

MEMORANDUM



DATE: March 23, 2011

TO: Roelof van Ark

FROM: Judge Quentin L. Kopp

QLK

RE: Termination of Ogilvy Public Relations Worldwide Contract

As you know, since October 2010, I have urged a termination of the contract between the California High Speed Rail Authority and Ogilvy Public Relations Worldwide. At the November 4, 2010 Board Meeting, I requested a staff review of the performance of Ogilvy. At that time, I had inspected Ogilvy invoices for services allegedly rendered since February 2010, including March, April, May, and June 2010.

To my knowledge, no staff review of Ogilvy's performance occurred thereafter.

After November 4, 2010, I requested and was supplied additional invoices for July, August, and September 2010.

In pertinent part, the Ogilvy contract provides for 5 years of service at a maximum total amount of \$9,000,000 and contemplates a maximum annual payment of \$1,800,000. It also provides that the contract can be terminated by either party on 30-day written notice.

Since Ogilvy's engagement in February 2010, its inadequate performance can be measured, by among other things, the worsening legislative, media, academic, and popular comments in the public domain about our project. As of last month, Ogilvy had billed the Authority over \$2,400,000. In fact, in the first year of its contractual obligation, Ogilvy had been paid over the maximum contemplated annual amount of \$1,800,000. I do not understand the reason the limit of \$1,800,000 was violated.

I note that in February and March 2010, Ogilvy, under the leadership of Kristi Black, developed a so-called "action plan" based in part upon ascertaining directly (at least from this member of the board) acts which should be pursued. Ms. Black, who was based in Sacramento, was then removed from the project, replaced by Mindy Fletcher of Ogilvy's San Diego office. The reason for such change of leadership has never been sufficiently or credibly explained to me.

By fall 2010, my displeasure with Ogilvy's performance had been expressed to others and to you. Ogilvy then hurried to prepare a most remarkable document, dated November 2010 and entitled, "Strategic Communications and Outreach Plan." I did not

receive a copy of the Plan until January 2011. I am informed by Commissioner Umberg that he received a copy in November 2010. I do not know if other members of the board ever received such "Plan."

I have read the "Plan." It is pap. It reiterates in its substantive core the first plan prepared in February and March 2010. We have been billed for the "Plan." That bill has been paid. The "Plan" is dated November 12, 2010. It constitutes a reiteration of obvious facts and surmises. It, of course, refers to "building coalitions." I know of no new coalition emanating from the services of Ogilvy. The hyperbolic references to coalitions are to people and groups which have been identified, both rhetorically and financially, at least since the 2008 campaign for approval of Proposition of 1A in November 2008. I have for the past 12 months or more supplied Ogilvy with published letters to the editor in newspapers in and around San Mateo County and San Francisco, in which the letter writers proclaim support for the project and various reasons for such support. I recommended continuously that a citizens committee of such individuals in an advisory capacity or otherwise be formed by Ogilvy. Ogilvy has never taken advantage of such opportunities; the constant barrage of criticism from Peninsula media and local elected officials continues unabated. Yet, the adherents of the project have never been contacted for purposes of public support (I am sending you additional such published letters in the expectation that you will cause consequent communication and utilization of our publicly-identified supporters).

Let me be specific with just some of the invoice entries:

- 1) Invoice #15202505, dated May 27, 2010, contains multiple entries from April 1, 2010 to April 16, 2010, from Mindy Tucker Fletcher without any detail (the invoice refers to "High-Speed Rail" and "High-Speed Public affairs." What's that mean?
- 2) Invoice #20181, dated April 30, 2010, from Robinson Communications, Inc. is for "Professional Consulting Services," which are undefined, in the amount of \$10,000.
- 3) An invoice for April 2010 from Dan Schnur refers to a \$1,500 retainer and indicates 3.5 hours for reading news clips about CHSRA. A similar invoice for April 2010 from Stutzman Public Affairs bills \$1,500 for "Consulting Services," without specification.
- 4) The law firm of Sonnenschein et al bills \$3,000, without definition, for April 2010, and a separate and previous invoice of \$3,000 for March 2010, including "Review News Coverage of High-Speed Rail" in April.
- 5) Young Communications Group billed in April 2010 \$2,560 for "Daily Review of Current HSR Media." So, the Authority was billed at least 3 times for people reading news clips in April 2010. In fact, the Authority was billed a fourth time for April 2010, "News Clip Review" by Apex Strategies, Inc.

6) Moreover, an Ogilvy invoice dated May 12, 2010 shows "Press Clipping Services" in the amount of \$5,400.

7) The only "certification" in the invoices sent me is dated May 12, 2010 by Jeffrey M. Barker concerning Ogilvy's work in the last few days of January 2010 and the month of February 2010. As indicated in an October 19, 2010 memorandum to Mr. Barker, Ogilvy has billed for drafting contracts of an undefined nature for "Year II." Does that refer to its contracts? It also displays retainer payments to Dewey Square Group, Stutzman Public Affairs, Dan Schnur, Sonnenschein Nath & Rosenthal, and Apex Strategies, Inc. Although I am informed the retainer practice finally ended, I do not understand the reason it was permitted. The June 2010 invoice from Young Communications Group shows the Authority was billed by Young through Ogilvy for time spent in its negotiations with yet another subcontractor for a "media partnership" in the amount of at least \$577. Why should the Authority pay for time spent by subcontractors in drafting their partnership agreements?

8) Robinson Communications submitted an invoice dated June 30, 2010, which includes an alleged 3-hour meeting on June 4, 2010 with the Bay Area Council and an additional 3-hour meeting on June 4, 2010 with Jim Lazarus of the "SF Chamber." I have personally confirmed the meeting with Mr. Lazarus consumed less than 1 hour; and the meeting at the Bay Area Council consumed 1 hour or less. Such invoice also shows a 2-hour telephone call on June 16, 2010 with Mindy Fletcher. I don't believe it.

9) In June 2010, the Sonnenschein Law Firm continued to fill a flat fee of \$3,000, which included "a review of news coverage of high-speed rail."

10) For June 2010, Young Communications Group billed \$404 on June 25, 2010, for further negotiation with one Vernon Whitmore respecting a partnership. We paid for it.

11) In June 2010, Dewey Square Group billed \$3,000 for "Daily clips review." Stutzman billed \$1,500, which included 3.5 hours of "CHSRA news clip reviews, and Sonnenschein Nath et al billed \$3,000 for "Review news coverage of high-speed rail," *inter alia*.

12) For July 2010, Young Communications Group billed \$173.25 for additional negotiation of "possible partnership."

13) A memorandum of November 4, 2010 from Mindy Fletcher to Mr. Barker shows a 2009-2010 budget of \$1,500,000 and \$1,517,541 as already invoiced.

14) The August 2010 invoice of Robinson Communications includes on August 11, 2010, 3 hours for Mr. Robinson to attend the Transbay Terminal groundbreaking at \$300/hour, a total of \$900, and 3 hours for Patty Jo Rutland of his office, attending the same function for \$200/hour, a total of \$600. Thus, the Authority

was billed \$1,500 by Robinson Communications for their presence at that event. What taxpayer waste.

15) The September 2010 invoice from Robinson Communications is \$15,000, the retainer. I note the charged hours for Richard Robinson (45), Patty Jo Rutland (4), and Barry Wyatt (3.5) enabled Robinson to charge exactly \$15,000. Included in the summary of tasks are such entries as ensuring that "messaging and CA HSR news briefings were communicated to our federal, state, and local elected officials and their staff." I was informed months previously that Ogilvy included such service as part of its original "Plan." Also included was reference to ". . . building our media coalition with the addition of New American Media to our list of news outlets." Does that mean New American Media is a part of a "coalition," openly advocating the project?

I add two other acts of which you are aware. In January 2011, I was visited by Michael Law, Maggie Lindon, and Sebastian Desio of Ogilvy at Mr. Law's request. Mr. Law explained that the requested meeting was consistent with Ogilvy staff having met with Commissioner Lynn Schenk previously in San Diego. After I expressed disbelief based upon Commissioner Schenk's informing me that very morning she had no intention of meeting with Ogilvy personnel and had not met previously with Ogilvy personnel, Mr. Law and Ms. Lindon assured me two times that such a meeting had occurred. As you know, no such meeting had occurred.

In February 2011, you informed me that Ogilvy would remedy its inadequacies by assigning one person to work directly in the Authority offices and had hired Catherine Strehl for such purpose. Ms. Strehl, since October 2010, has served as a member of the Menlo Park Transportation Commission, a city which has sued the Authority twice and is a plaintiff in two pending actions. I informed you, and I repeat, that Ms. Strehl is not competent to serve in a capacity which places her inside the Authority offices, with a conflicting loyalty to a party suing us.

I am also informed, and I did confirm, that Assemblyman Jared Huffman, at an Assembly Budget Subcommittee hearing, stated that you should immediately advise Ogilvy not to render further services, until otherwise notified, in an obvious effort to stanch the drain of taxpayer money. That was wise advice. I reiterate it.

I shouldn't have had to devote considerable time and attention to reading some 6 months of invoices. I am, however, personally offended by the failure of performance of Ogilvy, and I am mindful of the oath of office I was administered at the time of my appointment and reappointment to the California High-Speed Rail Authority. That is an oath higher than condonation of failure of performance.