of MCERA.

RESPONSE: The District partially disagrees with this finding. The District did not use the same actuarial evaluation report for "many different pension increases." The District commissioned an actuarial report before taking action in 2001 to do a one-time adjustment of pension benefits, and this report did review the proposed increases for each individual class of employees affected. The record of the District is unclear as to whether the findings of the actuarial report were publicly disclosed 2 weeks in advance. The District did not continue "using the evaluation after years had passed." The factors in Finding 1 do not "appear to have contributed to the current unfunded liabilities of MCERA." The actuarial study commissioned by the District showed that the District's pension obligation was 138% funded prior to the pension change, and would be 119% funded thereafter. Other factors, however, did end up contributing to the current unfunded liabilities of MCERA.

F2. The County appears to have violated Cal. Gov't Code § 23026 by (a) failing to make the pension increases public through a "regularly scheduled meeting" of the Board, including through the use of consent agendas; (b) failing to provide public notice of that increase on a board agenda; (c) failing to provide a public notice of the "financial impact" that the increase would have on MCERA. These violations excluded the public from examining the fiscal impact of the pension increases and from participating in the board's decision process.

RESPONSE: The District is unable to agree or disagree with this finding. The District has not independently evaluated or investigated the County's actions in regards to the County's adoption or noticing of changed pension benefits.

F3. The County appears to have violated Cal. Gov't Code § 31515.5 by (a) failing to make the pension increases public through a "regularly scheduled meeting" of the board, including through the use of consent agendas, (b) failing to provide prior public notice of that increase on board agendas, and (c) failing to provide a public notice of the "financial impact" that the increase would have on MCERA. The public appears to have been excluded from examining the fiscal impact of the pension increases and from participating in the approval process. It also appears that the public was unaware of potential future financial obligations.

RESPONSE: The District is unable to agree or disagree with this finding. The District has not independently evaluated or investigated the County's actions in regards to the County's adoption or noticing of changed pension benefits.

F4. The County appears to have violated Cal. Gov't Code § 31516 by (a) failing to secure an actuarial statement that explains the financial impact of the specific pension increase on MCERA and by (b) failing to make that actuarial report public at least two weeks prior to the adoption of the increase of benefits. This appears to have excluded the public from examining the fiscal impact of the pension increases, from participating in the board's decision-making process, and from understanding their potential future financial obligations.

RESPONSE: The District is unable to agree or disagree with this finding. The District has not independently evaluated or investigated the County's actions in regards to the County's adoption or noticing of changed pension benefits.

F5. If the pension increases were not made in accordance with the California Government Code, the citizens of Marin County were never given proper notice about pension increases that are now costing them millions of dollars. These increases and associated liabilities are a contributing factor to why MCERA has a collective unfunded pension liability of approximately $536.8 million.

RESPONSE: The District partially disagrees with this finding. Partial compliance with the Government Code could still serve to give notice to the citizens of Marin County about pension increases. For example, the benefit changes and MOU in question were adopted at noticed public hearings after the commissioning of an actuarial study showing that the District was projected to retain 119% funding of its pension liabilities. The District agrees that these increases and associated liabilities are a contributing factor, among many others, to why MCERA has unfunded pension liability.

F6. Because there appear to have been statutory violations, the future pension benefits provided for by the enhancements may or may not have vested as rights of the public employees under California law.

RESPONSE: It is unclear how the District can agree or disagree with a "may or may not" assertion, so the District partially disagrees with this finding. The District is unaware of any case law or code holding that a partial violation of Government Code 7507 prevents benefits from vesting.

RECOMMENDATIONS

R1. The Employers develop, adopt and implement a policy and procedures (including staff training) to prevent future violations of the California Government Code when increases in pension benefits are proposed. The Employers should consider making their legal counsel responsible for ensuring compliance with the Government Code.

RESPONSE: The District has not yet formally implemented this recommendation but will do so within 4 months. The District staff has been fully briefed on the requirements of 7507 by legal counsel and already carefully followed 7507, including an actuarial study and public notice, for a recent benefits change (a decrease).

R2. The Employers develop, adopt and implement a policy for "reporting out" to the public regarding the employment and pension costs in terms of the amount and the Employer's ability to pay on a current cash flow basis.

RESPONSE: The District has not yet formally implemented this recommendation but will do so within 4 months. The Marin County Public Employees Retirement Association provides the District with an annual actuarial report and a letter setting the required contribution rates for the upcoming fiscal year. Those rates are then factored into the District's budget. Three methods of "reporting out" to the public are already utilized: 1) the documents are reviewed by the Board of Directors' Finance Committee; 2) the documents are provided to the full Board of Directors, and; 3) the documents are posted on the District's website.

R3. Each Employer establish a Citizens' Pension Oversight Committee comprised of resident tax payers who would: 1.) review pension funding levels in light of the Employer's ability to pay; 2.) review proposed pension changes before final Employer approval of any collective bargaining agreement; 3.) review the Employer's compliance with Government Codes related to pensions; 4.) develop written quarterly reports for the public as to the financial security of the pension fund.

RESPONSE: This recommendation will not be implemented by the District because it is not warranted or reasonable. The components of this recommendation are the responsibility of the District's elected Board, will be addressed by the policies to be adopted in response to R1 and R2 above, and are also partially found in 7507. The District has established both Finance and Policy committees that are open to the public, which also address the components of this recommendation. The District's monthly financial reports are provided for review by the public and the Board at each regular meeting of the Board of Directors. These reports describe the amounts being paid towards the

District's unfunded pension liability as required by the actuarial study provided annually by the Marin County Public Employees Retirement Association. The District does not administer the pension fund and therefore is not in a position to opine on the fund's financial security.