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January 19, 2011

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City of San Diego  
1200 Third Avenue, Suite 1620  
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

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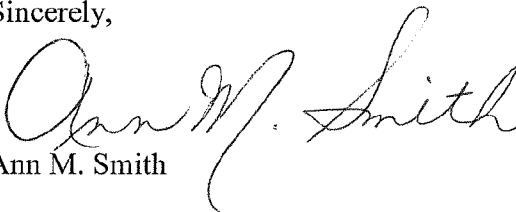
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this here. Instead, we *trust* that you need no further convincing that our silence in this regard when accepting your offer to mediate does not mean that we are agreeing with the “elements” or the “parameters” or the legal arguments you make in your 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