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September 16, 2011

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Sent by U. S. Mail and E-mail [jgoldsmith@sandiego.com](mailto:jgoldsmith@sandiego.com)

Jan I. Goldsmith  
San Diego City Attorney  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101-4178

Re: MEA's Demand to Meet and Confer Re "Pension Reform" Ballot Initiative

Dear Mr. Goldsmith:

I have received your letter dated September 12, 2011. Since you do not address the substantive issues I raised related to the *City's* failure to fulfill its responsibilities under the MMBA due to Mayor Sanders' open and obvious activities *as Mayor* in support of his *legacy* ballot initiative, I will continue to await the forthcoming letter you mention from Deputy City Attorney Joan Dawson. Of particular interest will be the degree to which her analysis is at odds with the prior published opinions of the Office of the City Attorney which I cited in support of MEA's continuing demand that Mayor Sanders initiate a good faith meet and confer process with MEA over *his* ballot initiative.

As to the points in your letter amounting to a "defense of Jan Goldsmith as City Attorney," I must correct the record in three particulars.

First, you state that my letter dated September 9, 2011, "implies" but does not allege that you "opined as to the legality of the initiative." But I did not *imply* it; I stated that *you had in fact done so*. Please see the last full paragraph on page 3 of my letter. I wrote:

"You have influenced the contents of this initiative; you have informed the public that '**it does provide pension relief within legal parameters**;' and you have appeared 'front-and-center' at multiple press conferences promoting this initiative to the public."

As to my assertion that you had influenced the contents of this initiative, I learned this fact directly from you. As to my assertion that you had informed the public that the ballot initiative allegedly provides pension relief "within legal parameters," I learned this fact – as did other interested persons and average taxpayers – by reading an article published in the Union-Tribune on April 9, 2011:

“Lawyers hired by the campaign committee to support the measure signed off on the ballot language, although no formal legal opinion has been released. City Attorney, Jan Goldsmith said, ‘It does provide pension relief within legal parameters.’”

You state unequivocally in your letter of September 12, 2011, that neither you nor your office has “opined as to the legality of the pension initiative.” However, this does not square with the public record. In view of your heightened sensitivity in the matter, I certainly would have expected to read a retraction of what Craig Gustafson wrote – or at least a follow-up press release in the matter from your office denouncing the inaccuracy of this important quote attributed to you.

Finally, as to my assertion that “you have appeared ‘front-and-center’ at multiple press conferences promoting this initiative to the public,” I have attached one notable example of such an event on the City Concourse which has appeared in print on multiple occasions in connection with this ballot initiative. You can be seen over the Mayor’s right shoulder in the first row of supporters behind a podium bearing the sign: “Pension Reform Now.” A similar banner appears over your head. It is highly probable that the average taxpayer in San Diego would conclude from your presence at this event – as the elected City Attorney – that you support this ballot initiative. They would have no basis to know – as you say now – that you had not even investigated the legality of a ballot initiative you stood behind the Mayor to support.

Second, your point that no “meet and confer” is required over a citizens’ initiative before being placed on the ballot, ignores the substantive premise of my letter demanding that Mayor Sanders meet and confer with MEA in his capacity as City’s CEO and Chief Labor Negotiator over *his legacy ballot initiative*. The notion that this is a *citizens’* initiative is pure fiction. The prior opinions published by the City Attorney’s Office – which I cited and quoted in my letter of September 9, 2011 – support the demand for meet and confer which MEA has repeatedly made to Mayor Sanders to no avail. Thus, even if you personally support this ballot initiative in the exercise of your basic First Amendment rights as an American – as you proclaim – this does not excuse the failure of your office to protect the *City* from the liability it incurs when the *Mayor* violates the MMBA.


Third, you contend that other members of the City Council have *not* been “excluded from input on pension reform” – citing and attaching your letter to me and all labor organizations dated January 13, 2011. I remind you of my response on behalf of MEA – and attach it lest you have forgotten – **accepting your invitation unequivocally and without conditions**. I have also attached a copy of your letter noting that MEA’s response was thoughtful, well-received and professional.

As you stated at the time, this invitation was an “offer to engage in mediated settlement negotiations regarding pending lawsuits and disputed legal issues.” You also made very clear that the “settlement” process you envisioned should not be confused with the City’s obligations under the MMBA.

There is nothing in your letter dated January 13, 2011, to suggest that you were inviting an MMBA-endorsed meet and confer process **with MEA** over matters that might otherwise become part of a *legacy* ballot initiative to be spearheaded by Mayor Sanders. Nor did Mayor Sanders at any

time or in any manner initiate such a process **with MEA**. This is the crux of the matter and the primary reason why the City is in violation of the MMBA. Because Mayor Sanders serves as the City's chief executive officer with the authority to give controlling direction to the administrative service of the City and to make recommendations to the City Council concerning the affairs of the City, he has a duty to honor MEA's rights under the MMBA as exclusive bargaining representative for 4,000 City employees *and* to honor the City Council's rights under both the Charter and the MMBA when determining policies affecting the future of this City. He cannot lawfully be the Lone Ranger – even if he teams up with two Councilmembers as he has done here. I am not “claiming” – as you assert – that there was no opportunity to address these issues with the full City Council; I am stating this as an undeniable fact.

Sincerely,



Ann M. Smith

cc: Mayor Jerry Sanders  
Council President Tony Young  
Council President *Pro Tem* Kevin Faulconer  
Councilmember David Alvarez  
Councilmember Marti Emerald  
Councilmember Lorie Zapf  
Councilmember Carl DeMaio  
Councilmember Todd Gloria  
Councilmember Sherri Lightner  
Jay Goldstone, Chief Operating Officer  
Andrea Tevlin, Independent Budget Analyst  
Scott Chadwick, Human Resources Director  
Michael Zucchet, MEA General Manager  
Tony Ruiz, MEA President  
Andrew Jones, Exec. Assistant City Attorney  
Mary Jo Lanzafame, Assistant City Attorney  
Joan Dawson, Deputy City Attorney  
(All sent by electronic mail only)

Encl: Photo of “Pension Reform Now” Press Conference on City Concourse  
AMS Letter to Mayor, Councilmembers and City Attorney, January 19, 2011  
Jan Goldsmith Letter to AMS, January 19, 2011



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January 19, 2011

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State Bar of California Board of Legal Specialization

Mayor Jerry Sanders  
Council President Tony Young  
Council President Pro Tem Kevin Faulconer  
Councilmember Sherri Lightner  
Councilmember Todd Gloria  
Councilmember Carl DeMaio  
Councilmember Lorie Zapf  
Councilmember Marti Emerald  
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City Attorney Jan I. Goldsmith  
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San Diego, CA 92101

Re: Your Unanimous Offer To Engage In Mediated Settlement Negotiations Regarding  
Pending Lawsuits and Disputed Legal Issues

Dear Mayor, Councilmembers and City Attorney:

We are in receipt of a letter from City Attorney Jan Goldsmith dated January 13, 2011, in which he conveys your unanimous support for an offer that MEA "engage in mediated settlement negotiations regarding pending lawsuits and disputed legal issues." Your letter observes that "pending litigation creates uncertainty and animosity that is not healthy for employer-employee relationships," and invokes the vision of reaching a "global settlement" while preserving vested benefits.

Having discussed this offer with MEA's General Manager Mike Zucchet, I accept the City's offer to engage in mediation on behalf of the San Diego Municipal Employees Association. Notwithstanding the concerns which Mr. Zucchet and I have identified and I share with you below, this acceptance is *unconditional*. MEA is prepared to begin the mediator selection process and the mediation process itself at the earliest opportunity.

With that said, we mention the following concerns in order to foster the best possible communication between us:

1. We will need to agree on a set of rules or protocols for conducting ourselves throughout such an unprecedented and challenging process. We cannot successfully *communicate* through the media. Nor can we develop the mutual trust on which this process will depend if some are permitted to exploit it as “cover” for a different agenda.

2. We will need to agree on the proper number and identity of participants so that we have a manageable process which yields positions taken by knowledgeable representatives, with proper authority, such that any outcome will receive the support of both (all) sides.

3. We should discuss and agree on the scope of the legal issues and/or litigation matters to be included in the mediation process if our objective is truly to achieve a “global” resolution. While you have identified your preference for limits or exclusions, we prefer to leave the matter open for the participants to determine at the start of the mediation process or as it progresses. For example, we find it difficult to reconcile your enthusiastic endorsement of a “global resolution,” with your position that an issue as significant as retiree healthcare should be excluded from any mediation process. By accepting your offer, we do not agree with the exclusions you propose; however, in our view, not only is it counterproductive for one side to pre-ordain the scope of any mediation, but it would be counter-productive for us to argue in advance about your proposed exclusions.

4. We will need to discuss the impact of this process on pending litigation and the aggressive deadlines which this litigation imposes. While the City has the resources to “mediate” while litigating, MEA does not. Moreover, I am a necessary participant on MEA’s behalf in both processes.

5. We will need to discuss the impact of this process on upcoming “meet and confer” between the City and MEA for a new or extended MOU. Again, while the City has the resources to “mediate,” “litigate,” and “meet and confer,” MEA does not. And, I am a necessary, if not indispensable, participant on MEA’s behalf in all three venues.

Finally, we regret that you have devoted much of your letter to a recitation of what the City views as necessary “elements” and/or “parameters” for a “global resolution.” I fear that your inability to resist this temptation has prompted the understandable resistance and skepticism that has come from some in response. Indeed, you spend a number of paragraphs arguing the merits of the City’s latest idea for pension savings by capping base compensation. As sub-class counsel on behalf of MEA-represented employees in the *Corbett* Class Action case on which judgment was entered on May 17, 2000, I readily see the fatal flaws in your base compensation analysis. And the defects in your pensionable pay analysis do not end with *Corbett*; your “plan” overlooks the impermissible, adverse impact on the vested “high-one-year” feature of the pension formula and tramples the uniform compensation aspects of a sound Civil Service System designed to protect against favoritism and cronyism. You also know that I have ardently argued the opposite view on many of the points you make.

Yet, what is the value in extending an offer to participate in mediation – or in accepting it – if we intend to repeat *ad nauseam* the arguments each side holds so dearly. We choose not to do

January 19, 2011

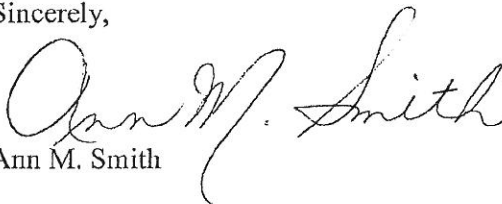
Page 3

this here. Instead, we *trust* that you need no further convincing that our silence in this regard when accepting your offer to mediate does not mean that we are agreeing with the “elements” or the “parameters” or the legal arguments you make in your January 13<sup>th</sup> letter – or that our acceptance will mean our ultimate acquiescence or capitulation. But this does not mean that we should not listen to each other or that we should not try to find common ground. To that effort we are committed.

Meanwhile, our ability to find proper compromises on important pension-related issues will undergo an immediate test in that I will be submitting a letter to you tomorrow which sets forth a “settlement” scenario related to the purchase of service credit issues. Our proposal will be designed to achieve a fair outcome within the parameters of the Court of Appeal’s decision while avoiding the protracted costs and uncertainties of more litigation over individual, meritorious damage claims. As you know, these issues must be resolved on a separate and independent time-line because the “correction” process on which SDCERS intends to embark is imminent.

Please let me know at your earliest opportunity how you would like to proceed in selecting a mediator.

Sincerely,



Ann M. Smith

cc: Andrea Tevlin, Independent Budget Analyst  
Mike Zucchet, MEA General Manager

OFFICE OF  
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CITY OF SAN DIEGO  
**JAN I. GOLDSMITH**  
CITY ATTORNEY

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January 19, 2011

Via Electronic Mail

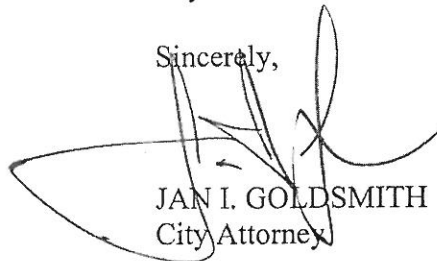
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Dear Ann:

Your letter in response to our proposal is thoughtful and well-received. I agree that we should defer areas of disagreement at this point. Hopefully, the other labor organizations will have a similar professional approach.

I will call you later this week to discuss your ideas.

Sincerely,



JAN I. GOLDSMITH  
City Attorney

JG:cbs

cc: Honorable Mayor  
Honorable City Councilmembers  
Independent Budget Analyst