

1 BRIGGS LAW CORPORATION [FILE: 1544.01]
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FILED
2008 AUG 19 A 9 37
CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

BLC COPY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO—CENTRAL DIVISION

11 IAN TROWBRIDGE,
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13 Petitioner,
14
15 vs.
16 SOUTHEASTERN ECONOMIC
DEVELOPMENT CORPORATION and DOES 1
through 100,
17
18 Respondents;
19
20 CAROLYN Y. SMITH and DOES 101 through
1,000,
21
22 Real Parties in Interest.

CASE NO. 37-2008-00089910-CU-WM-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE RALPH M.
BROWN ACT AND OTHER LAWS**

21 Petitioner IAN TROWBRIDGE is informed and believes and on that basis alleges as follows
22 in this Verified Petition for Writ of Mandate under the Ralph M. Brown Act and Other Laws:

23 **Parties**

- 24 1. Petitioner IAN TROWBRIDGE is an individual and a taxpayer residing in the City of
25 San Diego, California.
- 26 2. Respondent SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION
27 ("SEDC") is a local agency under Section 54951 of the Government Code. Respondent's Board of
28 Directors is a legislative body under Section 54952 of the Government Code.

1 3. Real Party in Interest CAROLYN Y. SMITH is a Real Party in Interest insofar as she
2 is a party to the action being challenged in this proceeding or has some other cognizable interest in the
3 action.

4 4. The true names and capacities of the Respondents identified as DOES 1 through 100 and
5 Real Parties in Interest identified as DOES 101 through 1,000 are unknown to Petitioner, who will seek
6 the Court's permission to amend this pleading in order to allege the true names and capacities as soon
7 as they are ascertained. Each of the fictitiously named Respondents 1 through 100 has jurisdiction by
8 law over one or more aspects of the action that is being challenged in this proceeding and each of the
9 fictitiously named Real Parties in Interest 101 through 1,000 either is a party to the challenged action
10 or has some other cognizable interest in the action.

11 **Background Information**

12 5. The action being challenged in this proceeding is that certain Termination of
13 Employment Agreement and Mutual Release Agreement by and between Respondent SEDC and Real
14 Party in Interest CAROLYN Y. SMITH ("Termination/Release Agreement"). A true and correct copy
15 of the Termination/Release Agreement is attached to this pleading as Exhibit "A."

16 6. The Termination/Release Agreement (or part of it) was approved by Respondents during
17 a closed-session meeting on July 23, 2008. Alternatively, at least one of the Termination/Release
18 Agreement's substantive provisions was not approved by Respondents at a duly noticed meeting, public
19 or otherwise. The Termination/Release Agreement was executed by Real Party in Interest CAROLYN
20 Y. SMITH on August 1, 2008, and on behalf of Respondents on August 4, 2008. There was no regular
21 or special meeting of Respondents' legislative body between July 23 and August 4, 2008. A true and
22 correct copy of the agenda for the meeting of Respondents' legislative body on July 23, 2008, is
23 attached to this pleading as Exhibit "B."

24 7. Petitioner opposes the Termination/Release Agreement on the grounds that its non-
25 disciplinary provisions were not deliberated and approved at a duly noticed public meeting of
26 Respondents' legislative body, in violation of the Ralph M. Brown Act ("Brown Act"), GOV'T CODE
27 § 54950 *et seq.*

28

1 8. On August 14, 2008, Petitioner caused a Request to Cure Violation of Ralph M. Brown
2 Act to be served on Respondents; on August 15, 2008, Petitioner caused an Amended Request to Cure
3 Violation of Ralph M. Brown Act to be served on Respondents. A true and correct copy of the requests
4 is attached to this pleading as Exhibit "C."

5 9. Respondents deny that they have violated the Brown Act in connection with the
6 Termination/Release Agreement. A true and correct copy of Respondents' denial is attached to this
7 pleading as Exhibit "D."

8 10. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law, since he
9 will suffer irreparable harm as a result of Respondents' violations of the Brown Act and other laws.
10 Respondents' approval of the Termination/Release Agreement rests on their failure to satisfy a clear,
11 present, ministerial duty to act in accordance with all applicable laws.

12 11. Petitioner has a beneficial right and interest in Respondents' fulfillment of all their legal
13 duties, as alleged in this pleading.

14 **FIRST CAUSE OF ACTION:**
15 **Violation of the Ralph M. Brown Act--Action in Closed Session**
16 **(Against All Respondents and Real Parties in Interest)**

17 12. Paragraphs 1 through 11 are fully incorporated into this paragraph.

18 13. Government Code Section 54954.2(a)(1) requires the legislative body of a local agency
19 (or the body's designee), at least 72 hours before a regular meeting, to post an agenda containing a brief
20 general description of each item of business to be transacted or discussed at the meeting, including items
21 to be discussed in closed session. Section 54954.2(a)(2) prohibits the legislative body from taking
22 action on or discussing any item not appearing on the posted agenda for the body's regular meeting.
23 Section 54954.5 sets forth exemplar agenda descriptions that shall be deemed legally sufficient under
24 Section 54954.2 for closed-session items.

25 14. Government Code Section 54962 prohibits the legislative body of a local agency from
26 meeting in closed session except as authorized by certain enumerated statutory provisions. Government
27 Code Section 54957 authorizes the legislative body of a local agency to hold a closed-session meeting
28 to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a
public employee or to hear complaints or charges brought against the employee by another person or

1 employee unless the employee against whom the complaints or charges are made requests a public
2 session. Section 54957 also prohibits closed-session discussion or action on proposed compensation
3 except for a reduction of compensation that results from the imposition of discipline.

4 15. The agenda for the meeting of Respondents' legislative body on July 23, 2008, contained
5 the following description for the action being challenged in this proceeding: "Public Employee
6 Discipline/Dismissal/Release (Government Code Section 54957)."

7 16. At least one of the provisions of the Termination/Release Agreement provides for
8 compensation to Real Party in Interest CAROLYN Y. SMITH that is not a reduction of compensation
9 resulting from the imposition of discipline. For example, the Termination/Release Agreement states:
10 "In full consideration of Smith signing this Release, and the covenants and releases given herein, SEDC
11 will provide Smith the following Severance Benefits, *which Smith acknowledges includes sums she is*
12 *not otherwise entitled to receive.*" The Agreement also releases SMITH "from any and all loss, liability,
13 claims, demands, causes of action or suits of any type related directly or indirectly to Smith's
14 employment with SEDC and/or Smith's separation from SEDC."

15 17. Respondents' legislative body violated the Brown Act when it approved at least one of
16 the non-disciplinary provisions of the Termination/Release Agreement in a closed-session meeting
17 because at least one such provision provides compensation other than a reduction of compensation
18 resulting from the imposition of discipline.

19 18. Petitioner has been harmed as a result of Respondents' violations of the Brown Act
20 because he has been denied the benefits and protections provided by compliance with the Act. By way
21 of example and without limitation, Petitioner was unable to observe and participate in the discussions
22 and deliberations of Respondents' legislative body when it discussed or took action on at least one of
23 the Termination/Release Agreement's non-disciplinary provisions at a closed-session meeting.

24 **SECOND CAUSE OF ACTION:**
25 **Violation of the Ralph M. Brown Act--Action on Item Not Appearing on Posted Agenda**
(Against All Respondents and Real Parties in Interest)

26 19. Paragraphs 1 through 18 are fully incorporated into this paragraph.

27 20. Government Code Section 54954.2(a)(1) requires the legislative body of a local agency
28 (or the body's designee), at least 72 hours before a regular meeting, to post an agenda containing a brief

1 general description of each item of business to be transacted or discussed at the meeting, including items
2 to be discussed in closed session. Section 54954.2(a)(2) prohibits the legislative body from taking
3 action on or discussing any item not appearing on the posted agenda for the body's regular meeting.

4 21. Neither the Termination/Release Agreement nor any of its non-disciplinary provisions
5 was briefly or generally described on any agenda of Respondent's legislative body as an item of
6 business to be transacted or discussed at any of the body's meetings.

7 22. Respondents violated the Brown Act when they approved the Termination/Release
8 Agreement or its non-disciplinary provisions because such action was never described on any agenda
9 of Respondent's legislative body as an item of business to be transacted or discussed at any of the
10 body's meetings.

11 23. Petitioner has been harmed as a result of Respondents' violations of the Brown Act
12 because he has been denied the benefits and protections provided by compliance with the Act. By way
13 of example and without limitation, Petitioner was unable to observe and participate in the discussions
14 and deliberations of Respondents' legislative body when it discussed or took action on one or more of
15 the Termination/Release Agreement's non-disciplinary provisions not appearing on any posted agenda
16 for any regular meeting of the body.

17 **Prayer**

18 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
19 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
20 this proceeding):

21 A. *On the First Cause of Action:*

22 1. A judgment determining or declaring that Respondents failed to comply fully
23 with the Brown Act with respect to the Termination/Release Agreement and its non-disciplinary
24 provisions and that the approval thereof by Respondents' legislative body in closed session did not
25 comply with the Act, thus rendering the Termination/Release Agreement, its non-disciplinary
26 provisions, or both null and void;

1 2. A judgment determining or declaring that Respondents must fully comply with
2 the Brown Act before any discussion may take place or any action may be taken in connection with the
3 Termination/Release Agreement or any of its non-disciplinary provisions;

4 3. Injunctive relief prohibiting Respondents from discussing or taking any action
5 in connection with the Termination/Release Agreement or any of its non-disciplinary provisions
6 (including but not limited to making payments or releasing claims) unless and until they have fully
7 complied with the Brown Act and all other applicable laws; and

8 4. Any and all other relief that may be authorized by the Brown Act but is not
9 explicitly or specifically requested elsewhere in this Prayer.

10 B. *On the Second Cause of Action:*

11 1. A judgment determining or declaring that Respondents failed to comply fully
12 with the Brown Act with respect to the Termination/Release Agreement and its non-disciplinary
13 provisions and that the approval thereof by Respondents' legislative body without first briefly and
14 generally describing that action on at least one of the body's regular-meeting agendas did not comply
15 with the Act, thus rendering the Termination/Release Agreement, its non-disciplinary provisions, or
16 both null and void;

17 2. A judgment determining or declaring that Respondents must comply fully with
18 the Brown Act before any discussion may take place or any action may be taken in connection with the
19 Termination/Release Agreement or any of its non-disciplinary provisions;

20 3. Injunctive relief prohibiting Respondents from discussing or taking any action
21 in connection with the Termination/Release Agreement or any of its non-disciplinary provisions
22 (including but not limited to making payments or releasing claims) unless and until they have fully
23 complied with the Brown Act and all other applicable laws; and

24 4. Any and all other relief that may be authorized by the Brown Act but is not
25 explicitly or specifically requested elsewhere in this Prayer.

26
27 [This space is intentionally blank.]
28

1 C. *On All Causes of Action:*

2 1. All attorney fees and other legal expenses incurred in connection with this
3 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
4 Procedure and the Government Code; and

5 2. Any and all further relief that this Court may deem appropriate.
6

7 Date: August 19, 2008.

Respectfully submitted,

8 BRIGGS LAW CORPORATION

9
10 By:

Cory J. Briggs
Cory J. Briggs

11 Attorneys for Petitioner Ian Trowbridge
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**VERIFIED PETITION FOR WRIT OF MANDATE UNDER
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "A"

**TERMINATION OF EMPLOYMENT AGREEMENT AND MUTUAL GENERAL
RELEASE AGREEMENT**

This Termination of Employment Agreement and Mutual General Release Agreement (the "Release") is entered into by and between the Southeastern Economic Development Corporation ("SEDC") a Public Agency Organized as a California Nonprofit Public Benefit Corporation and Carolyn Y. Smith ("Smith") with respect to the following facts:

A. The current term of the employment agreement between SEDC and Smith ends on February 28, 2009.

B. The Board of Directors ("Board") of SEDC took action by the unanimous vote of eight directors at a regularly scheduled meeting on July 23, 2008 to exercise SEDC's right to terminate the employment agreement upon 90-days notice.

C. At the conclusion of a duly noticed closed session, the Board announced the action terminating the employment agreement in the public session of its duly noticed meeting held on July 23, 2008, which was attended by Smith and Smith specifically waives any rights she may have had to written notice of the termination of the employment agreement.

D. The termination of the employment agreement shall be effective at the close of business on October 21, 2008, and Smith will not be expected to perform any duties for SEDC after October 21, 2008.

E. SEDC and Smith desire to resolve any and all differences regarding Smith's employment and the termination of Smith's employment agreement with SEDC.

The parties mutually agree as follows:

1. **Severance Benefits and Settlement Payment.** In full consideration of Smith signing this Release, and the covenants and releases given herein, SEDC will provide Smith the following Severance Benefits, which Smith acknowledges includes sums she is not otherwise entitled to receive. SEDC will pay Smith One Hundred Thousand, Three Hundred and Fifty dollars (\$100,350.00), ("Separation Pay"). The Separation Pay will be made, less all applicable state and federal withholdings, to Smith within ten (10) business days after Smith's last day of employment.

2. **Mutual Non-Disparagement.** Neither SEDC, its officers, current or former directors, employees, agents, or representatives, on the one hand, nor Smith, on the other hand, shall: (a) make or cause to be made any statement or comment, whether oral or written, including without limitation, any statement or comment made via the Internet, which disparages, denigrates, impugns, or discredits the other; or (b) act in any manner which is intended to or does damage the reputation of the other. Nothing contained herein shall prohibit current or former directors, officers, employees, agents, or representatives of SEDC, on the one hand, or Smith, on the other hand, from giving truthful testimony in response to any duly served subpoena, discovery request, or other inquiry authorized by law in a pending litigation or investigation.

3. **Cooperation with SEDC.** Smith agrees to cooperate fully with SEDC and its counsel with respect to any matter (including litigation, investigation, government proceedings and general claims) which relates to matters with which Smith was involved during the term of employment with SEDC, subject to reimbursement of reasonable out-of-pocket travel costs and expenses. Such cooperation may include appearing from time to time at the offices of SEDC or SEDC's counsel, or telephonically, for conferences and interviews and providing testimony in depositions, court proceedings and administrative hearings as necessary for SEDC to defend claims, and in general providing SEDC and its counsel with the full benefit of Smith's knowledge with respect to any such matter. Smith agrees to render such cooperation in a timely fashion and at such times as may be mutually agreeable to the parties concerned.

4. **Confidential and Proprietary Business Information.** Smith acknowledges that, during the course of the employment relationship, Smith has become privy to confidential and proprietary business information belonging to SEDC, as well as confidential information regarding past and present SEDC employees, the unauthorized disclosure of which could cause serious and irreparable injury to SEDC. Smith agrees to hold and safeguard the confidential information in trust for SEDC, its successors and assigns, and agrees that Smith will not misappropriate, use for Smith's own advantage, disclose or otherwise make available to anyone who is not an officer or director of SEDC, for any reason, any of the confidential information, regardless of whether the confidential information was developed or prepared by Smith or others. Smith agrees not to remove any writings containing confidential information from SEDC's premises or possession without SEDC's express consent. Smith agrees to promptly return to SEDC all confidential information in Smith's possession or under Smith's control (whether in original, copy, electronic disk or some other form). Before disclosing any confidential information under compulsion of legal process, Smith agrees to promptly give notice to SEDC of the fact that Smith has been served with legal process pursuant to which the disclosure of confidential information may be requested. Such notice will be given within sufficient time to permit SEDC to intervene in the matter or to take such other actions as may be necessary or appropriate to protect its interest in the confidentiality of its confidential business information.

5. **Mutual General Release.** Smith, individually and on behalf of her heirs, assigns, executors, successors and each of them, hereby unconditionally, irrevocably and absolutely releases and discharges SEDC, the current and former members of SEDC's Board of Directors, and SEDC's officers, employees, agents, representatives, attorneys, insurers, successors and assigns, from any and all loss, liability, claims, demands, causes of action or suits of any type related directly or indirectly to Smith's employment with SEDC and/or Smith's separation from SEDC, including claims for wrongful termination, constructive wrongful termination, harassment, retaliation, defamation, fraud, misrepresentation, infliction of emotional distress, reimbursement of Smith expenses except for indemnity obligations for a claim or judgment arising out of acts or omissions occurring within the course and scope of Smith's managerial and discretionary duties and to the extent that indemnification is permitted under local and state law, reimbursement of medical expenditures, violation of civil rights, severance pay, denial of pension benefits, claims under the Labor Code of the State of California or similar laws of any other jurisdiction, claims under the federal Wage and Hour laws, claims for discrimination, including claims arising under the Age Discrimination in Employment Act, physical handicap and/or disability under federal and state law, the Federal Sarbanes-Oxley Act of 2002 and any other claims under local ordinances, state law or federal law. This Release does not in any way affect Smith's rights in any retirement plan, which rights are governed by the terms of the plan(s) and by applicable law. Smith further represents that she has not and will not institute,

prosecute or maintain on her behalf, before any administrative agency, court or tribunal, any demand or claim of any type related to the matters released herein.

SEDC, on behalf of itself, the current and former members of its Board of Directors, its officers, employees, agents, attorneys, insurers, successors and assigns, hereby unconditionally, irrevocably, and absolutely releases Smith, her heirs, agents, attorneys, insurers, assigns, and successors from any and all loss, liability, claims, demands, causes of action or suits of any type related directly or indirectly to Smith's employment with SEDC and/or Smith's separation from SEDC.

This Release does not apply to any claim arising after Smith's execution of this Release. In accordance with state law, nothing in this Release exonerates Smith from responsibility or liability for Smith's own wrongful act or omission or because of Smith's own actual fraud, corruption, actual malice or criminal conduct.

Smith and SEDC expressly waive all of the benefits and rights granted to them pursuant to California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6. This Release is intended by the parties to release and discharge any and all claims the parties may have against each other as set forth in Paragraph 5 above, including but not limited to any claims Smith may have against SEDC arising under the laws of the State of California and/or the United States regulating or prohibiting alleged civil rights violations or employment discrimination. It is the intent of the parties that this Agreement satisfy the requirements of the Age Discrimination in Employment Act ("ADEA")/Older Workers Benefit Protection Act ("OWBPA"), Public Law 101-433, codified at 29 U.S.C. § 626(f) with regard to Smith, who is over 40 years-old. The following general provisions, along with the other provisions of this Agreement, are agreed to for this purpose:

a. Smith acknowledges and agrees that she has read and understands the terms of this Agreement;

b. Smith acknowledges that she has been given a full opportunity to consult with her attorney with respect to the matters referenced in this Agreement, and that Smith has obtained and considered such legal counsel as she deems necessary, such that Smith is entering into this Agreement freely, knowingly and voluntarily;

c. Smith acknowledges that she has been given at least twenty-one (21) days in which to consider whether or not to enter into this Agreement and that if she signs this Agreement before the expiration of the 21-day period, her shortening of the time period is done at her option, knowingly and voluntarily and that this 21-day period shall have no effect on the 90-days notice of termination period;

d. Smith understands that she has seven (7) days from the date she signs this Agreement to revoke the Agreement. Any such revocation must be received by hand-delivery to SEDC's attorneys, Regina A. Petty of Wilson, Petty, Kosmo & Turner LLP, no later than 9:00 a.m. on the day following the 7-day revocation period, or if this is a weekend or holiday, the following business day.

e. This Agreement does not waive or release any rights or claims that Smith may have under the ADEA/OWBPA which arise after execution of this Agreement.

7. General Provisions.

a. Smith and SEDC acknowledge that they have been given the opportunity to consult with their own legal counsel with respect to the matters referenced in this Release, and that they have obtained and considered the advice of such legal counsel as they deem necessary or appropriate, such that they have voluntarily and freely entered into this Release.

b. This Release contains the entire Release between Smith and SEDC and there have been no promises, inducements or Releases not expressed in this Release.

c. The provisions of this Release are contractual, not merely recitals, and shall be considered severable, such that if any provision or part thereof shall at any time be held invalid under any law or ruling, any and all such other provision(s) or part(s) thereof shall remain in full force and effect and continue to be enforceable.

d. In the event of any dispute between Smith and SEDC concerning any aspect of this Release, such disputes shall be resolved by binding arbitration before a single neutral arbitrator in San Diego, California, to the extent permitted by law. The arbitrator shall be agreed upon by the parties. If the parties cannot agree, then the arbitrator will be selected from the American Arbitration Association according to its procedures. The parties shall bear their own costs and attorneys' fees in any such action.

e. This Release shall be interpreted, construed, governed and enforced in accordance with the laws of the State of California.

f. This Release shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

g. Nothing in this Release shall be construed as an admission of any liability or any wrongdoing by any party to this Release.

h. This Release shall not be construed against any party on the grounds that such party drafted the Release.

8. **Release Read and Understood.** Smith and SEDC certify that they have read all of this Release, including the release provisions contained herein and that they fully understand all of the same.

BY SIGNING BELOW, Smith certifies that she has read and understands all of this Release, has received any advice or counsel Smith deems necessary regarding this Release, and is entering into this Release freely and voluntarily, intending to be bound by its terms.

The undersigned have executed this Release on the dates shown below at San Diego, California.

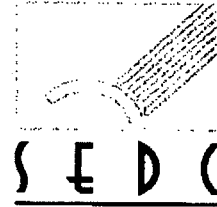
Dated: Aug. 1, 2008

By: Carolyn Y. Smith
Carolyn Y. Smith

SOUTHEASTERN ECONOMIC
DEVELOPMENT CORPORATION
A Public Agency Organized as
a California Nonprofit Public
Benefit Corporation

Dated: Aug 4, 2008

By: Artie M. Owen
Artie Owen
Chairman
SEDC Board of Directors



INVOICE

TO:

Will Carless
Voice of San Diego
2508 Historic Decatur Rd , Suite 120
San Diego, CA 92106

INVOICE DATE: August 12, 2008

FROM:

Southeastern Economic Development Corporation
4393 Imperial Avenue, Suite 200
San Diego, CA 92113

QTY	DESCRIPTION	PRICE	AMOUNT
5	Copies of Various SEDC Corporate Documents Requested Under the Freedom of Information Act Dated August 11, 2008	0.25	\$1.25

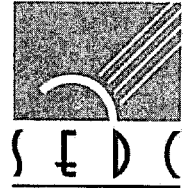
Total \$1.25

**VERIFIED PETITION FOR WRIT OF MANDATE UNDER
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "B"

AGENDA 006

SEDC BOARD OF DIRECTORS
4393 IMPERIAL AVENUE, SUITE 200
SAN DIEGO, CA 92113
JULY 23, 2008
5:00 P.M.



Southeastern
Economic
Development
Corporation

T 619.527.7345
F 619.262.9845
www.sedcinc.com

1. **Call to Order**
2. **Approval of the Minutes from the Agendas of June 25, 2008**
3. **Request for Continuance**

The SEDC Board of Directors will consider requests to continue specific items. You must complete a speaker form indicating your request that an item be continued.

4. **Communications**

Comments from the audience, limited to a three-minute non-debatable presentation, will be heard at this time. If you would like to address the Board, please complete a speaker form.

5. **Non-Agenda Item(s)**

Action items must meet the requirements of Government Code Section 54954.2(b).

6. **Consent Agenda Item(s)**

None.

7. **Project Reports and Action Items**

- a. Approval of the Temporary Installation of a "Going Native Naturally" Water Conservation Demonstration Garden (Report No. 08-031)
- b. Presentation on Affordable Housing (Report No. 08-032)

8. **Personnel and Budget Committee Reports and Actions from Meeting on July 22, 2008**

- a. Report and Recommendations for Revised and/or New Employee Compensation Policies (Report No. 08-033)
- b. Report and Recommendations for Creation of Senior Level Financial Officer Position (Report No. 08-034)

9. **Chair's Report**
10. **President's Report**
11. **Committee Reports**
12. **Adjournment into Closed Session**
 - a. Public Employee Discipline/Dismissal/Release (Government Code Section 54957)
13. **Reconvene Open Session**

NOTE: Action may be taken on any item identified on the Agenda.

The entire Board Packet, which includes the individual staff reports and recommendations on each item, is available for viewing in the reception area of SEDC's corporate offices during normal business hours, Monday thru Friday, 8:00 a.m. - 5:00 p.m., and by visiting the website at www.sedcinc.com. Copies of the Board Packet or specific items of the packet may be obtained from SEDC between the hours of 8:00 a.m. - 5:00 p.m. No copying requests shall be taken over the phone.

*SEDC is located at:
4393 Imperial Avenue
Suite 200
San Diego, CA 92113*

This information is available in alternative formats upon request. To request an agenda in Braille, large print or cassette or to request a sign language or oral interpreter for the meeting, please call SEDC at least five working days prior to the meeting to ensure availability. Alternative Listening Devices ("ALD") are available for the meeting upon request.

**VERIFIED PETITION FOR WRIT OF MANDATE UNDER
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "C"

BRIGGS LAW CORPORATION

San Diego Office:
5663 Balboa Avenue, No. 376
San Diego, CA 92111-2705

Telephone: 858-495-9082
Facsimile: 858-495-9138

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1544.01

14 August 2008

Artie "Chip" Owen, Chair
Carolyn Y. Smith, President
Southeastern Economic Development Corporation
4393 Imperial Avenue, Suite 200
San Diego, CA 92113

Via Facsimile Transmission and U.S. Mail

Re: Request to Cure Violation of Ralph M. Brown Act

Dear Mr. Owen and Ms. Smith:

On behalf of my client, Ian Trowbridge, I am writing to request the cure of a violation of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) committed by the Board of Directors of the Southeastern Economic Development Corporation at its meeting on July 23, 2008, with respect to Item 12a (Public Employee Discipline/Dismissal/Release) on its agenda for the meeting.

In particular, the Board of Directors violated the Brown Act, including but not limited to Government Code Section 54957, by taking action on Item 12a in closed session. One or more aspects of the agreement (if not the entire agreement) reached on Item 12a--*e.g.*, the consideration given by SEDC in order to resolve differences over the employment and termination of Ms. Smith as president--should have been the subject of discussion and action taken in open session.

Under the Brown Act, the violation must be cured not more than 30 days after receipt of this letter. Please notify me *in writing* as soon as possible to let me know whether the violation will be cured and, if so, when the cure will take place. (My client may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

Cory J. Briggs



BRIGGS LAW CORPORATION

San Diego Office:
5663 Balboa Avenue, No. 376
San Diego, CA 92111-2705

Telephone: 858-495-9082
Facsimile: 858-495-9138

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: Artie "Chip" Owen and Carolyn Y. Smith

Recipient's fax number: (619) 262-9845

Date: 14 August 2008

BLC File: 1544.01

Total Pages (including cover sheet): 2

Sender: Cory J. Briggs

Sender's fax number: 858-495-9138 909-949-7121

Message: N/A

Original Document to Follow? Yes No

CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.

Be Good to the Earth: Reduce, Reuse, Recycle



TRANSMISSION VERIFICATION REPORT

TIME : 08/14/2008 12:56
NAME : BRIGGS LAW UPLAND
FAX : 9099497121
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SER.# : 000D3J115759

DATE, TIME	08/14 12:55
FAX NO./NAME	916192629845
DURATION	00:00:24
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

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FACSIMILE COVER SHEET

Recipient: Artie "Chip" Owen and Carolyn Y. Smith

Recipient's fax number: (619) 262-9845

Date: 14 August 2008 BLC File: 1544.01

Total Pages (including cover sheet): 2

Sender: Cory J. Briggs

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Message: N/A

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BLC File(s): 1544.01

15 August 2008

Artie "Chip" Owen, Chair
Carolyn Y. Smith, President
Southeastern Economic Development Corporation
4393 Imperial Avenue, Suite 200
San Diego, CA 92113

Via Facsimile Transmission and U.S. Mail

Re: Amended Request to Cure Violations of Ralph M. Brown Act

Dear Mr. Owen and Ms. Smith:

On behalf of my client, Ian Trowbridge, I am writing to request the cure of two violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*)--one committed by the Board of Directors of the Southeastern Economic Development Corporation at its meeting on July 23, 2008, with respect to Item 12a (Public Employee Discipline/Dismissal/Release) on its agenda for the meeting; the other committed by the Board of Directors when it took action on an item that never appeared on any posted meeting agenda.

First, the Board of Directors violated the Brown Act, including but not limited to Government Code Section 54957, by taking action on Item 12a in closed session. One or more aspects of the agreement (if not the entire agreement) reached on Item 12a--*e.g.*, the consideration given by SEDC in order to resolve differences over the employment and termination of Ms. Smith as president--should have been the subject of discussion and action taken in open session.

Alternatively and additionally, the Board of Directors is believed to have taken action to approve the Termination of Employment Agreement and Mutual Release Agreement by and between SEDC and Ms. Smith even though that item never appeared on any posted agenda for any meeting of the Board of Directors. If that is true, then such action also violated the Brown Act, including but not limited to Government Code Section 54954.2(a)(2).

Under the Brown Act, the violation must be cured not more than 30 days after receipt of this letter. Please notify me *in writing* as soon as possible to let me know whether the violation will be cured and, if so, when the cure will take place. (My client may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

Cory J. Briggs



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Original Document to Follow? Yes No

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Message: N/A

**VERIFIED PETITION FOR WRIT OF MANDATE UNDER
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "D"

PUBLIC STATEMENT REGARDING BROWN ACT COMPLIANCE

The agenda for the regular meeting of the Board of Directors of the Southeastern Economic Development Corporation held on July 23, 2008 described the closed session personnel matter involving discipline, dismissal or release of a public employee in compliance with the model format in the safe harbor provision of the Brown Act. As required by the Brown Act, timely written notice was delivered to the employee that disciplinary or other action could be taken in the closed session based on complaints or charges brought against the employee and that the employee had the right to request a public hearing. The impetus for the closed session was a written demand on July 18, 2008 by the mayor and several councilmembers that Ms. Smith resign as President of SEDC immediately or that the SEDC Board of Directors terminate her contract immediately at an emergency meeting of the Board.

The President was accompanied by her legal counsel during the Board's examination of her as a witness in the Board's investigation of the personnel matter. The examination of any or all witnesses in a personnel matter in closed session is permitted by the Brown Act. The President did not otherwise attend the closed session. No negotiations were conducted between the Board of Directors and the President in the closed session. At the conclusion of the closed session, the Chair of the Board immediately announced the unanimous Board action taken to invoke a 90-day notice clause to terminate the President's employment agreement and that a payment to be made at the time of departure was conditioned on the execution of a release. No claim or other communication threatening litigation by Ms. Smith had been received by the SEDC or publicly made as of the Board meeting on July 23rd.

The action taken by the Board of Directors did not alter the amount of Ms. Smith's salary and no other terms of her employment agreement were modified by Board action. The Termination of Employment Agreement and Mutual General Release Agreement was prepared by legal counsel for SEDC and legal counsel for the President in the days following the Board meeting. The termination agreement was provided to the Office of the City Attorney prior to its execution. No comments have been directly received by the SEDC from the Office of the City Attorney.

The City of San Diego and the Redevelopment Agency are not named in the termination agreement as parties to the mutual release. The operating agreement between the SEDC and the City of San Diego specifies that the SEDC is an independent contractor and not an agent of the City.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing Petition for Writ of Mandate under the Ralph M. Brown Act and Other Laws and know its contents.

[X] CHECK APPLICABLE PARAGRAPH
I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am [] an Officer [] a partner [] a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on August 18, 20 08, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ian Trowbridge
Type or Print Name

[Signature]
Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California.

I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list; in this action
[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

[] BY MAIL
[] * I deposited such envelope in the mail at, California.
The envelope was mailed with postage thereon fully prepaid.

[] As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.

[] ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
[] (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)