

## Huerta, John

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**From:** Small, Lawrence  
**Sent:** Thursday, January 25, 2007 6:04 PM  
**To:** Hobbins, James M.; Huerta, John  
**Subject:** Re: Amending the Secretary's Agreement

Jim/John: From my perspective, the existing employment agreement I have with the Institution has worked well over the last seven years. Certainly, the detailed review recently completed has shown that I have lived up to the letter and spirit of the deal that was made and from my perspective, so has the Smithsonian.

Consequently, I have no desire to enter into even the slightest negotiation to "re-cut", in any substantive way, the deal that was made. I have no interest in seeking greater benefits than those that were committed to me and which have been operative over the last 7 years. Similarly, I'm not willing to discuss giving up one iota of what the Institution agreed to provide before I came to work.

If the Institution, at some point, comes to the conclusion it isn't comfortable with providing a particular part of the agreement in a certain way, than it should figure out another way to deliver the same value. It would represent the highest possible degree of naiveté to think a discussion could even be started where, after all that has been accomplished over the course of the last 7 years, I would entertain some form of "give-up."

From my point of view, there's no sense in starting the process of amending the current agreement to gain clarity without a complete recognition by everyone involved that neither I nor the Institution is expected to "give up" anything committed to in the original agreement and essentially institutionalized by the practices followed over the last 7 years.

And, once again, if there's any apparent complexity to the proposed amendments, such as in the wording raised by John, I shall require, as is standard procedure in senior level employment contract negotiations, the Institution to provide whatever level of independent outside counsel is required to represent me.

All the best,

Larry

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Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
**From:** Hobbins, James M.  
**To:** Huerta, John  
**Cc:** Small, Lawrence  
**Sent:** Thu Jan 25 17:37:11 2007  
**Subject:** RE: Amending the Secretary's Agreement

John,

Thanks for your thoughtful work. I hope Larry has the tools with which he can digest your attachments. If this turns out to be relatively straightforward, I'd be delighted to reach agreement between Larry and Roger by Monday, January 29th, though honestly there is no compelling reason to rush it.

With best wishes,

## Huerta, John

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**From:** Small, Lawrence  
**Sent:** Thursday, January 25, 2007 7:16 PM  
**To:** Huerta, John; Hobbins, James M.  
**Cc:** Lee, Yong  
**Subject:** Re: Amending the Secretary's Agreement

John: Raising the tax issue you have put forth by "spelling out in the transmittal what the tax ramifications may be if we are not careful" and not presenting any recommendations to deal with them, if, in fact, you think they're substantive, neither provides good service to the Regents or to the Secretary. You can't just say the equivalent of "You should worry about this" and leave things at that, expecting that the Secretary should modify 7 years of practice to conform with some new interpretation of what's acceptable.

If first class air travel at all times, as called for by my existing arrangement and 7 years of practice, for example, poses a problem from your point of view, there's no sense in sending any possible amendments to Roger or to me until you, with help from anyone you wish, come up with some solution to deal with what you perceive might be a problem.

For example (and not having given this matter much thought), the Institution could easily make an estimate of the amount of air travel that would be incurred by me and, on occasion, my spouse (all for business reasons, of course) for each coming year and simply increase, say, my housing allowance by the grossed-up amount. I could then pay for the air travel directly. Net result: I continue to live by the deal we made, so does the Institution. It would be more costly for the Institution but if the judgment of the experts, after 7 years of doing it as we have, is that there's an excessive tax risk, then the Institution may well have to spend more money to live up to the deal it made.

I'm not proposing the foregoing. I'm just saying I'm not willing to discuss any amendments if there's even the remotest idea on the table that something like the travel arrangement that was agreed to back in 1999 is under discussion and there's no alternative for providing equivalent economic and functional value and a total indemnity from any adverse tax consequences.

I do not want any of my comments passed along to Roger. This is strictly a discussion that you, Jim and I are having. We shouldn't go to Roger until we are completely comfortable that any proposed amendment is good for the Institution and good for me, is economically equivalent to the existing arrangement and operative practices and protects everyone from adverse consequences.

As Jim points out, there's no reason to rush. These issues should be settled before we go back to the Board. It's not right to toss any perceived problems in their lap.

All the best,

Larry

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Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** Huerta, John  
**To:** Small, Lawrence; Hobbins, James M.  
**Sent:** Thu Jan 25 18:20:14 2007  
**Subject:** RE: Amending the Secretary's Agreement

Larry,

Thank you for your comments. I am a firm believer that you have lived up to the letter and spirit of your employment agreement with the Smithsonian Institution. By drafting the

revisions, I was responding to a request from Roger Sant (given to me through Jim Hobbins) to draft changes to the indicated sections of your employment agreement. I believe that Roger was motivated by the comments and recommendations of the Acting Inspector General.

I wasn't trying to cut back on any of the benefits that you have received as Secretary of the Smithsonian Institution. I was attempting to bring clarity by explicitly indicating that you were entitled to first class travel, including car service and premium hotel accommodations. Your existing agreement did not have that clarity.

I am only motivated by loyalty to you and the Institution, and I am trying to protect both parties by clearly spelling out in the transmittal what the tax ramifications may be if we are not careful.

Obviously, if you and Roger do not wish to amend your employment agreement, neither Jim nor I are requiring you to do so.

Shall I forward your response to Roger directly, along with my transmittal to you, so that he will understand why Jim and I are not proceeding with his request?

Best wishes,

John E. Huerta (huertaj@si.edu)  
General Counsel, Smithsonian Institution

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