

**SETTLEMENT AGREEMENT AND**  
**MUTUAL GENERAL RELEASE**

This Settlement Agreement and Mutual General Release ("Agreement") is made as of October 9, 2003 ("the Effective Date"), between and among: David W. Wood, individually, ("Wood") and San Diego City Employees' Retirement System ("SDCERS"). Wood and SDCERS are sometimes referred to hereinafter collectively as "Parties."

I. RECITALS.

A. On or about February 21, 2003, Wood filed a Complaint for Violations of the Ralph M. Brown Act (Cal. Govt. Code § 54960; Cal. Code Civ. Proc. § 1060), in the matter of *David W. Wood, Plaintiff v. San Diego City Employees Retirement System, et al., Defendants*, San Diego Superior Court Case No. GIC 805928 ("the Litigation").

B. On or about April 1, 2003, SDCERS answered the Complaint, generally denying the allegations stated therein, and alleging certain affirmative defenses.

C. On September 9, 2003, Wood filed a First Amended Complaint for Violations of the Ralph M. Brown Act (Cal. Govt. Code § 54950, et seq.; Cal Code Civ. Proc. 1060) and California Public Records Act (Cal. Govt. Code § 6250, et seq.) in the Litigation.

D. The Parties desire and intend by this Agreement, to settle fully and finally all Claims and Costs, as defined below, and to provide for mutual general releases of same arising out of the Litigation.

## II. DEFINITIONS.

As used in this Agreement, the following phrases and words have the following meanings:

### A. Associated Persons and Associated Entities.

1. "Associated Persons" shall mean: present and former officers, directors, shareholders, trustees, members, employees, agents, representatives, assigns, accountants, actuaries, attorneys, insurance carriers, beneficiaries, spouses, children, executors, administrators, heirs, predecessors-in-interest, successors-in-interest and creditors, respectively, of each of the Parties, and of each of their respective Associated Entities; and

2. "Associated Entities" shall mean: any entities over which any of the Parties, respectively, have either direct or indirect control, or more than 20% ownership.

### B. Claims.

"Claims" shall include all claims, rights, demands, liabilities, and causes of action (whether asserted, unasserted, known, unknown, contingent, accrued, inchoate or otherwise) arising out of the Litigation, which may exist as of the Effective Date, or which may hereafter arise out of facts or events occurring prior to the Effective Date.

C. Costs.

"Costs" shall include all costs, losses, damages, expenses, attorneys' fees, other fees, interest and all other obligations arising out of the Litigation, which may have been paid or incurred prior to the Effective Date, or which may hereafter be paid or incurred in connection with proceedings pending prior to the Effective Date.

III. TERMS OF SETTLEMENT.

A. SDCERS will adopt proposed SDCERS Board Rule 5.30, including use of speaker slips. A true and correct copy of SDCERS Proposed Board Rule 5.30 is attached as Exhibit A to this Agreement and incorporated herein by this reference.

B. SDCERS will include the following statement in each Board and Committee meeting agenda:

**“Non-Agenda Public Comment** [to be used for agendas for full Board meetings]

This portion of the agenda is for members of the public to address the Retirement Board on any subject within the Board's jurisdiction that is not on today's agenda. To address the Board during Non-Agenda Public Comment, you must complete a Request to Speak form and submit it to the Board secretary before the meeting begins. To address the Board on a subject that is on today's agenda, you must submit a Request to Speak form before the item is called. These forms are located in the back of the Board Room. The chairperson will call you by name to address the Board during Non-Agenda Public Comment, or when your item is to be heard. Non-agenda Public Comment is limited to 3 minutes per speaker and 15 minutes per topic. Public testimony on an item on the agenda is limited to 3 minutes per speaker and 15 minutes per side.

**Non-Agenda Public Comment** [to be used for agendas for committee meetings]

This portion of the agenda is for members of the public to address the \_\_\_\_\_ Committee of the Retirement Board on any subject within

the committee's jurisdiction that is not on today's agenda. To address the committee during Non-Agenda Public Comment, you must complete a Request to Speak form and submit it to the Board secretary before the meeting begins. To address the committee on a subject that is on today's agenda, you must submit a Request to Speak form before the item is called. These forms are located in the back of the Board Room. The chairperson will call you by name to address the committee during Non-Agenda Public Comment, or when your item is to be heard. Non-agenda Public Comment is limited to 3 minutes per speaker and 15 minutes per topic. Public testimony on an item on the agenda is limited to 3 minutes per speaker and 15 minutes per side."

C. Provide at least three (3) copies of "last minute" documents at the back of the Board Room. "Last minute documents" are documents not prepared by SDCERS and/or its staff, and are instead prepared by third parties or entities for discussion (but not action) at Board or Committee meetings.

D. Provide three (3) copies of the board binder at the back of the Board Room for public use during the meeting.

#### IV. SOLE CONDITION SUBSEQUENT.

Payment of plaintiff's attorney's fees and costs, pursuant to Government Code sections 54960.5 or 6259, subdivision (d), will be resolved through good faith negotiation of the Parties. If this is not accomplished within 15 days of the execution of this Agreement, Plaintiff may petition the Court for payment of attorneys fees pursuant to Government Code sections 54960.5 or 6259, subdivision (d). The Court shall reserve jurisdiction over the Parties for the sole and exclusive purpose of resolving this issue, if necessary.

V. TERMINATION OF PENDING LITIGATION.

Upon satisfaction of each and every forgoing Term of Settlement, as set forth in Sections III and IV, *supra*, Wood shall execute and enter a Dismissal with Prejudice of Entire Action in the Litigation.

VI. RELEASES, WAIVERS AND INDEMNIFICATIONS.

A. Wood General Release.

Wood, for himself, hereby fully and forever releases, acquits, and discharges SDCERS, and each of its Associated Persons and Associated Entities, from any and all Claims and Costs, reserving and excepting those based on obligations created by this Agreement.

B. SDCERS General Release.

SDCERS, for itself and on behalf of each of its Associated Persons and Associated Entities, hereby fully and forever releases, acquits, and discharges Wood, and each of his Associated Persons and Associated Entities, from any and all Claims and Costs, reserving and excepting those based on obligations created by this Agreement.

C. Waiver of Civil Code Section 1542.

The Parties, for themselves and on behalf of each of their Associated Persons and Associated Entities, acknowledge that their releases include Claims and Costs which they do not know or suspect to exist, and hereby waive all rights which may exist under California Civil Code Section 1542, arising out of the Litigation only, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

VII. WARRANTY AGAINST ASSIGNMENT.

Each of the Parties represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer (and covenants that it will not assign, transfer or purport to assign or transfer), to any person or entity, any Claim or Cost herein released and discharged; and, each such party, respectively, shall indemnify each person and entity released and discharged by the provisions of paragraphs VI.A. and VI.B. above, and shall hold them harmless from and against: (1) any Claim or Cost assigned or transferred contrary to the foregoing warranty; and, (2) any loss, expense, liability or cost arising out of, or caused by, any breach of the foregoing warranty by said indemnitor.

VIII. GOOD FAITH DETERMINATION.

Each of the Parties acknowledges (and upon request by any other Party, will stipulate in writing) that this Agreement has been entered into in good faith, and shall fully cooperate at all times if any other Party applies to any court for a good faith settlement determination under California Code of Civil Procedure Section 877.6.

IX. FURTHER ASSURANCES.

Each of the Parties shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the intent of this Agreement.

X. NO ADMISSION.

The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission by any of the Parties, or any of their Associated Persons

or Associated Entities of, any liability or responsibility whatsoever, and that each of the Parties specifically disclaims any liability or responsibility.

XI. GOVERNING LAW.

This Agreement is made and entered into at San Diego, California, and shall be interpreted, enforced and governed by and under the laws of California.

XII. INTEGRATION.

This Agreement constitutes the final, complete and exclusive agreement and understanding between and among the Parties, and supersedes all prior or contemporaneous written or oral agreements. The Parties each acknowledge that they have relied upon no representations, warranties, agreements, arrangements or understandings other than as expressly contained in this Agreement.

XIII. INDEPENDENT ADVICE.

Parties each acknowledge that they have received independent legal advice with respect to the advisability of making this Agreement, and specifically with respect to the meaning and effect of waiving California Civil Code Section 1542.

XIV. SEVERANCE.

If a provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall either be rewritten by the Court to be legal and valid (so long as the rewritten provision remains consistent with the intent of the Parties expressed herein) or deemed to be severed and deleted. Neither such revision nor such severance and deletion shall affect the validity of the remaining provisions.

XV. SUCCESSORS AND ASSIGNS.

This Agreement shall apply to, bind and inure to the benefit of Parties and each of their Associated Entities and Persons.

XVI. COUNTERPARTS.

This Agreement may be executed in one or more counterparts all of which together shall constitute one and the same Agreement.

XVII. INTERPRETATION.

The Parties have each agreed to the use of the particular language of the provisions of this Agreement, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the party who causes an uncertainty to exist or against the draftsman.

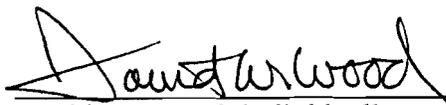
XVIII. PRONOUNS.

Masculine and/or feminine pronouns shall be substituted for the neuter form and/or vice versa, and the plural shall be substituted for the singular form and/or vice versa, in any place or places herein in which the content requires such substitution or substitutions.

XIX. NO ORAL MODIFICATIONS.

This Agreement may be amended or modified in writing only, signed by the Parties to be charged or bound by such amendment or modification.

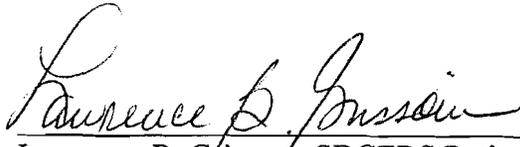
THE FOREGOING IS APPROVED AND AGREED:

Dated: Oct. 9, 2003   
David W. Wood, individually

Dated: \_\_\_\_\_  
Lawrence R. Grissom, SDCERS Retirement Administrator  
Pursuant to Vote of SDCERS Board of Trustees, dated  
September 19, 2003, approving the foregoing Settlement  
terms.

THE FOREGOING IS APPROVED AND AGREED:

Dated: \_\_\_\_\_  
David W. Wood, individually

Dated: 10/13/03   
Lawrence R. Grissom, SDCERS Retirement Administrator  
Pursuant to Vote of SDCERS Board of Trustees, dated  
September 19, 2003, approving the foregoing Settlement  
terms.

# **EXHIBIT A**

### **Rule 5.30 Non-Agenda Public Comment**

(a) Every agenda for a regular Board or committee meeting will provide a period at the beginning of the meeting for members of the public to address the Board or committee on items of public interest within the jurisdiction of the Board or committee that are not on the agenda for action.

(b) Public comment will be limited to three minutes per speaker and 15 minutes per topic. The Board President or chairperson may extend these time limits.

(c) Any member of the public who wishes to speak during the period for non-agenda public comment may reserve time by submitting a Request to Speak to the Board Secretary before the meeting begins. Speakers will be called in the order that their requests were received, unless the President or chairperson elects to call speakers in a different order.

(d) Each public speaker will approach the podium, state his or her name for the record, state the subject he or she wishes to discuss and, if the speaker represents a person or other organization, state who he or she represents. All remarks should be addressed to the Board or committee as a whole, rather than to any particular member.

(e) The Board or committee may not discuss or take action on any matter raised during non-agenda public comment. If appropriate, the President or chairperson may refer any matter properly raised under this rule to the Board, staff, or appropriate committee for action.

(f) No person may disrupt any Board or committee meeting with loud, offensive, boisterous or tumultuous conduct.

Added September 19, 2003

### **Rule 5.40 Procedure for Deliberation and Public Testimony**

The Board and its committees will use the following procedures to deliberate on any item presented for action:

(a) Items presented by staff:

(1) Motion and second.

(2) Staff report, if any, by the appropriate staff members and relevant questions by Board or committee members.

(3) Testimony by members of the public concerning the action item

(maximum of three minutes per speaker and 15 minutes per side). The Board President or chairperson may extend these time limits.

(4) Deliberation by Board or committee members. The President or chairperson will determine the order in which to recognize the Board or committee members to speak.

(b) Items presented to the full Board by a committee:

(1) Motion and second, if appropriate.

(2) Brief opening statement by the committee chairperson or the chairperson's designee describing the item and the committee's recommendation.

(3) Staff report, if any, by the appropriate staff members and relevant questions by Board members.

(4) Testimony by members of the public concerning the action item (maximum of three minutes per speaker and 15 minutes per side). The Board President or chairperson may extend these time limits.

(5) Deliberation by Board members. The President or chairperson will determine the order in which to recognize the Board or committee members to speak.

(c) Any member of the public who wishes to address an action item on the agenda may reserve time by submitting a Request to Speak to the Board Secretary before the item is called. The President or chairperson will call speakers in the order that their requests were received, unless the President or chairperson elects to call speakers in a different order.

(d) No person may disrupt any Board or committee meeting with loud, offensive, boisterous or tumultuous conduct.

Added September 19, 2003