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August 5, 2005

VIA HAND DELIVERY

Honorable Terrence R. Boren
Presiding Judge
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

J. Patrick Burke, Foreman
Grand Jury
Marin County
3501 Civic Center Drive, Room 303
San Rafael, CA 94903

Re: Response from Marin County's Law Enforcement Labor Organizations to the Grand Jury Report Entitled, "The Bloated Retirement Plans of Marin County, Its Cities and Towns"

Dear Judge Boren and Foreman Burke:

This office represents the Marin County Deputy Sheriffs' Association, San Rafael Police Association, Novato Police Officers' Association, San Anselmo Police Officers' Association, Sausalito Police Officers' Association, and the Twin Cities Police Officers' Association (hereinafter referred to as "Responding Associations") for purposes of providing a response to the above-referenced Grand Jury Report. We have undertaken considerable effort to review the Grand Jury Report and have consulted with the Responding Associations in order to adequately respond to the Findings and Recommendations set forth therein.

The Responding Associations take exception to many of the statements contained in the Report. The Grand Jury Report is obviously very critical of public employee pension systems, not only in Marin County but throughout the State of California. The criticism lodged against the Marin County Employees Retirement Association, the County of Marin, local municipalities, and employee organizations are, in many respects, misplaced. The actual retirement benefits afforded public employees in nearly all cases result from the collective bargaining process. Pursuant to collective bargaining rights granted to public employees under state statutes, employees are afforded the right to negotiate with the employer on wages, hours and other terms and conditions of employment. The statutory enactment of various retirement plans merely gives the parties an opportunity to participate in retirement programs which suit the parties' needs. Retirement benefits are never mandated but are always negotiated.

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As the Report indicates, a number of factors have contributed to the financial dilemma which face many cities and counties throughout the State of California. It should be noted that the increase in retirement costs are directly related to economic downturns and losses incurred in the financial markets. In years past, most pension plans enjoyed surplus earnings for extended periods of time. In many cases, when retirement associations were earning record profits, local municipalities were, in some cases, going years without making any retirement contributions based upon their surplus earnings. We find it interesting that, during those years when local municipalities were making zero contributions to the retirement system, there was no hue and cry to curtail or terminate pension benefits afforded public employees.

You should also be aware that the Responding Associations are comprised exclusively of employees performing law enforcement functions. Frankly, there is no other occupation in this country which is so vital to protect the basic freedoms that we enjoy as a society. Moreover, as evidenced by the recent murder of Officer Nels "Dan" Niemi of San Leandro, these men and women literally put their lives on the line when they report to work each day. We would challenge anyone to find a "private sector" occupation where an individual is charged with the responsibility of enforcing laws, apprehending dangerous felons, utilizing deadly force and, finally, is exposed to the risk of physical harm and death on a daily basis.

Those individuals who are elected and hired to manage state and local government have recognized the risks and dangers associated with working in law enforcement and, through the collective bargaining process, have seen fit to provide those employees with levels of compensation and retirement benefits which they richly deserve. If one criticizes the pension benefits afforded public safety personnel, would the same objections pertain to the enhanced death benefits afforded the spouses and surviving children of those peace officers and firefighters killed in the line of duty? It is the duty and responsibility of those who govern local and state government to make prudent decisions based upon social policy and financial limitations. The Responding Associations firmly believe that these decisions are best left in the hands of the parties who face these challenges on a daily basis.

The enclosed documents are responsive to the "Request for Responses" as delineated on page 19 of the Report. In light of the fact that the Findings and Recommendations, for the most part, pertain to and address employer activities, legal obligations, contractual commitments and policy decisions, the Responding Associations are not in a position to provide substantial detail nor specific responses to many of the findings and recommendations. That being said, however, the responding associations have endeavored to provide the Grand Jury with responses which, in part, represent a collective perspective of the specific findings and recommendations.

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Finally, we hope that the information provided will be instructive to your analysis.

Very truly yours,

RAINS, LUCIA & WILKINSON LLP



Rockne A. Lucia, Jr.

RAL:psf
Enclosure

cc: Marin County Deputy Sheriffs' Association
San Rafael Police Association
Novato Police Officers' Association
San Anselmo Police Officers' Association
Sausalito Police Officers' Association
Twin Cities Police Officers' Association

**RESPONSE TO FINDINGS AND RECOMMENDATIONS OF THE 2004/2005 MARIN COUNTY CIVIL
GRAND JURY REPORT ENTITLED "THE BLOATED RETIREMENT PLANS OF MARIN COUNTY,
ITS CITIES AND TOWNS" DATED MAY 9TH 2005**

Prepared on behalf of Marin County Deputy Sheriffs' Association, San Rafael Police Association, Novato Police Officers' Association, San Anselmo Police Officers' Association, Sausalito Police Officers' Association, and Twin Cities Police Officers' Association hereinafter collectively referred to as "Responding Associations"

As to the responses set forth below, the Grand Jury is aware that Responding Associations are local employee organizations representing their members in matters related to wages, hours and other terms and conditions of employment. Each Responding Association has been recognized by the employing agency as a bargaining representative representing its members pursuant to statutory rights set forth in the Meyers-Millis-Brown Act (Government Code section 3500, *et seq.*). As employee organizations, Responding Associations have limited or in some cases no access to data, financial information or other information which is relevant to the findings and recommendations set forth in the Report. That being said, Responding Associations hereby offer the following:

FINDINGS

- F1 Public sector pensions are substantially more valuable than private sector pensions. For Miscellaneous employees in Marin, pensions are 2 to 3 ¼ times as valuable as private sector pensions; for safety employees, they are 2 ½ to 4 ½ times as valuable.**

Comment: Responding Associations have insufficient information and resources to adequately respond to this Finding. Responding Associations will, however, acknowledge that public safety employees receive enhanced pension benefits which are completely justified and appropriate based upon the unique and vital role that law enforcement plays in our communities. The physical hazards faced by law enforcement officers have absolutely no corresponding counterpart in the private sector. The law enforcement function is the essential and foundational element to protecting a free and civilized society. The members of Responding Associations face physical danger, confrontation and risk their lives for the citizens they are sworn to protect. There is no private sector occupation which expects and demands more from an employee. Members of Responding Associations are held to extremely high standards both on and off-duty. Law enforcement officers must undertake great effort to ensure that their private lives, away from the employer's supervision and control, adhere to standards which no other private sector employee must endure.

- F2 Most public sector employees in Marin do not participate in Social Security and thus contribute less (no Social Security taxes) to their retirement than do employees in the private sector.**

Comment: Responding Associations do not have sufficient information to determine whether this finding is accurate. Most public employees pay a substantial amount of their compensation toward their own retirement. The amounts paid vary, but in most cases exceed the amount paid by private sector employees for social security.

- F3 The employers' costs for public sector pensions in Marin are extremely volatile, causing financial stress to the County and its Municipalities. Average pension costs for miscellaneous plans for the County and its Municipalities increased from 2% of miscellaneous payroll in FY2002-2003 to 15% in FY2005-2006. For safety plans, the increase was from 5% of safety payroll in FY2002-2003 to 30% in FY2005-2006.**

Comment: Responding Associations do not have sufficient resources to adequately respond to this finding. However, Responding Associations acknowledge that public sector pensions, like private sector pensions, depend in large part upon the success of those charged with the responsibility of investing pension assets. It is the task and responsibility of those fiduciaries who oversee the investment portfolio of the pension funds to minimize the risk, yet enhance the profitability of the plan. The Responding Associations also assert that fluctuations and volatility in the financial markets can be anticipated, and with the proper planning the impact on the costs of employee pensions can be minimized.

- F5 Despite extremely high pension levels and the financial stress that increases in pension costs bring upon public sector budgets, there is continuous pressure to increase public sector pensions. Unions apply this pressure on the legislature which then enacts legislation enabling pension increases to proliferate throughout the state.**

Comment: Responding Associations partially disagree with this finding. Responding Associations disagree that the pension levels of employees covered under the local and state retirement systems are "extremely high." The finding that a pension is "extremely high" assumes an analysis that considers the pension levels of other employees performing similar work. There is no private sector counterpart to the duties performed by law enforcement personnel. The "continuous pressure" to increase public sector pensions is merely an outgrowth of employee organizations' attempts to ensure that their members are adequately compensated for services they provide. The collective bargaining process, both in the private and public sector, necessarily encompass the compromise of competing interests. Employees bargaining for increased pension benefits do so at the expense of wage increases, medical benefit enhancement and other bargained for benefits. The local employers must provide wage and benefit packages which are competitive. Enhanced retirement benefits are now the standard in the State of

California. Local employee labor organizations, through affiliated statewide organizations, engage in political efforts to provide statutory authorization for pension and other benefits. Public sector employees enjoy the same rights and opportunities to participate in the political/legislative process as do private sector employees. Legislative authorization of enhanced local retirement benefits does not mandate the benefit, it simply permits the parties to negotiate the benefit where appropriate. It should also be noted that public employers also lobby the legislature to expand and enhance their own authority and power in many areas including, but not limited to, retirement benefits.

- F6** **Once pension increases are adopted by a public sector employer, they cannot be rescinded without a bargained compensatory improvement in some other element of compensation. This contrasts vividly to the private sector wherein reductions in the future promises, in either pensions or Social Security, are common.**

Comment: Responding Associations partially disagree with this finding. It is true that pension benefits, like any other bargained for benefit, are memorialized in valid binding contracts. Unless and until the parties renegotiate the contract, neither party can unilaterally rescind its provisions. Each contract, or memorandum of understanding (collective bargaining agreement) is negotiated by the parties at arm's length and will no doubt vary from jurisdiction to jurisdiction. Private sector employers who, under a collective bargaining agreement, agree to provide a benefit cannot unilaterally rescind that benefit without bargaining the change with the employee or employee organization. Private sector employees are free to bargain with their employer to secure the same or similar benefits of public employees. Public employees have historically foregone lucrative private sector compensation, wages and other benefits in order to secure the advantages of a fair, reasonable and sound retirement program.

- F7** **Unless systemic (i.e., statewide) changes are made, the employers' abilities to attract and retain good employees would be undermined. Extremely large pensions, coupled with allegedly lower salary levels, impact hiring and retention. However, changing the mix, to increase salaries while decreasing pensions, would be harmful to public sector employers.**

Comment: Responding Associations disagree with this finding. The ability to attract and retain "good employees" is not conditioned on "systemic" changes to public employee pension plans. The current collective bargaining laws permit employer and employee groups to negotiate a variety of benefits, including pensions and wages. Striking a balance between competing interests by establishing priorities for wages or pension benefits is left to the parties to negotiate in the context of collective bargaining. "Good employees" are retained and recruited with a competitive compensation and benefit package.

- F8 A number of reasonable pension reform proposals have been developed, and/or are being developed, to deal with the problems of public sector pensions.**

Comment: Responding Associations do not have the resources nor information sufficient to address this finding.

- F9 In addition to pensions, the County and its Municipalities maintain retiree healthcare plans for their employees. Although these plans share many characteristics with pensions, unlike the case with pensions, neither the County nor any of its Municipalities have been required to include retiree healthcare obligations on their financial statements.**

Comment: Responding Associations acknowledge that retiree healthcare plans have been negotiated with employers. Responding Associations have a general understanding that there has been no requirement to include retiree healthcare obligations as liabilities on financial statements.

- F10 Imminent changes required by GASB will require that public sector entities include retiree healthcare obligations on their books. In the private sector, similar Financial Accounting Standards already have caused many employers to discover substantial unknown obligations and, in many cases, to reduce those obligations by cutting retiree healthcare benefits.**

Comment: Responding Associations are aware of the financial reporting requirements mandated by GASB changes. Responding Associations are not familiar enough with the accounting and financial reporting requirements for private sector employers to provide additional comments.

RECOMMENDATIONS

- R1 Sponsor pension reforms, including rolling back pension levels to historical, lower levels for new hires.**

Comment: Responding Associations are opposed to any mandated formulaic pension reform which necessarily diminishes existing pension benefits. Responding Associations also have substantial concerns over establishing different benefit and compensation packages for new hires. Responding Associations are willing to discuss proposals with employers in the context of collective bargaining where mutual interests can be addressed.

- R2 Provide lower level pensions in favor of forms of compensation whose employer costs are less volatile.**

Comment: Responding Associations are opposed to any mandated reduction in wages, hours and benefits. The collective bargaining process will address costs and volatility relative to retirement benefits. It should be the employer and employees who determine the balance between wages and benefits.

- R3 Work with plan administrators, in most cases CalPERS, to establish more stable funding models for pensions.**

Comment: Responding Associations would support any effort to stabilize funding and reduce volatility of pension investments.

- R4 Stop spending found money, which is temporary, on recurring obligations.**

Comment: Responding Associations would support any effort to enhance the financial strength and stability of the employer and the retirement system.

- R5 Lobby the unions to act responsibly and lobby the legislature to stop legislating plans that undermine public employers' abilities to control the structure of compensation.**

Comment: Responding Associations take great exception to the assertion that they have not acted responsibly. The California legislature represents all the people of this state, not the special interest of public and private employers. Public employers have a collective lobby in Sacramento and no doubt make their positions known to the legislature.

- R6 Rethink compensation strategy with a goal of sponsoring systemic (i.e., statewide) changes (including changes in disability retirement).**

Comment: Responding Associations encourage, through the collective bargaining process, an ongoing evaluation of various strategies to enhance the financial strength of employers and improving benefit packages provided to employees.

- R7 Sponsor programs to help employees understand their retirement, so they can take an active role in their retirement planning.**

Comment: Responding Associations are supportive of any programs which would help their members gain a greater understanding of retirement benefits. Furthermore, any effort toward engaging employees in active roles in retirement planning would also be welcome.