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August 27, 2008

Sent By Facsimile and Regular Mail

Ms. Regina Petty
Wilson Petty Kosmo & Turner LLP
550 W "C" Street, #1050
San Diego, CA 92101-3532

Re: Termination of Employment Agreement and Mutual General Release Agreement between SEDC and Carolyn Smith and Written Tender of Defense and Indemnification in the case of *City of San Diego, et al. v. Smith*, San Diego Superior Court Case No. 37-2008-0089518-CU-BC-CTL

Dear Ms. Petty:

It has come to my attention that the SEDC Board of Directors will be considering on August 27 an agenda item involving action previously taken on July 23 concerning the legally suspect authorization and execution of a document entitled Termination of Employment Agreement and Mutual General Release Agreement ["Termination Agreement"].

Specifically, it appears that SEDC may very well determine to cure its past unlawful acts by nullifying its past action on July 23 or take some other form of remedial action and then affirmatively approve, in open session, the Termination Agreement executed by SEDC and Carolyn Y. Smith.

As the City Attorney for the sole shareholder of SEDC and as Redevelopment Agency General Counsel, I hereby request that you, as corporate counsel for SEDC, instruct your client and take all action necessary so that SEDC **does not execute nor in any way validate execution** of the Termination Agreement and instead nullify the past actions taken on July 23 relative to approving and executing the Termination Agreement so that there is no executed or operative Termination Agreement in effect. As you know, the Mayor has nominated four (4) new members to the SEDC Board which will be before the San Diego City Council for confirmation on September 2, 2008. Additional nominations in the not-to-distant-future are also contemplated by the Mayor's Office. This act of rushing to take action in an attempt to bind a future SEDC

Board, not to mention the attempt to encumber taxpayers' dollars, is highly questionable and of dubious legal validity.

It has further come to my attention that the SEDC Board of Directors will be considering on August 27 a request by Carolyn Smith for SEDC to defend and indemnify her for her actions and omissions alleged in the above-referenced litigation.

First, please be advised that a Complaint has been filed in this litigation which, among other things, makes it clear that the actions and omissions of Ms. Smith were outside the scope and course of her employment with SEDC. The Complaint alleges that Ms. Smith is liable under a breach of contract theory and a breach of fiduciary duty theory. In support thereof, it is alleged (among other things) that Ms. Smith exceeded her authority and spent public funds without proper legal authorization.


Second, the Employment Agreement indemnity language is only operative PROVIDED the "employee is acting within the scope and course of her employment with the Corporation and in compliance with the terms of this Agreement." Clearly, the allegations in the Complaint belie such an assumption and therefore SEDC CANNOT accept such a tender.

Third, to have SEDC agree to such a request by Ms. Smith only compounds a messy situation. Ms. Smith is accused of exceeding her authority, violating the terms of her employment contract and her fiduciary duty, and illegally spending hundreds of thousands of dollars. To now attempt to spend precious taxpayers' monies on defending her only adds to the amount which will need to be recovered from her in the future. If, by some chance, Ms. Smith is successful in the defense of her position in this litigation so that the Employment Agreement indemnification language would be operative, she can then submit a claim for reimbursement which can be considered. This is clearly the better and more prudent course of action to take.

Again, as you are corporate counsel to SEDC, I strongly urge and implore you to do the right thing and advise and insist that the SEDC Board reject Ms. Smith's tender of defense and indemnification.

A copy of this letter is also being faxed to you as Corporate Counsel of SEDC at 4393 Imperial Avenue, Suite 200, San Diego, CA 92113.

Very truly yours,


MICHAEL J. AGUIRRE
City Attorney