

ORIGINAL

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10 FRIENDS OF ROSE CANYON,
SAN DIEGO AUDUBON SOCIETY, and
11 ENDANGERED HABITATS LEAGUE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 FRIENDS OF ROSE CANYON; SAN
DIEGO AUDUBON SOCIETY; and
15 ENDANGERED HABITATS LEAGUE,

16 Petitioners,

17 v.

18 CITY OF SAN DIEGO; SAN DIEGO CITY
COUNCIL; and DOES 1 through 20,
19 inclusive,

20 Respondents,

21 PROJECT DESIGN CONSULTANTS;
22 GEOCON CONSULTANTS, INC.;
GEOCON INC.; KATZ & ASSOCIATES, INC.;
23 PB AMERICAS, INC.; SAFDIE RABINES
ARCHITECTS; SYSKA HENNESSY GROUP
24 CONSTRUCTION INC.;
SYSKA HENNESSY GROUP, INC.; T.Y. LIN
25 INTERNATIONAL/CCS; URBAN SYSTEMS
ASSOCIATES, INC.; and DOES 21-40,
26 inclusive,

27 Real Parties in Interest.
28

) Case No.

) **VERIFIED PETITION FOR WRIT
OF MANDATE**

) (Code Civ. Proc. § 1085 [§ 1094.5];
California Environmental Quality Act
["CEQA"] Pub. Res. Code § 21168
[21168.5])

INTRODUCTION

1
2 1. This action challenges the decision of the City of San Diego (“City”) and
3 the San Diego City Council (collectively, “Respondents”) to approve a nearly \$4.9
4 million agreement (entitled “Lump Sum Agreement for Regents Road Bridge and Limited
5 Roadway Changes, Contract No. HO73678”) (“Contract”) with Real Parties in Interest
6 Project Design Consultants for full engineering and design of the Regents Road Bridge
7 and Limited Roadway Changes Project (collectively, “the Bridge”) without first
8 completing environmental review.

9 2. The Bridge would construct a nearly 1700-foot, four-lane thoroughfare
10 across and through the Rose Canyon Open Space Preserve/Park (“Rose Canyon”), a
11 unique natural resource and recreational amenity in the otherwise largely urbanized City.
12 It would cut and fill approximately six acres of undeveloped Rose Canyon in order to
13 install a new roadway leading to the Bridge. In a 1979 Ordinance setting aside and
14 dedicating Rose Canyon, the City explained its primary purpose was to “preserve” the
15 Canyon. Moreover, as the City explained to the State when it applied for state funds to
16 restore sensitive habitat in Rose Canyon, the Canyon is a “natural treasure” and “is
17 recognized as one of the last natural canyons in the area”

18 3. In order to completely engineer and design the Bridge, the Contract calls for
19 invasive boring, pits, and backhoe trenches in Rose Canyon. Some of this work is
20 scheduled to begin within the first three months of the Contract’s execution; all of it will
21 occur *before* the City analyzes the environmental impacts of that very same work.

22 4. The City’s approval of the Contract without prior environmental review
23 turns state environmental law on its head. The Contract calls for complete engineering
24 and design of every detail of the Bridge *before* the City completes analysis of the Bridge’s
25 potential environmental impacts and *before* the City has evaluated whether there are less
26 harmful alternatives to the Bridge, or design features and mitigation measures that would
27 protect Rose Canyon. Based on the City’s misguided approach, comments by the public
28 and by federal and state resources agencies on the City’s eventual environmental analysis

1 of the Bridge would not be incorporated into the design process, and would be received
2 only *after* the City committed millions of dollars to implementing the Bridge.

3 5. By approving the Contract, the City has committed to complete a nearly \$5
4 million design of the Bridge's every detail before completing environmental analysis of
5 the Bridge's impacts. The 100 percent engineering and design work called for under the
6 Contract is far more commitment to the project than federal and state road building
7 agencies permit prior to the completion of environmental review for similar infrastructure
8 projects, and is well beyond what state law requires in order for the City to prepare
9 adequate review of the Bridge and its alternatives.

10 6. Moreover, the City's approach is exactly the opposite of the process the
11 City very recently committed to follow. In August 2006, the City first approved the
12 Bridge based on inadequate environmental review. As a result of petitioners' litigation
13 challenging that action, on March 27, 2007, the City rescinded its approval of the Bridge
14 and agreed not to proceed with "any implementation, if any" of the Bridge until *after* the
15 City prepares full environmental review of the Bridge and its alternatives. The City's
16 approval of the Contract now and its deferral of environmental review ignore this prior
17 commitment.

18 7. Respondents' adoption of Ordinance O-19673 (first reading September 4,
19 2007; second reading October 16, 2007; date of final passage November 5, 2007)
20 ("Ordinance") approving the Contract ("the Project"), without first completing
21 environmental review, violates the California Environmental Quality Act ("CEQA"),
22 Public Resources Code §§ 21000 *et seq.*, and CEQA's implementing regulations, the
23 CEQA Guidelines, Title 14, California Code of Regulations §§ 15000 *et seq.*

24 **PARTIES**

25 8. Petitioner Friends of Rose Canyon ("FRC") is a California nonprofit public
26 benefit corporation dedicated to the protection, preservation and restoration of Rose
27 Canyon and the Rose Creek watershed, where the Bridge would be constructed. FRC was
28 founded in 2002 in response to the City's proposal to build a major road through the

1 middle of Rose Canyon. Today, FRC supporters use and enjoy the natural, recreational
2 and scenic resources of Rose Canyon. FRC works with the City Park and Recreation
3 Department to organize nature walks and habitat restoration projects that bring hundreds
4 of people a year from all over the City of San Diego, including students, families, and
5 scout groups, into Rose Canyon. FRC also works with other Canyon “friends” groups
6 and environmental organizations on region-wide Canyon protection efforts, and with the
7 Rose Creek Watershed Alliance to address issues throughout the watershed. Individual
8 supporters of FRC, who number at least 1,900, are residents and taxpayers of the City of
9 San Diego who will be negatively affected by the Project’s adverse environmental
10 impacts. The interests that FRC seeks to further in this action are consistent with the
11 purpose and goals of the organization. Supporters of FRC have a direct and beneficial
12 interest in the City’s compliance with CEQA and the CEQA Guidelines. These interests
13 will be directly affected by approval of the Contract, which violates provisions of law as
14 set forth in this Petition and which would cause substantial and irreversible harm to the
15 natural environment. The maintenance and prosecution of this action will confer a
16 substantial benefit on the public by protecting the public from the environmental harms
17 alleged herein. FRC submitted oral and written comments to the City by commenting on
18 and objecting to approval of the Contract.

19 9. Petitioner San Diego Audubon Society (“SDAS”) was formed in 1948 and
20 organized as a California nonprofit public benefit corporation in 1965. Currently, there
21 are approximately 2,900 members of SDAS, located throughout the San Diego region.
22 The mission of SDAS is to foster the protection and appreciation of birds and other
23 wildlife, and their habitats, through study and education, and to advocate for a cleaner,
24 healthier environment. The activities of SDAS focus on wildlife and habitat
25 conservation, as well as a variety of educational and outreach programs to serve the San
26 Diego area. Among other conservation activities, SDAS works in collaboration with
27 dozens of government agencies, conservation organizations, and citizen groups to
28 advocate for land use planning that protects wildlife and open space areas for public use.

1 Members and supporters of SDAS use and enjoy the natural, scenic and recreational
2 resources of Rose Canyon. The interests that SDAS seeks to further in this action are
3 consistent with the mission and goals of the organization. Members and supporters of
4 SDAS have a direct and beneficial interest in the City's compliance with CEQA and the
5 CEQA Guidelines. These interests will be directly affected by approval of the Contract,
6 which violates provisions of law as set forth in this Petition and which would cause
7 substantial and irreversible harm to the natural environment. The maintenance and
8 prosecution of this action will confer a substantial benefit on the public by protecting the
9 public from the environmental harms alleged herein. SDAS submitted oral comments to
10 the City objecting to and commenting on approval of the Contract.

11 10. Petitioner Endangered Habitats League ("EHL") is a non-profit
12 organization dedicated to protecting the unique scenic, biological, and natural resources
13 of Southern California. Through participation in community and regional planning
14 processes, EHL promotes sustainable land use planning that both serves area residents
15 and preserves native landscapes. EHL and its members are directly affected by decisions
16 that destroy wildlife habitat, diminish recreational opportunities, increase traffic
17 congestion, result in water contamination, and generally threaten the environment and
18 impair their community's quality of life. Members and supporters of EHL use and enjoy
19 the natural, scenic and recreational resources of Rose Canyon. The interests that EHL
20 seeks to further in this action are within the purposes and goals of the organization. EHL
21 and its members and supporters have a direct and beneficial interest in the City's
22 compliance with laws bearing upon approval of the Contract. These interests will be
23 directly and adversely affected by the approval of the Contract, which violates provisions
24 of law as set forth in this Petition and which would cause substantial and irreversible
25 harm to the natural environment. The maintenance and prosecution of this action will
26 confer a substantial benefit on the public by protecting the public from the environmental
27 harms alleged herein. EHL submitted oral comments to the City objecting to and
28 commenting on the approval of the Contract.

1 11. Respondent City of San Diego is a public agency under section 21063 of the
2 Public Resources Code. The City is responsible for regulating and controlling land use in
3 the City, including implementing and complying with the provisions of CEQA.
4 Respondent City is the lead agency for purposes of Public Resources Code section 21067,
5 with principal responsibility for conducting environmental review and approving the
6 Contract.

7 12. Respondent San Diego City Council is the duly elected legislative body for
8 the City and is responsible for implementing the City's land use planning.

9 13. Petitioners do not know the true names and capacities, whether individual,
10 corporate, associate, or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and
11 therefore sue said Respondents under fictitious names. Petitioners will amend this
12 Petition to show their true names and capacities when the same have been ascertained.
13 Each of the Respondents is the agent and/or employee of each other Respondent, and
14 each performed acts on which this action is based within the course and scope of such
15 Respondent's agency and/or employment.

16 14. Real Party in Interest PROJECT DESIGN CONSULTANTS ("PDC") is a
17 recipient of the Project approval that is the subject of this action. Specifically, PDC is the
18 prime contractor to the Contract challenged by this action.

19 15. Real Party in Interest GEOCON CONSULTANTS, INC.
20 is a recipient of the Project approval that is the subject of this action. Specifically,
21 GEOCON CONSULTANTS, INC. is a sub-contractor to the prime contractor PDC under
22 the Contract challenged by this action.

23 16. Real Party in Interest GEOCON INC. is a recipient of the Project approval
24 that is the subject of this action. Specifically, GEOCON INC. is a sub-contractor to the
25 prime contractor PDC under the Contract challenged by this action.

26 17. Real Party in Interest KATZ & ASSOCIATES, INC. is a recipient of the
27 Project approval that is the subject of this action. Specifically, KATZ & ASSOCIATES,
28 INC. is a sub-contractor to the prime contractor PDC under the Contract challenged by

1 this action.

2 18. Real Party in Interest PB AMERICAS, INC. is a recipient of the Project
3 approval that is the subject of this action. Specifically, PB AMERICAS, INC. is a sub-
4 contractor to the prime contractor PDC under the Contract challenged by this action.

5 19. Real Party in Interest SAFDIE RABINES ARCHITECTS is a recipient of the
6 Project approval that is the subject of this action. Specifically, SAFDIE RABINES
7 ARCHITECTS is a sub-contractor to the prime contractor PDC under the Contract
8 challenged by this action.

9 20. Real Party in Interest SYSKA HENNESSY GROUP CONSTRUCTION INC. is
10 a recipient of the Project approval that is the subject of this action. Specifically, SYSKA
11 HENNESSY GROUP CONSTRUCTION INC. is a sub-contractor to the prime contractor
12 PDC under the Contract challenged by this action.

13 21. Real Party in Interest SYSKA HENNESSY GROUP, INC. is a recipient of the
14 Project approval that is the subject of this action. Specifically, SYSKA HENNESSY
15 GROUP, INC. is a sub-contractor to the prime contractor PDC under the Contract
16 challenged by this action.

17 22. Real Party in Interest T.Y. LIN INTERNATIONAL/CCS is a recipient of the
18 Project approval that is the subject of this action. Specifically, T.Y. LIN
19 INTERNATIONAL/CCS is a sub-contractor to the prime contractor PDC under the
20 Contract challenged by this action.

21 23. Real Party in Interest URBAN SYSTEMS ASSOCIATES, INC. is a recipient
22 of the Project approval that is the subject of this action. Specifically, URBAN SYSTEMS
23 ASSOCIATES, INC. is a sub-contractor to the prime contractor PDC under the Contract
24 challenged by this action.

25 24. Petitioners do not know the true names and capacities, whether individual,
26 corporate, associate, or otherwise, of Real Parties in Interest DOE 21 through DOE 40,
27 inclusive, and therefore sue said Real Parties in Interest under fictitious names.
28 Petitioners will amend this Petition to show their true names and capacities when the

1 same have been ascertained. Each of the Real Parties in Interest is the agent and/or
2 employee of each other Real Party in Interest, and each performed acts on which this
3 action is based within the course and scope of such Real Party in Interest's agency and/or
4 employment.

5 **JURISDICTION AND VENUE**

6 25. Pursuant to California Code of Civil Procedure section 1085 (alternatively
7 section 1094.5) and Public Resources Code sections 21168.5 (alternatively section 21168)
8 and 21168.9, this Court has jurisdiction to issue a writ of mandate to set aside
9 Respondents' decision to approve the Project.

10 26. Venue is proper in this Court because the causes of action alleged in this
11 Petition arose in the County of San Diego where the site of the proposed Bridge is
12 located, and where the Project would be implemented.

13 27. Petitioners have complied with the requirements of Public Resources Code
14 section 21167.5 by serving a written notice of Petitioners' intention to commence this
15 action on Respondents on November 21, 2007. A copy of the written notice and proof of
16 service is attached hereto as Exhibit A.

17 28. Petitioners will comply with the requirements of Public Resources Code
18 section 21167.7 by concurrently sending a copy of this Petition to the California Attorney
19 General.

20 29. Petitioners will comply with the requirements of Public Resources Code
21 section 21167.6 by concurrently filing a notice of their election to prepare the record of
22 administrative proceedings relating to this action.

23 30. Petitioners have performed any and all conditions precedent to filing the
24 instant action and have exhausted any and all available administrative remedies to the
25 extent required by law.

26 31. Petitioners have no plain, speedy or adequate remedy in the course of
27 ordinary law unless this Court grants the requested writ of mandate to require
28 Respondents to set aside the adoption of the Ordinance, which authorizes the execution of

1 a consultant agreement with PDC for full engineering and design of the Bridge. In the
2 absence of such remedies, the Ordinance will remain in effect in violation of State law.

3 STATEMENT OF FACTS

4 Project Area – Affected Environment

5 32. Rose Canyon is a significant regional resource which, in addition to its
6 value as wildlife habitat, provides important recreational and educational opportunities
7 for the people of San Diego. Rose Canyon Open Space Preserve/Park consists of 411
8 acres and lies within the larger Rose Canyon. The City recognizes that the Canyon is a
9 “living museum” and “natural classroom” which should be “maintained in that capacity
10 along with its recreational aspect for future generations to enjoy.” It is served by a park
11 ranger and is designated as open space in the City’s University Community Plan. Rose
12 Creek runs the length of the Canyon floor and the Canyon is part of the watershed for
13 Mission Bay.

14 33. Rose Canyon provides important habitat for numerous species, including
15 bobcat and the federally-listed threatened California gnatcatcher. Based on its value as
16 species habitat, the City designated Rose Canyon as an integral component of its Multi-
17 Habitat Planning Area (“MHPA”), as identified in the City’s Multiple Species
18 Conservation Program subarea plan for habitat conservation. The MHPA contains those
19 lands that provide the necessary habitat quantity, quality and connectivity to support the
20 future viability of San Diego’s unique biodiversity. The MHPA lands are recognized as
21 some of the most significant biological resources in San Diego County.

22 34. Rose Canyon is the site of a significant restoration project funded in part by
23 the California Department of Parks and Recreation’s Habitat Conservation Fund Program.
24 In or around 1997, the City applied for and received a State grant to remove invasive
25 species from Rose Canyon and to plant native species. After approximately 2,900 hours
26 of volunteer labor, use of \$21,000 of state funds, and \$13,000 worth of in-kind donations,
27 the City completed the restoration effort in or around 2002. Under the terms of the State
28 grant, the City must maintain the restored area in perpetuity, unless expressly authorized

1 to change the use by an act of the State Legislature. The City proposes to construct the
2 Bridge directly in the restoration area, thus destroying the restoration area in
3 contravention of the terms of the State grant and squandering taxpayer resources. The
4 Legislature has not authorized the City's proposal.

5 **Background of the Bridge**

6 35. The Bridge that would be engineered and designed under the Contract is the
7 same bridge project that the City recently considered in the University City North/South
8 Transportation Corridor Study ("Study"). In particular, the Study described the Bridge as
9 one of seven alternatives that would purportedly reduce traffic congestion between the
10 northern and southern portions of the University City community in San Diego. In
11 November 2005, the City circulated a project level draft Environmental Impact Report for
12 the Study, and in June 2006, the City released its Responses to Comments and other
13 documents comprising the Final Environmental Impact Report for the Study ("Original
14 Bridge EIR").

15 36. The Bridge would connect the existing termini of Regents Road on the
16 north and south rims of the Canyon. The bridge segment of the project would be
17 approximately 870 feet long and approximately 94 feet wide. The height of the Bridge
18 would vary from 27 feet up to 60 feet from the Canyon floor. The Bridge would require
19 construction of eight columns on the Canyon floor to support the roadbed. The footprint
20 of each column would be approximately 128 square feet and would require drilling deep,
21 wide holes in the Canyon floor to install the bridge piles. The Bridge would also require
22 two abutments, constructed on the north and south rims.

23 37. In addition to construction of the bridge itself, the project would cut and fill
24 approximately six acres of undeveloped Rose Canyon in order to construct a new, 700-
25 foot long and 94-foot wide roadway. The impacted area includes a tributary drainage to
26 Rose Creek and coastal sage scrub that provides habitat for a pair of federally-listed
27 threatened California gnatcatchers. The Bridge would destroy lands contained in the
28 MHPA, which provides "necessary" habitat to maintain the City's biodiversity. The

1 tributary area that would be filled is up to 40 feet deep and 450 feet wide; total fill for the
2 Bridge is estimated to be 42,000 cubic yards. The road cut into the side of the Canyon
3 would be up to 30 feet deep and 250 feet wide; the total cut is estimated to be 46,000
4 cubic yards. The Bridge would also expand 950 feet of existing roadway on the south rim
5 of the Canyon from 32 feet to 94 feet.

6 38. The Original Bridge EIR estimated that construction of the Bridge would
7 take place during a period of 18 months. Construction would require the use of heavy
8 equipment and vehicles, access routes for construction vehicles, and the staging of
9 construction materials in the Canyon. During the lengthy construction period, access to
10 Rose Canyon for hikers, bird watchers, and other recreationists would be limited. Those
11 people who continue to use the Canyon during the construction period could expect
12 significant noise and disruption of the scenic, recreational and aesthetic qualities of Rose
13 Canyon.

14 39. Federal, state, and regional resource agencies submitted strongly worded
15 comments notifying Respondents that the Original Bridge EIR was wholly inadequate.
16 These agencies warned the City that the Bridge would result in significant, unmitigated
17 and unacceptable impacts to water quality and important biological resources. Some
18 agencies recommended that the City remove the Bridge from the City's consideration
19 altogether, given its especially egregious environmental impacts. The City Attorney
20 likewise warned the City that the Original Bridge EIR did not comply with the CEQA and
21 incorporated by reference the serious concerns of the resource agencies and the comments
22 of Petitioners.

23 40. Ignoring the advice of the expert resource agencies and its own legal
24 counsel, Respondent City Council nonetheless certified the Original Bridge EIR and
25 approved the Bridge. In particular, on August 1, 2006, the City adopted Resolution R-
26 301787 (attached hereto as Exhibit B), authorizing the Mayor to "proceed with the
27 implementation" of the Bridge and to eliminate from the community plan an alternative to
28 the Bridge, the Genesee Avenue Widening Alternative ("Genesee Alternative"). The

1 Resolution plainly explained what the City meant by “implementation”:

2
3 Implementation of the Regents Road Bridge Alternative would require
4 design and refinement of the preliminary estimates. The first stage of
5 implementation [of the Bridge] would be design and would require future
6 council action for a consultant agreement.

7 41. On September 1, 2006, FRC, SDAS, EHL and San Diego Coastkeeper filed
8 a Petition for Writ of Mandate to prevent the City’s implementation of the Bridge without
9 adequate project-level environmental review under CEQA. *Friends of Rose Canyon, et*
10 *al. v. City of San Diego, et al.*, San Diego County Superior Court, Case No. GIC 871984.

11 42. On March 27, 2007, in response to the petitioners’ action, the City adopted
12 Resolution R-302497 (attached hereto as Exhibit C), which rescinded the City’s August
13 2006 approval of the Bridge. Specifically, Resolution R-302497 directed that the Mayor
14 may *not* proceed with implementation of the Bridge unless and until the City first
15 prepares a “full, adequate project-level (Environmental Impact Report [EIR])” for the
16 Bridge, and that the City may *not* eliminate the Genesee Alternative without prior
17 environmental review. Resolution R-302497 further directed “that the Mayor is
18 authorized to proceed with the preparation of a full, separate, independent project-specific
19 Environmental Impact Report under CEQA and its Guidelines for the Bridge Alternative,
20 *which the Council must certify before any implementation, if any, of that Bridge*
21 *Alternative is approved and commenced.*” (emphasis added).

22 43. Based on the City’s rescission of its prior approval of the Bridge and its
23 commitment to prepare a project-level EIR for the Bridge and alternatives to the Bridge,
24 Petitioners agreed with the City that their case was moot and dismissed the merits of their
25 CEQA claims.

26 **Planned Environmental Review of the Bridge**

27 44. On August 24, 2007, in accordance with the City’s commitment in
28 Resolution No. R-302497, the City issued a Request for Proposals (“RFP”) for an
29 Environmental Impact Report for the Bridge (Contract No. H084105) (“New Bridge
30 EIR”). The RFP provided that the due date for proposals for preparation of the New

1 Bridge EIR was September 26, 2007; that deadline was extended to October 12, 2007 in
2 Addendum 1 to the RFP.

3 45. According to the schedule outlined in the RFP, the City anticipates that the
4 selected EIR consultant would begin work approximately four months after the City's
5 selection and notification (i.e., no sooner than February 2008).

6 46. The City expects the selected consultant to complete the New Bridge EIR
7 approximately two years from now, in October 2009.

8 **The Contract**

9 47. In November 2006, before the City committed to preparing the New Bridge
10 EIR, Petitioners learned that the City was contemplating boring and trenching activity
11 related to implementing the Bridge. In December 2006, while Petitioners' suit
12 challenging the adequacy of the Original Bridge EIR was still pending, the City prepared
13 a draft agreement with PDC for the Bridge, including full design of the Bridge ("Draft
14 Contract").

15 48. FRC submitted a letter to the Mayor and City Council on or about January
16 29, 2007, objecting to the Draft Contract's broad Scope of Services, which included full
17 design of the Bridge and damaging geotechnical testing activities in Rose Canyon. FRC
18 explained in its letter that it did not oppose those tasks in the proposed agreement that
19 would enable the City to conduct the project-level EIR for the Bridge. Specifically, FRC
20 explained that it would *not* object to those components of the Draft Contract that provide
21 for public outreach, data collection, mapping, studies, preliminary (or 15 percent)
22 engineering and design, and other similar activities that would not cause any
23 environmental damage to the Canyon and which would contribute to preparation of a
24 project-specific EIR.

25 49. By letter dated March 12, 2007, FRC again objected to the City's plans to
26 approve the Draft Contract. FRC pointed out that the City's Environmentally Sensitive
27 Lands regulations (San Diego Municipal Code §§ 143.0101 *et al.*) and Land Use Manual
28 Biology Guidelines would not be sufficient to address Petitioners' interest in protecting

1 Rose Canyon from soil testing, borings, trenching, and other activities related to the
2 Bridge prior to completion of project-specific environmental review.

3 50. On or about June 22, 2007, the City made available for public review the
4 final form of the Contract, which was revised on or about July 13, 2007.

5 51. Despite the City's March 27, 2007 commitment to prepare a full EIR before
6 "any implementation" of the Bridge and the City's recognition that City Council approval
7 of a design contract with a consultant would constitute "implementation," on September
8 4, 2007, the Council introduced Ordinance O-19673 (attached hereto as Exhibit D),
9 authorizing the City to execute the Contract and make the associated expenditures.

10 Specifically, the City took the following actions:

- 11 a. Authorized execution of the Contract "for the purpose of . . .
12 providing design services for the Regents Road Bridge and Limited
13 Roadway Changes Project;"
- 14 b. Authorized the expenditure of \$4,861,373 for the Contract;
- 15 c. Authorized the transfer of excess funds, if any, to the appropriate
16 reserves; and
- 17 d. Stated that the adoption of the Ordinance was not a "project" and
18 was therefore exempt from CEQA (14 Cal. Code Regs. §
19 15060(c)(3)).

20 Also on September 4, 2007, the Council adopted Resolution R-2008-110 authorizing the
21 City Auditor and Comptroller to transfer \$2 million from Fiscal Year 2009 to Fiscal Year
22 2008 for the purpose of fully funding the Contract.

23 52. On October 16, 2007, the City completed the second reading and adopted
24 the Ordinance. The Mayor signed the Ordinance on November 5, 2007. The City's
25 action in adopting the Ordinance is discretionary.

26 53. The Contract obligates the City to pay PDC for performance of all
27 professional services rendered in accordance with the Contract in a lump sum amount of
28 up to \$4,861,373. It also authorizes the City to spend up to \$200,000 in payment for

1 additional services beyond the Scope of Services, if any.

2 54. The Contract includes boilerplate language allowing the City to terminate
3 the Contract for “convenience;” however, the Contract commits the City to compensating
4 PDC for work completed through the time of termination.

5 55. The Contract states that PDC *shall* perform the tasks set out in the
6 accompanying Scope of Services (Article 1.1).

7 56. The Scope of Services includes 100 percent engineering and design of the
8 Bridge.

9 57. The implementation of the Contract will result in significant, irreparable
10 impacts to biological and hydrological resources in Rose Canyon.

11 58. The activities required by the Contract include invasive boring, trenching,
12 and other destructive activities in Rose Canyon. For example, the Scope of Services for
13 the Bridge would require PDC to drill at least three borings for the preliminary
14 geotechnical investigation (Task 1.7.3), and approximately three to five additional borings
15 for the final geotechnical design (Task 3.1.1.3). Additionally, Task 3.1.2.1 would require
16 PDC to excavate approximately five trenches of unspecified size with backhoes.

17 59. Under the Contract’s proposed time schedule (outlined in Exhibit C to the
18 Contract), the preliminary geotechnical work in Rose Canyon would begin in the first
19 quarter of the Contract’s implementation (i.e., no later than three months after the City
20 issues the Notice to Proceed).

21 60. The City previously has recognized that such geotechnical activities may
22 result in significant environmental impacts, and has required compliance with CEQA
23 before engaging in such work. For example, on or about February 16, 2005, the City
24 prepared a mitigated negative declaration for the Salk Institute Geotechnical Testing
25 Points Project.

26 61. Entering into the Contract is the first step in implementing the Bridge,
27 which the City acknowledges will be the subject of the New Bridge EIR. The Contract
28 thus authorizes the City to spend more than \$5 million for design of a project that would

1 have numerous significant and unmitigated environmental impacts, some of which have
2 been identified in the Original Bridge EIR and the comment letters on those documents.

3 62. Under the Contract's proposed time schedule, final design of the Bridge
4 would be nearly complete at the time environmental review of the Bridge is concluded.
5 For example, the City's review of the "100% Plans" for the Bridge and Limited Roadway
6 Changes would occur *at the same time* as certification of the New Bridge EIR. (Exhibit C
7 to the Contract). PDC would complete its preparation of the 100 percent plans *before*
8 certification of the EIR. (*Id.*).

9 63. The Contract states that "[c]hanges to the project approach, site layout and
10 design requirements are not anticipated once final design has begun." (Scope of Services,
11 Regents Road Bridge, Task 3 Assumptions).

12
13 **CAUSE OF ACTION**
(Violation of CEQA; Failure to Conduct Environmental Review)

14 64. Petitioners hereby re-allege and incorporate paragraphs 1 through 63,
15 inclusive.

16 65. CEQA applies to "discretionary projects proposed to be carried out or
17 approved by public agencies." Pub. Res. Code § 21080.

18 66. An activity which "may cause either a direct physical change in the
19 environment, or a reasonably foreseeable indirect physical change in the environment,"
20 and which is directly undertaken by a public agency, or which is undertaken by a person
21 supported through a contract with a public agency, is a "project" under CEQA. Pub. Res.
22 Code § 21065.

23 67. The City approved a "project" under CEQA when it adopted Ordinance O-
24 2008-16, authorizing execution of the Contract to engineer and design the Bridge. The
25 Contract will cause direct and indirect physical changes to the environment as a result of
26 borings and trenching in Rose Canyon, and because it is an essential step towards
27 implementing the Bridge. The City has conceded that the Bridge is a project requiring
28 CEQA review and that it will have significant adverse environmental impacts.

1 from taking any action to implement the Project, unless and until the City demonstrates
2 full compliance with the requirements of CEQA and the CEQA Guidelines;

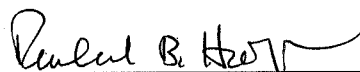
3 5. For costs of the suit;

4 6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5
5 and other provisions of law; and

6 7. For such other and future relief as the Court deems just and proper.

7 Dated: November²¹, 2007

SHUTE, MIHALY & WEINBERGER LLP

8
9 By: 
RACHEL B. HOOPER

10 Attorneys for Petitioners FRIENDS OF ROSE
11 CANYON, SAN DIEGO AUDUBON
12 SOCIETY, and ENDANGERED HABITATS
LEAGUE

1 **VERIFICATION**

2 I, Deborah Knight, declare as follows:

3 I am a resident of the City of San Diego and the President of the Board of
4 Directors of Friends of Rose Canyon, one of the petitioners in this action, and am
5 authorized to execute this verification on Petitioners' behalf. I have read the foregoing
6 Petition for Writ of Mandate and know the contents thereof. All facts alleged in the
7 above Petition, not otherwise supported by exhibits or other documents, are true of my
8 own knowledge, except as to matters stated on information and belief, and as to those
9 matters I believe them to be true. I declare under penalty of perjury under the laws of the
10 State of California that the above is true and correct.

11 Executed this 21 day of November, 2007, in San Diego, California.

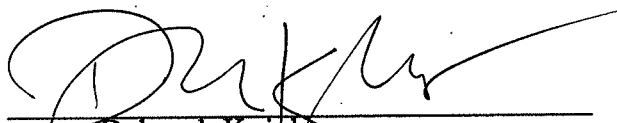
12 
13 _____
14 Deborah Knight

EXHIBIT A

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
* SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
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WWW.SMWLAW.COM

ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI
AMANDA R. GARCIA

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

November 21, 2007

Mayor Jerry Sanders
and Members of the San Diego City Council
City Administration Building
202 C Street, 11th Floor
San Diego, CA 92101
Fax: (619) 236-7228

Re: Notice of Commencement of CEQA Litigation Challenging Adoption of Ordinance O-19673 Authorizing the Execution of the Lump Sum Agreement for Regents Road Bridge and Limited Roadway Changes (Contract No. HO73678) with Project Design Consultants

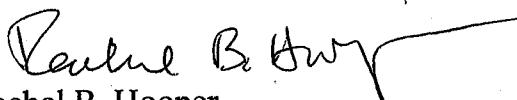
To Whom It May Concern:

This letter is to notify you that Friends of Rose Canyon, San Diego Audubon Society, and Endangered Habitats League will file suit against the City of San Diego and the San Diego City Council (collectively "City") for failure to observe the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.*, in the administrative process that culminated in the City's decision to adopt Ordinance O-19673 (first reading September 4, 2007; second reading October 16, 2007) authorizing the execution of the Lump Sum Agreement for Regents Road Bridge and Limited Roadway Changes (Contract No. HO73678) with Project Design Consultants.

This notice is given under Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Rachel B. Hooper

November 21, 2007

Page 2

cc: Carmen Brock, Deputy City Attorney
Marco Gonzalez, Coast Law Group LLP

[P:\FRC\dk098 (notice to City).wpd]

1 **DECLARATION OF SERVICE**

2 *Friends of Rose Canyon, et al. v. City of San Diego, et al.*
3 San Diego County Superior Court, Case No. _____

4 I am a citizen of the United States, over the age of 18 years, and am not a party to
5 the above-entitled action. I am employed in the City and County of San Francisco,
6 California, with the law firm of Shute, Mihaly & Weinberger LLP ("firm"), located at
396 Hayes Street, San Francisco, California 94102. On this date, I served the following
document(s):

7 **NOTICE OF COMMENCEMENT OF CEQA LITIGATION CHALLENGING**
8 **DECISION TO ADOPT ORDINANCE O-19673**

9 on the parties identified below in the following manner:

10 X **By First Class Mail.** I am familiar with the firm's practice for collecting and
11 processing correspondence for mailing with the United States Postal Service. In
12 the ordinary course of business, correspondence is deposited with the United States
13 Postal Service on the same day such correspondence is collected. I placed true and
correct copies of the document(s) listed above in sealed envelope(s) addressed as
shown below and affixed with first-class postage. I caused such envelope(s) to be
collected for mailing in accordance with the firm's ordinary business practice.

14 Elizabeth Maland
15 City Clerk,
16 City of San Diego
202 "C" Street, 2nd Floor
San Diego, CA 92101

Carmen Brock,
Deputy City Attorney
City of San Diego
1200 Third Avenue, Ste.
San Diego, CA 92101

17 Marco Gonzalez
18 COAST LAW GROUP LLP
19 169 Saxony Road, Suite 204
Encinitas, CA 92024

20 I declare under penalty of perjury, under the laws of the State of California
21 that the foregoing is true and correct to the best of my knowledge.

22 Executed on November 21, 2007 at San Francisco, California.


23
24 
25 _____
26 Amy Parsley

EXHIBIT B

(R-2007-109)

RESOLUTION NUMBER R-301787DATE OF FINAL PASSAGE AUGUST 21, 2006

A RESOLUTION AUTHORIZING IMPLEMENTATION OF THE REGENTS ROAD BRIDGE ALTERNATIVE, C.I.P. NO. 53-044.0, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT, ADOPTING THE FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS, ADOPTING THE MITIGATION, MONITORING AND REPORTING PROGRAM, AND INITIATING AN AMENDMENT TO DELETE THE GENESEE AVENUE WIDENING ALTERNATIVE FROM THE UNIVERSITY COMMUNITY PLAN

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor is authorized to proceed with the implementation of the Regents Road Bridge Alternative, CIP No. 53-044.0.
2. That the Environmental Impact Report (EIR) for Project No. 27445 dated June 13, 2006, on file in the office of the City Clerk and incorporated herein by reference, is certified as having been completed in compliance with the California Environmental Quality Act of 1970 (Cal. Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (Cal. Code of Regs. section 15000 et seq.), and that the EIR reflects the independent judgment of the City of San Diego as Lead Agency.
3. That the information contained in the EIR, together with any comments received during the public review process, has been reviewed and considered by this Council prior to selecting the Regents Road Bridge Alternative, C.I.P. No. 53-044.0.
4. That the Findings and Statement of Overriding Considerations for the Regents Road Bridge Alternative, on file in the office of the City Clerk and incorporated herein by

(R-2007-109)

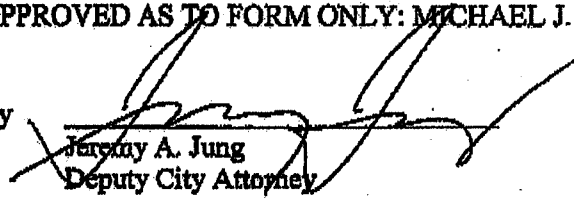
reference, is hereby adopted.

5. That the Mitigation, Monitoring and Reporting Program for the Regents Road Bridge Alternative, on file in the office of the City Clerk and incorporated herein by reference, is hereby adopted.

6. That this Council initiates a community plan amendment to delete the Genesee Avenue Widening Alternative from the University Community Plan.

APPROVED AS TO FORM ONLY: MICHAEL J. AGUIRRE, City Attorney

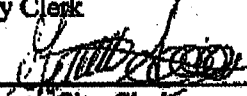
By


Jeremy A. Jung
Deputy City Attorney

JAJ:cla
8/8/06
Aud Cert.: N/A
Or.Dept:E&CP
R-2007-109

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 15 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8-21-04
(date)



JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on AUG - 1 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 21 2006

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Cepeda* Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-301787

EXHIBIT C

(R-2007-961)

RESOLUTION NUMBER R- 302497DATE OF FINAL PASSAGE APR 02 2007A RESOLUTION SUPERSEDING RESOLUTION NUMBER
R-301787 PASSED AND ADOPTED ON AUGUST 21, 2006.

WHEREAS, the Council of the City of San Diego previously adopted Resolution Number R-301787 (August 21, 2006), authorizing, in part, the Mayor "to proceed with the implementation of the Regents Road Bridge Alternative, C.I.P. No. 53-044.0" [Bridge Alternative], and whereas the Council wishes to clarify that such authorization intended that a full and separate Environmental Impact Report [EIR] under the California Environmental Quality Act of 1970 (Cal. Pub. Res. Code § 21000 *et seq.*) [CEQA], as amended, and the State guidelines thereto (Cal. Code Regs. § 15000 *et seq.*) [Guidelines] be prepared, considered and certified before any Bridge Alternative improvement is finally considered, approved and commenced; and

WHEREAS, Resolution Number R-301787 adopted, in part, certain Findings and Statement of Overriding Considerations [collectively Statement] for the Bridge Alternative that have been interpreted by some to have authorized construction of the Bridge Alternative notwithstanding the Council's intent and direction that a project-level EIR first be prepared, considered and certified prior to the final implementation of the Bridge Alternative, if warranted; and

WHEREAS, Resolution Number R-301787 approved "initiat[ing] a community plan amendment to delete the Genesee Avenue Widening Alternative from the University Community Plan," which the Council clarifies as intending to direct that the appropriate CEQA review

(R-2007-961)

process be undertaken, approved and certified before the Genesee Avenue Widening Alternative be deleted from the University Community Plan, if at all; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Resolution Number R-301787 (August 21, 2006) is hereby superseded as follows:

1. That the Mayor is authorized to proceed with the preparation of a full, separate, independent project-specific Environmental Impact Report under the provisions of CEQA and its Guidelines for the Bridge Alternative, which the Council must certify before any implementation, if any, of that Bridge Alternative is approved and commenced.

2. That the Council confirms and re-iterates that the EIR for the University City North/South Transportation Corridor Study [University N/S Study] dated June 13, 2006, on file in the office of the City Clerk and incorporated herein by reference, is certified as having been completed in compliance with CEQA, and the EIR reflects the independent judgment of the City of San Diego as Lead Agency only for the environmental review for the University N/S Study.

3. That the information contained in the University N/S Study EIR, together with any comments received during the public review process, was reviewed and considered by this Council prior to selecting the Bridge Alternative for preparation of a full, separate, independent project-specific EIR under CEQA. Notwithstanding the foregoing, the certification of the University N/S Study EIR and the selection of the Bridge Alternative for further environmental review are not "projects" within the meaning of CEQA, Public Resources Code section 21065 [CEQA project].

(R-2007-961)

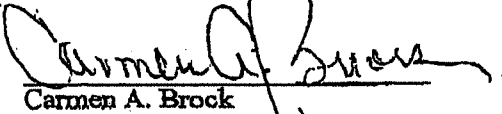
4. That the adoption of the Statement for the Bridge Alternative on file in the office of the City Clerk, is rescinded, without prejudice to the later consideration and adoption, if any, of any Statement following the preparation and certification of a full, separate, independent project-specific EIR under CEQA for the Bridge Alternative.

5. That the adoption of the Mitigation, Monitoring and Reporting Program for the Bridge Alternative on file in the office of the City Clerk is rescinded, without prejudice to the later consideration and adoption, if any, of the Mitigation Program following the preparation and certification of a full, separate, independent project-specific EIR under CEQA for the Bridge Alternative.

6. That this Council initiates the preparation of all appropriate environmental review under CEQA for a community plan amendment to delete the Genesee Avenue Widening Alternative from the University Community Plan, which review the Council must consider and certify before any such amendment, if any, is adopted.

7. Because this Resolution confirms that the certification of the University N/S Study EIR and the selection of the Bridge Alternative for further environmental review are not considered CEQA projects, the Council rescinds the Notice of Determination filed August 4, 2006 (State Clearinghouse No. 2004031011).

APPROVED AS TO FORM ONLY: MICHAEL J. AGUIRRE, City Attorney

By: 
Carmen A. Brock
Deputy City Attorney

CAB:amj
3/29/07
Aud Cert.: N/A
Or.Dept:Clerk
R-2007-961

(R-2007-961)

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 29 2007.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 4-2-07
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

I, Elizabeth S. Maland, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said city.

ELIZABETH S. MALAND, City Clerk

By [Signature], Deputy

Dated _____

EXHIBIT D

10/NO
ASST

CLERK'S FILE COPY

ORDINANCE NUMBER O- 19673 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 05 2007

AN ORDINANCE AUTHORIZING THE EXECUTION OF A CONSULTANT AGREEMENT WITH PROJECT DESIGN CONSULTANTS FOR THE REGENTS ROAD BRIDGE AND LIMITED ROADWAY CHANGES.

WHEREAS, under the San Diego Charter section 99 no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the City Council; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute an agreement with Project Design Consultants under the terms and conditions set forth in the document filed in the Office of the City clerk as Document No. OO- 19673, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor or his designee deem necessary from time to time in order to carry out the purpose and intent of this project and agreement, for the purpose of preparing supplemental environmental document, obtaining permits, and providing design services for the Regents Road Bridge and Limited Roadway Changes Project; and

Section 2. That the expenditure of an amount not to exceed \$4,861,373 is authorized for the aforementioned agreement, provided that the City Auditor and Comptroller for the aforementioned agreement, provided that the City Auditor and Comptroller first certifies that the necessary funds are, or will be, on deposit in the City Treasury; and

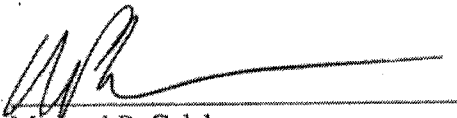
Section 3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

Section 4. Stating that this activity is not a "project" and is therefore exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA guidelines Section 15060(c)(3).

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael P. Calabrese
Chief Deputy City Attorney

*Approved as to form only,
and not as to legality. See
City Attorney's April, 4, 2007 and
July 24, 2007 memos.*

MPC:sc
07/26/07
07/30/07 COR. COPY
09/20/07 COR. COPY 2
Aud.Cert.:AC2800037
Or.Dept:E&CP
O-2008-18

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 16 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11-5-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

