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May 3, 2016

Mayor Kevin Faulconer and
Members of the City Council
San Diego City Hall
202 W. C Street
San Diego, CA 92101

Re: Joint Request for Cooperative Action Related to Prop B Legal Controversy by Charging Parties San Diego Municipal Employees Association, AFSCME Local 127, San Diego City Firefighters, Local 145, and Deputy City Attorneys' Association

Honorable Mayor and Members of the City Council:

This letter is presented on behalf of the four above-named Charging Parties in unfair labor practice proceedings against the City related to Prop B which resulted in the PERB Board's 63-page Decision No. 2464-M filed on December 29, 2015.

We recognize that the City has thus far determined that it should not accept and comply with this PERB Decision but rather challenge it by a petition to the Fourth Appellate District for a writ of extraordinary relief. The City's petition has been filed and is now pending. A separate petition was filed on the same day by counsel for the three official ballot proponents who appeared with Mayor Sanders and City Attorney Goldsmith at a press conference on the City Concourse on April 11, 2011, to announce the intent to circulate a petition to get this "transformative pension reform" on the ballot. However, we write today for two separate reasons.

First, we note that, while these writ proceedings unfold before the Fourth District Court of Appeal, Prop B continues to have highly adverse effects on the City as an employer because it severely hampers recruitment of experienced lateral new hires with the skills this City needs to serve its residents. The City, of course, continues to have the option to accept PERB's determination regarding the violation of the MMBA which occurred here and to

seek, by mutual agreement with Charging Parties as the PERB Decision allows, a negotiated outcome to this controversy. The City of San Jose has recently done so with regard to its "Measure B." Yet, the rhetoric surrounding our case to date – and the filing of a petition in obvious coordination with counsel for the ballot proponents – suggest that such a negotiated result, however prudent, continues to be unlikely. If this pessimistic assessment is incorrect, we welcome an overture from you to open the dialogue for the purpose of trying to achieve such a resolution.

Second, despite our differences over the legal issues here, we do have a shared interest in getting a resolution of this dispute and a final determination regarding the validity of Prop B at the earliest opportunity. As you know, as part of PERB's customary restorative remedy in a unilateral change case, the City's "make-whole" liability with regard to Prop B began on July 20, 2012, and will continue to grow, with 7% per annum added in interest charges, until Prop B is invalidated. Such invalidation may require, as PERB has recognized, additional proceedings beyond the relief available at the Court of Appeal even if the pending petitions for extraordinary relief are otherwise denied.

Moreover, as you know, PERB has directed the City, at the Unions' option, to join in and/or to reimburse the Unions for legal fees and costs for bringing a *quo warranto* or other civil action aimed at overturning the adoption of Prop B. Since *quo warranto* relief is likely the most appropriate and will require the permission of the Attorney General – a process which itself takes time and involves several procedural steps – it is imperative that this process be initiated *now* while proceedings on the pending petitions are in progress. Doing so will prevent an unnecessary and avoidable delay later; doing so *by stipulation* will reduce the costs and attorneys' fees which Charging Parties will incur and which may ultimately become the City's responsibility.

With these points in mind, Charging Parties request that you direct the City Attorney to join them as relators in stipulated filings before the Attorney General. Our purpose would be to invite the Attorney General to give the Court of Appeal permission to proceed in *quo warranto* in making any invalidation decision on the record and briefing before it or, in the alternative, to give the parties permission to file an original *quo warranto* proceeding in the Superior Court promptly upon the Court of Appeal's determination that the MMBA was violated as PERB has concluded. Such a coordinated and cooperative effort will not prejudice the City's position in the matter but will promote an earlier final resolution of this controversy, reduce the City's "make-whole" exposure, and spare the City the risk of greater expense if the Unions must seek the Attorney General's permission to seek *quo warranto* relief on a contested basis.

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Because time is of the essence, please advise us by May 23, 2016, whether you will accept our proposed cooperative, cost-saving approach.

Sincerely,

SMITH, STEINER, VANDERPOOL & WAX, APC

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