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ADMINISTRATOR:
VIRGINIA WOOD

April 27, 2010

Mayor Jerry Sanders
202 C Street, 11th Floor
San Diego, CA 92101

Re: The Proposed "Competition and Transparency In City Contracting" Ballot Measure and the Planned Downtown "Schoolbrary"

Dear Mayor Sanders:

Our firm represents some taxpayers in the City of San Diego who have asked us to share with you their concerns regarding the negative effect the proposed "Competition and Transparency In City Contracting" ballot measure would have on the construction of the proposed downtown "Schoolbrary".

Based on our review of the ballot measure, we have concluded that this measure, if passed, would prohibit all public works projects in the City which are not funded entirely by non-prevailing wage City dollars and private funds, including the proposed Schoolbrary. Section 227(c)(4) of this ballot measure prohibits the City from funding any construction contract which requires that a contractor "make payments on behalf of employees to union benefit plans **or other trust funds**" (emphasis supplied). Significantly, this last clause does not apply solely to union trust funds. Rather, as written, it applies to **all** trust funds, whether union or not. Section 1777.5(m) of the Labor Code, however, requires that for any project covered by the State's Prevailing Wage Law, the contractor is required to make payments to apprenticeship trust funds, either directly or via the California Apprenticeship Council. Because this measure prohibits the City from funding projects which require contractors to make payments to trust funds, and because Section 1777.5(m) of the Labor Code requires contractors to make apprenticeship trust fund payments on state prevailing wage projects, this measure effectively prohibits the City from funding or entering into construction contracts governed by the State Prevailing Wage Law.

Further, construction of the Schoolbrary is unquestionably governed by the State Prevailing Wage Law. As you know, the City Council recently approved a lease with the San Diego Unified School District that would result in the District paying the City \$20 million, consisting of Proposition S funds and redevelopment funds, toward the cost of constructing the downtown library, in exchange for the District having a 40-year lease on the sixth and seventh floors for use as a charter school. Since all construction projects using Proposition S funds and redevelopment funds must comply with the State Prevailing Wage Law, this means that construction of the Schoolbrary must also comply with the State Prevailing Wage Law.

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Therefore, it is apparent to us that this proposed ballot measure would make it illegal for the City to fund or enter into a contract to build the proposed downtown Schoolbrary, because construction of this project would require payment into apprenticeship trust funds, which would be barred by this measure.

I thank you for the opportunity to address this issue. If your staff would like to discuss our analysis of the impact of this measure, please do not hesitate to contact our firm.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ricardo Ochoa', with a long horizontal flourish extending to the right.

Ricardo Ochoa
Attorney at Law

RO:smh