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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE, HISTORIC COURTHOUSE**

10 R. BEN CLYMER JR., an individual

11 Plaintiff,

12 v.

13 THE CITY OF RIVERSIDE, a municipal
14 agency; ALL PERSONS INTERESTED IN
15 THE MATTER OF CITY OF RIVERSIDE'S
ADOPTION OF A SEVEN YEAR
16 CONTRACT EXTENSION OF CITY
MANAGER JOHN RUSSO AND THE
17 ENSUING MORTGAGE AGREEMENT
BETWEEN THE CITY OF RIVERSIDE
AND THE CITY MANAGER; and DOES 1
18 through 50, inclusive,

19 Defendants.

Case No.

**CLASS ACTION COMPLAINT
PURSUANT TO *CODE OF CIVIL
PROCEDURE* SECTION 860, ET SEQ.
(REVERSE VALIDATION)**

- 1) **Breach of Fiduciary Obligation and Unlawful Gift of Public Funds;**
- 2) **Violation of the City Charter and California Constitution;**
- 3) **Declaratory Relief;**
- 4) **Ultra Vires**

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22 **TO EACH PARTY AND ITS ATTORNEY OF RECORD:**

23 Plaintiff R. Ben Clymer Jr. ("Mr. Clymer"), a resident and taxpayer of the City of Riverside
24 on behalf of himself and all other similarly aggrieved individuals, brings this reverse validation
25 action to have the City Manager for the City of Riverside, John Russo's ("Mr. Russo"), contract
26 extension and mortgage with the City invalidated. This action is brought pursuant to *Code of Civil
27 Procedure* section 860 *et seq.*, and *Government Code* section 53511.

1 **THE PARTIES**

2 1. Plaintiff, Mr. Clymer is and at all relevant times was a resident of the City of
3 Riverside. Mr. Clymer regularly pays property, business, utility, and sales taxes that inure to the
4 City’s benefit and help to fund City salaries and pensions.

5 2. The City of Riverside (also referred to as the “City”) is a charter city, organized under
6 the laws of the State of California, including Article XI, section 5 of the *California Constitution*.

7 3. Plaintiff is unaware of the true identities of defendants All Persons Interested In the
8 Matter of City of Riverside’s Adoption of a Seven Year Contract Extension of City Manager John
9 Russo and the Ensuing Mortgage Agreement Between the City Of Riverside and the City Manager
10 (“All Interested Persons”) and, upon learning of those identities, will amend this complaint.

11 4. Plaintiff is unaware of the true identities of defendants DOES 1 to 50, which are sued
12 herein under fictitious names. When their true names and capacities are ascertained, Plaintiff will
13 amend this complaint.

14 **PROCEDURAL COMPLIANCE FOR REVERSE VALIDATION ACTION**

15 5. This action is brought in this court under section 860 of the *Code of Civil Procedure*
16 and *Government Code* section 53511 which permits a plaintiff to bring an action to determine the
17 validity of any local agencies bonds, warrants, contracts, obligations or evidence of indebtedness.
18 Plaintiff submits that the subject amended contract between the City of Riverside and Mr. Russo
19 (“Amended Contract”) and the subsequent mortgage are obligations and evidence of indebtedness
20 binding upon the taxpayers of the City of Riverside and hence subject to a reverse validation action.

21 6. As a taxpayer and property owner in the City of Riverside, Mr. Clymer alleges that
22 the Amended Contract commits the City to pay monies that, by the City’s own admission, it may
23 not have after 2020, when the City goes into a budget deficit and can no longer meet its pension or
24 other obligations. Mr. Clymer seeks class certification under *Code of Civil Procedure* section 382
25 on behalf of all similarly situated taxpayers in the City of Riverside and is an appropriate class
26 representative because his claims are typical of those of other City taxpayers who are too numerous
27 to identify by name.

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1 7. Plaintiff files this complaint pursuant to *Code of Civil Procedure* section 860 against
2 All Interested Persons. Defendants herein are all persons having or claiming to have an interest in
3 the proceedings, including the adoption of the Amended Contract and the execution of the mortgage
4 in favor of Mr. Russo. The names and capacities of those persons having or claiming an interest in
5 the above and the proceeding leading up to the adoption of the Amended Contract are unknown to
6 the Plaintiff and therefore Plaintiff names such persons as provided under section 860 *et seq.* of the
7 *Code of Civil Procedure*.

8 8. Shortly after the filing of this complaint, Plaintiff will request that this court issue a
9 summons to be published in the Press Enterprise, a newspaper of general circulation in the
10 jurisdiction of the City of Riverside, pursuant to section 861 of the *Code of Civil Procedure* and
11 subject to the requirements of section 861.1 of the *Code of Civil Procedure*. Plaintiff is informed
12 and believes, and thereon alleges, that the proceedings held thereunder and the adoption of a
13 resolution approving the Amended Contract and mortgage are of general knowledge to the persons
14 affected. Plaintiff also is willing to post the Summons in Riverside City Hall upon this court's order.

15 9. This action was timely filed within 60 days of the action and contracts being
16 contested. *Code of Civil Procedures* section 867 provides that reverse validation actions should be
17 given priority on the court's calendar. Priority is appropriate here because of the uncertainty
18 surrounding the duration of the City Manager's contract, the Mayor's veto, and the overall
19 controversy these issues have wrought upon the citizens of Riverside.

20 **ALLEGATIONS RELATING TO ALL CAUSES OF ACTION**

21 10. California cities and counties increasingly face severe budget shortfalls due to
22 underfunded pensions and poor fiscal planning. This pension crisis is due, in part, to excessive pay
23 and benefits afforded to city managers and senior staff who, in many instances, receive pensions in
24 the tens of millions of dollars. Faced with mounting pension debt, some cities have even been forced
25 to resort to bankruptcy.

26 11. Defendant the City of Riverside confronts mounting unfunded pensions upwards to
27 \$600,000,000, and the City will begin experiencing a budget deficit in Fiscal Year 2020. Riverside
28 residents and taxpayers, including Plaintiff, already are highly taxed in order to fund payroll and

1 pensions which taxes include an 11.6 percent General Fund Transfer Tax on all utility charges. At
2 the same time, the City recently approved a sales tax increase in 2016 necessitated by the need to
3 supplement the City's services, and is proposing a large increase in utility rates in May 2018, a
4 substantial percentage of which is solely for salaries and pensions.

5 12. Notwithstanding this mounting fiscal crisis, the City Council on February 6, 2018,
6 voted to extend the City Manager's contract through December 31, 2024, and to offer the City
7 Manager a below market mortgage with a one percent interest rate (the "Mortgage"). The process
8 underlying the adopting of that Amended Contract and its legality are the central issue in this class
9 action reverse validation suit.

10 13. In February 2015, the City of Riverside hired its current City Manager, Mr. Russo,
11 for a five year contract expiring in 2020. In 2017, Mr. Russo and the City began renegotiating his
12 contract even though he had performed only 2.5 years of it. Because these negotiations took place
13 either in private or in closed session, the general public was unaware that an extension of the contract
14 was being considered.

15 14. In January 2018, the City posted an open session item for the Amended Contract on
16 its February 6, 2018, 2:00 p.m. agenda rather than at the 7:00 p.m. session typically where more
17 controversial matters are heard because more people are able to attend and watch. The information
18 provided to the public was incomplete, misleading and Plaintiff suspects intentionally false. The
19 agenda package included a brief one-page cover memorandum without any specific analysis of the
20 Amended Contract including the net effect on the City's pension obligations. Although the
21 Amended Contract referenced as an attachment a copy of the Employer's Fringe Benefit and Salary
22 Plan ("FBSP"), it was not included in the agenda package. Instead, the FISCAL ANALYSIS in the
23 cover memorandum included the misleading statement that the amendment would have "no net cost
24 compared to the current contract." This later statement simply is false. When and if Mr. Russo
25 retires at the end of the contract, the pension obligations of the City will be far greater than they
26 would have been had the contract terminated by its terms in 2020. Further, the existing contract
27 include no mortgage obligations on the City's part whereas the amendment provided a below market
28 mortgage. Attached as Exhibit A is a true and correct copy of the City Council Memorandum.

1 Attached as Exhibit B is a true and correct copy of the “Employment Agreement, City Manager”
2 provided to the public. Sometime between February 6 and the filing of this complaint, this City also
3 provided a below market mortgage in the amount of \$675,000. That mortgage also is the subject of
4 this reverse validation action; however, the public did not receive a copy of it, and therefore it could
5 not be attached to this complaint.

6 15. On approximately February 4, 2018, the City of Riverside Budget Engagement
7 Commission, a City Council-appointed commission tasked to evaluate the City’s fiscal spending
8 and make recommendations to Council, called upon the City Treasurer to explain how the contract
9 could have “no fiscal impact” given that it included a five year extension and an under market
10 mortgage. The City Treasurer responded, however, that he was not in a position to confirm one way
11 or the other, because he is not authorized to evaluate the impacts of the City Manager’s contract.
12 This statement was made despite the fact that he approved (or ostensibly approved) statements in
13 the Cover Memorandum indicating that there were sufficient funds to satisfy the obligations of the
14 City. This statement may or may not be true after Fiscal Year 2020 when the City projects a budget
15 deficit. The following is a YouTube link to portions of the Budget Engagement Committee:
16 (<https://www.youtube.com/watch?v=dh528kuZwFM#action=share>¹)

17 16. On February 6, 2018, after heated discussion, the City Council voted 5:2 to approve
18 the Amended Contract. At that point, the Mayor vetoed the council’s decision pursuant to the
19 Riverside City Charter, section 413. The following is a YouTube video of the Mayor’s veto and the
20 ensuing arguments in the City Council meeting. ([https://www.youtube.com/
21 watch?v=RgTXUjOF63I](https://www.youtube.com/watch?v=RgTXUjOF63I))

22 17. At the time of the vote, the City had before it two separate legal opinions by two
23 public law experts that conflicted on the issue of the Mayor’s power to veto approval of a City
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27 ¹ Plaintiff is not responsible for any of the editorial comments on the Youtube Videos; however, these are the only
28 videos readily available that reflect the testimony of the City Treasurer that he did not review the fiscal impact of the
amended contract.

1 Manager's contract. Despite the uncertainties created by these conflicting Charter interpretations,
2 the City Attorney could have sought judicial input at that time through a properly filed validation
3 action before obligating the public to the controversial Amended Contract. He did not. Instead, the
4 morning after the vote and veto, the Mayor Pro Tem signed the Amended Contract with the approval
5 of the City Attorney.

6 18. On February 13, 2018, Plaintiff appeared at the City Council meeting objecting to
7 the circumstances under which the contract was adopted namely that the City had not fully disclosed
8 the extent of its obligation to Mr. Russo with sufficient detail to allow taxpayers an opportunity to
9 weigh before its adoption. Plaintiff requested that the Council respect the Charter and call for a vote
10 to override the veto. The Council refused to do so and continues refusing to set an agenda item for
11 a vote on a veto override.

12 19. On March 6, 2018, Mayor William Rusty Bailey, III ("Mayor") filed a Petition for
13 Writ of Mandate in this court, Case No. RIC1804755. Although some of the relief sought by
14 Plaintiff herein overlaps with that case and Plaintiff believes consolidation of the two suits would
15 be appropriate, Plaintiff separately has filed this action in validation. Not only does Plaintiff seek a
16 declaration upholding the Mayor's power to veto, it seeks a ruling that the City's action in executing
17 the Amended Contract was *ultra vires*, a breach of its fiduciary obligations to fully evaluate the
18 fiscal impacts of long-term obligations on the general fund, a gift of public funds, and a violation of
19 Plaintiff's substantive and procedural constitutional rights based, in part, upon the deceptive notice
20 provided the public prior to adoption of the Amended Contract. The relief ultimately sought by
21 Plaintiff is that the Amendment Contract be deemed *void ab initio* and that City Manager's original
22 contract through 2020 be reinstated. In this regard, Plaintiff further submits that the City Council's
23 failure to agendize a veto override vote within the 60 days provided by the Charter renders the veto
24 valid such that the Amended Contract has no effect.

25 20. It is not Plaintiff's intention to penalize Mr. Russo or to place at issue before this
26 court whether or not he is performing properly under his original contract. Moreover, should this
27 court conclude that the Amended Contract and Mortgage are unlawful, this court can fashion a
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1 remedy allowing the City Manager time to obtain a market-based mortgage and develop a payment
2 schedule to repay to the general funds all monies unlawfully paid to him.

3 **FIRST CAUSE OF ACTION**

4 **(Breach Of Fiduciary Obligations And Unlawful Gift Of Public Funds)**

5 **(As Against All Defendants)**

6 21. Plaintiff re-alleges paragraphs 1 through 20 of the complaint as if fully set forth
7 herein.

8 22. By the City Treasurer's own calculations, the City will be unable to meet its current
9 level of service and pension obligations in 2020. Nevertheless, the City Council extended to the
10 City Manager a contract which, in its entirety, is 10 years, five years beyond when the budget will
11 go into the red without raising taxes or cutting services. The City Council also approved a 15-year
12 mortgage at below market rates and on terms more favorable than the City Manager could obtain
13 through a traditional lender. Plaintiff alleges that the City Council made this decision largely behind
14 closed doors and without any independent analysis of the fiscal impacts of the Amended Contract
15 by the City's Treasurer or the City's Budget Engagement Committee, two offices tasked with the
16 protection of the general fund.

17 23. Plaintiff alleges that the failure to fully evaluate the short- and long-term fiscal
18 impact of the amended contract and mortgage was a breach of the City Council's fiscal
19 responsibilities and fiduciary obligation to its citizens, including Plaintiff, and that its failure to do
20 so resulted in a gift of public funds in violation of law. The California Supreme Court has long held
21 that "A taxpayer may sue a governmental body in a representative capacity in cases involving fraud,
22 collusion, ultra vires, or failure on the part of the governmental body to perform a duty specifically
23 enjoined." (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 1248, 1254) (citing
24 *Gogerty v. Coachella Valley Junior College Dist.* (1962) 57 Cal.2d 727, 730.) At its core, the City
25 Council is tasked with protecting the General Fund and financial stability of its municipality which
26 it failed to do in this instance.

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THIRD CAUSE OF ACTION
(Declaratory Relief Upholding The Effect Of
The Mayor’s Veto Under The City Charter)
(As Against All Defendants)

29. Plaintiff re-alleges paragraphs 1 through 28 of the complaint.

30. The Mayor is the only full time elected official in the City with a part-time City Council representing each of Riverside’s seven wards. The City of Riverside is known as a strong city manager/weak mayor form of government. Plaintiff does not dispute this fact. However, Plaintiff submits that the framers of the City Charter imbued in it certain checks and balances over the power of the City Council to act. According to the Charter, the Mayor has a right to break a tie vote and to veto any action of the City Council subject to an override. (See City Charter at section 413.) According to the Charter, upon vetoing an ordinance or resolution, the action “shall be deemed neither approved nor adopted.” (*Ibid.*) The Mayor exercised that veto on February 6, 2018, and the City Council has failed to override it as required by the Charter. Instead, the mayor pro tem executed an Amended Contract which was an *ultra vires* act outside of his powers and hence that action is null and void. Similarly, any mortgage executed by the City on behalf of the City Manager is similarly *ultra vires* and null and void.

31. One of the arguments advanced against the Mayor having a veto power is that the City Manager serves at the pleasure of the City Council and therefore the Mayor should have no say. The City Manager has significant powers over the hiring and firing of city employees, salaries, department budgets, land use approvals, and all aspects of city contracting including contracts with various labor unions. In many cases, including here, the City Manager hires his own upper management “team” over which he predictably has significant influence. In the current case, the February 6, 2018 Agenda Cover Memorandum’s FISCAL STATEMENT was “Approved” by: Marianna Marysheva, an assistant City Manager who has worked with Mr. Russo on and off for nearly 20 years and was hired by him shortly after he came to Riverside. Her employment and salary is almost entirely dependent upon Mr. Russo’s favor.

1 32. A seven-year extension of Mr. Russo’s contract means that his tenure theoretically
2 exceeds the term of any currently sitting City Council member and, to Plaintiff’s knowledge, is
3 longer than any elected official or serving City Manager in the United States. As an attorney, former
4 city council member, and experienced City Manager, Mr. Russo, by his own admission, is very
5 familiar with the various machinations of city hall, the rules applicable to his position, and the
6 politics of influencing a city council. This places Mr. Russo in an especially powerful position given
7 the Charter form of government in Riverside.

8 33. Another argument against the Mayor having the right to veto the Amended Contract
9 is that the City Manager would become a “stooge” of the mayor if the mayor had the power to hire
10 or fire him. Given Mr. Russo’s stated powers under the Charter - including the power to set the
11 Mayor’s budget and staffing - this “fear” is unfounded. More importantly for purposes of this
12 complaint, the Mayor’s veto does not mean that the City Manager’s contract would not be extended.
13 Instead, the veto results in the City Council taking a harder look at the issue and provides the public
14 with additional time to review a proposed action. Given how the Amended Contract was “rushed
15 through” prematurely in this case, the veto operated precisely as was intended to ensure that
16 decisions are not thrust upon an unwary public.

17 34. The Mayor has filed a Petition for Writ of Mandate in Case No. RIC1804755
18 currently pending in this court. Plaintiff incorporates by reference and has attached a copy of that
19 Petition herein including the analysis of why the Mayor’s veto is valid under the Charter. Plaintiff
20 similarly seeks a declaration herein upholding the power of the Mayor to veto the Amended Contract
21 and that the veto rendered the Amended Contract action “unapproved” such that no valid amended
22 contract has been adopted.

23 35. Further because the City Council refused to schedule a “veto override” vote, Plaintiff
24 prays for a declaration not only upholding the veto, but further declaring that the City Council
25 violated the Charter by refusing to schedule an veto override veto or to initiate a declaratory relief
26 action concerning the obligations of the City Council and hence the action of the Mayor is final
27 without further action.

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1 **FOURTH CAUSE OF ACTION**

2 **(Ultra Vires)**

3 **(As Against All Defendants)**

4 36. Plaintiff re-alleges paragraphs 1 through 35 of the complaint.

5 37. By executing an amended contract despite the Mayor’s veto, the Mayor Pro Tem’s
6 action was ultra vires and hence the contract is void ab initio and has no force and effect.

7 **PRAYER FOR RELIEF**

8 THEREFORE, Plaintiff prays as follows:

9 1. That this court order that the jurisdiction of interested persons be by publication of
10 Summons under *Code of Civil Procedure* sections 861 & 861.1 in the Press Enterprise commencing
11 as soon as is practicable and continuing once per week for three weeks, and by posting a copy of the
12 Summons in City Hall.

13 2. That this court find that this action is properly brought under *Code of Civil Procedure*
14 section 860 *et seq.*, as a reverse validation action.

15 3. That the Amended Contract be deemed null and void because the City violated
16 plaintiffs’ constitutional rights in connection with its adoption.

17 4. That the execution of the Amended Contract was an *ultra vires* action because the
18 Mayor had vetoed the actions of the City Council, and therefore the Mayor Pro Tem had no authority
19 to enter into the contract.

20 5. That the mortgage apparently executed in Mr. Russo’s favor is a violation of the
21 Charter and is similarly ultra vires for the reasons stated herein.

22 6. That the Amended Contract and mortgage are an unlawful gift of public funds.

23 7. That the City Council breached its fiduciary obligations to Plaintiff by failing to
24 analyze and to disclose the full fiscal impact of the Amended Contract though obligating the City to
25 a lengthy contract and substantial pension for which there may be inadequate funds.

26 8. \$1 in compensatory damages.

27 9. That Plaintiff recover his attorneys’ fees and costs of suit pursuant to California’s
28 Private Attorney General Act for attempting to enforce rights on behalf of all residents of Riverside.

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10. That Plaintiff be adjudged an appropriate class representative under *Code of Civil Procedure* section 382.

11. For whatever further and additional relief this court deems appropriate.

DATED: April 6, 2018

TYLER & BURSCH, LLP

By: 
Robert H. Tyler, Esq.
Nathan R. Klein, Esq.
Attorneys for Plaintiff **R. BEN CLYMER, JR.** an individual

EXHIBIT “A”

**EMPLOYMENT AGREEMENT
(CITY MANAGER)**

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into this 6th day of February, 2018, by and between the City of Riverside a California charter city and municipal corporation (“Employer”) and John Russo (“Employee”), collectively party or parties, both of whom understand and agree to the following:

RECITALS

WHEREAS, the City Council of the City of Riverside (“City Council”), the governing body of the Employer, desires to retain the services of the Employee as the City Manager, as that office has been created in Article VI, Section 600 of the City of Riverside City Charter (“Charter”); and

WHEREAS, it is the desire of the City Council to provide benefits and establish certain terms and conditions of employment as set forth herein.

TERMS

NOW, THEREFORE, in consideration of mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

The City Council hereby agrees to employ the Employee as City Manager of the City of Riverside to perform the functions and duties of the City Manager as specified in the Charter and to perform other legally permissible and proper duties and functions consistent with the office of the City Manager, as the City Council shall from time to time assign. Employee shall also serve as Executive Director of the City’s various Authorities currently in existence, as has been

previously determined by the respective agencies, and any authorities subsequently created by the City Council.

Section 2. Term

The term of this Agreement shall become effective on January, 1, 2018, and shall remain in effect for a period of seven (7) years, unless otherwise terminated pursuant to the provisions stated herein. At the end of the initial term, this Agreement may be extended upon mutual agreement of the parties. During the term of this Agreement, the Employee shall be a full-time City Manager.

Employee shall not engage in any conduct which constitutes a criminal act involving moral turpitude, fraud, malfeasance or act of misfeasance. In the event that Employee is charged with any such conduct, Employee may be subject to discipline up to and including being placed on administrative leave. In the event that Employee is convicted of any such conduct, Employee may be subject to discipline up to and including termination of employment and termination of this Agreement.

Section 3. Salary

The Employer agrees to pay the Employee for services rendered, as provided herein, Three Hundred Twenty Seven Thousand, One Hundred Twelve Dollars (\$327,112) per year, payable in installments at the same time and in the same manner as other employees of the Employer are paid. Employee's annual salary will be increased by four percent (4%) on January 1, 2019 and by an additional three percent (3%) on January 1, 2020 and each subsequent anniversary date of Employee's employment with Employer, unless four (4) councilmembers vote that Employee's performance of his job duties is "unsatisfactory" pursuant to the Annual Performance Review described in Section 12 below. Characterization of Employee's performance will result from a

mandatory Annual Performance Review which is held no later than November of each year as set forth in Section 12 of this Agreement. Should Employer fail to timely organize or otherwise hold the Annual Performance Review, for any reason or for no reason at all, Employee's salary increase will nevertheless become effective on the anniversary of the effective date of this agreement.

Section 4. Deferred Compensation

In addition to the sums otherwise payable to Employee hereunder, the Employer agrees to contribute matching funds to a deferred compensation account in the amount set forth in the Employer's Fringe Benefit and Salary Plan ("FBSP").

Section 5. Pension

The Employer agrees to enroll and continue the Employee as a member of the Public Employee Retirement System. Employee shall pay the required employee contribution.

Section 6. Benefits

The Employer agrees to provide Employee with the same benefits as are provided to the Executive Group of the Employer per the FBSP, including but not limited to accrual of sick leave, medical, dental and optical coverages, and holiday schedule. Employee may purchase disability insurance as set forth in Section 19-1 of the FBSP. Employer agrees to provide the Employee and Employee's family with health, dental and optical insurance coverage, the same offered to the Employer's Executive Group of the FBSP, at no cost to Employee. Employer shall pay for Employee's State of California Annual Bar dues and membership in the International City/County Management Association.

Section 7. Life Insurance

The Employer agrees to procure for Employee, at Employer's expense, a fifteen year term life insurance policy on the life of Employee in the amount of Seven Hundred Thousand Dollars (\$700,000).

- a. Policy is to remain in effect at Employer's expense until December 31, 2024 and thereafter paid by Employee.
- b. If Employee voluntarily leaves employment with Employer before the end of the contract, or if Employee is terminated for any reason as defined in Section 11, Employer will be relieved of any obligation to maintain in force this insurance policy. Employee shall then have the right to maintain this insurance policy at his own expense.

Section 8. Vacation and Administrative Leave

Employee shall receive a one-time allocation of two hundred eighty (280) hours of vacation time effective January 1, 2018. Employee will continue to accrue vacation at a rate of two hundred (200) hours during the calendar year 2018, accruable in the manner provided for the Executive Group (Section 6 and Table 4 of the FBSP), in calendar year 2018. (A summary of the FBSP is attached hereto).

Employee will accrue vacation at the rate of two hundred (240) hours per year beginning January 1, 2019 and will only be entitled to cash out a maximum of one hundred twenty (120) hours accrued in the previous calendar year beginning on January 1, 2019.

Employee will receive eighty (80) hours of administrative leave on July 1, 2018, and one hundred twenty (120) hours per year thereafter. Employee may cash out only a maximum of forty (40) hours of Administrative leave beginning on January 1, 2020. Administrative leave must be

used or cashed out by June 30th of each year, which is the end of each fiscal year. There shall be no carryover of any administrative leave.

Section 9. Automobile Allowance

Employee shall receive an automobile allowance of Five Hundred Dollars (\$500) per month or as may be modified in the future.

Section 10. City Provided Mortgage

Employer shall provide to Employee a 15 year loan, secured by a Deed of Trust in the first position on Employee's family residence in Riverside, in the amount of Six Hundred Seventy Five Thousand Dollars (\$675,000) no later than March 1, 2018.

Employee will repay one-fifteenth (1/15) of the principal amount annually in equal monthly payments due on the first of each month. Each monthly principal payment equals Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Interest on the unpaid loan principal will be variable and is to be recalculated in January of each year using a rolling average of the Local Agency Investment Fund (LAIF) rate of return for the prior five (5) calendar years. Once calculated, interest will be paid in twelve (12) equal monthly payments due on the first of each month beginning on March 1, 2018 and each calendar year thereafter.

If Employee voluntarily leaves employment with Employer or is terminated for cause as defined in Section 11 of the Agreement, prior to January 1, 2025, the City may declare the mortgage fully due and payable in one hundred eighty (180) days.

If Employee ceases to reside in his current family residence in Riverside, Employer may declare the mortgage fully due and payable in one hundred eighty (180) days. This paragraph shall

not apply in the case of Employee's death as long as Employee's spouse continues to reside in the subject family residence.

Section 11. Termination and Severance Pay

In the event Employee is terminated prior to the expiration of this Agreement, and Employee is willing and able to perform duties under this Agreement, the Employee shall be entitled to a cash payment of compensation equal to one year's annual salary ("Severance Pay"). Notwithstanding the above, in the event Employee is terminated for cause, which is herein defined as any criminal act involving moral turpitude, fraud, malfeasance, or act of misfeasance, then, in that event, Employer shall have no obligation to continue the employment of Employee and shall have no obligation to make the Severance Pay stated above, or continue in force the life insurance policy described in Section 7 above.

Section 12. Performance Evaluation

The City Council shall review and evaluate the performance of the Employee at least once annually and no later than November of each year. The Annual Performance Review shall be in accordance with specific criteria developed jointly by the City Council and the Employee. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the Employee, provided, however, that such criteria shall be established within the limits of the resources made available to Employee for accomplishment of the identified goals and objectives. At such Annual Performance Review, the City Council and the Employee shall define such goals and performance objectives which they determine necessarily for the attainment of the City Council's policy objectives and the City Council and the Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. Employer agrees that it will act in good faith to assure that Employee has available those resources

reasonably necessary to achieve compliance of identified goals and objectives within the anticipated time frames. In giving effect to the provisions of this section, the City Council and the Employee mutually agree to act in good faith and abide by all provisions of applicable law.

Section 13. Outside Teaching Authorization

Employee is authorized to teach one class per semester at a local (Southern California) higher education institution of his choice. Must not be during normal working hours or on City Council nights.

Section 14. Other Terms and Conditions of Employments

The City Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the provisions of this Agreement, the Charter, any ordinance or resolution of Employer, or any other applicable law.

Section 15. Nondiscrimination

Employee agrees that in the performance of Employee's functions and duties, he shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression or sexual orientation.

Section 16. General Provisions

This shall constitute the entire agreement between the parties as to the subject matter hereof and supersedes all prior and contemporaneous oral and written understandings or agreements of the parties. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any party thereto. If any provision or any portion hereof is held

unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion hereof shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement may only be amended in writing and duly execute by both parties.

Section 17. Notices

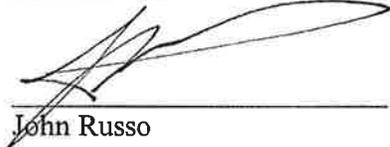
Notices pursuant to this Agreement shall be in writing and shall be personally served, given by mail or by overnight delivery. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the respective parties at 3900 Main Street, Riverside, California, 92522, or such other address as may be given, in writing, to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

EMPLOYER

EMPLOYEE

William R. Bailey, III
Mayor



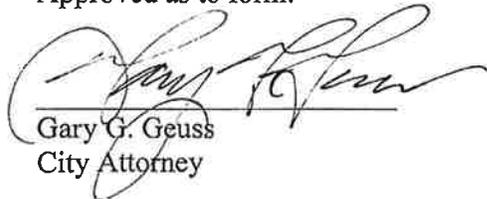
John Russo

Chris MacArthur
Mayor Pro Tem

Attested to by:

Approved as to form:

Colleen J. Nicol
City Clerk



Gary G. Geuss
City Attorney

EXHIBIT “B”

EXHIBIT “C”

1 THOMPSON & COLEGATE LLP
3610 Fourteenth Street
2 P. O. Box 1299
Riverside, California 92502
3 Tel: (951) 682-5550
Fax: (951) 781-4012

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 09 2018

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11 Attorneys for Petitioner

WILLIAM R. ("RUSTY") BAILEY III

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF RIVERSIDE, CENTRAL DISTRICT

15
16 WILLIAM R. ("RUSTY") BAILEY
17 III,

18 Petitioner,

19 v.

20 CITY OF RIVERSIDE,

21 Respondent.

CASE NO. 21C1804755

JUDGE:

PETITION FOR WRIT OF MANDATE OR
OTHER EXTRAORDINARY RELIEF (CODE
OF CIVIL PROCEDURE SECTION 1085, ET
SEQ.); **REQUEST FOR TEMPORARY
STAY ORDER**, A TEMPORARY
RESTRAINING ORDER AND A
PRELIMINARY AND PERMANENT
INJUNCTION; REQUEST FOR JUDICIAL
NOTICE; MEMORANDUM OF POINTS
AND AUTHORITIES

TRIAL DATE:

ACTION FILED:

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1 Petitioner alleges:

2 **SUMMARY OF RELIEF REQUESTED AND**
3 **REQUEST FOR AN IMMEDIATE STAY OF PERFORMANCE OF CONTRACT**

4 1. The within petition for an extraordinary writ under Code of Civil Procedure section
5 1085 seeks to preserve the veto authority of the Office of the Mayor of the City of Riverside with
6 regard to formal action taken by vote of the City Council on February 6, 2018 which action is
7 subject to the express provisions of Section 413 of the City's Charter and other related provisions
8 within the Charter, and as provided by Resolution No. 23035. This is to preserve the checks and
9 balances established by the Charter and the democratic processes of the City of Riverside now and
10 for the benefit of the future.

11 2. To that end, and pursuant to Section 413 of the Charter, the petition seeks a
12 peremptory writ of mandate, or other appropriate relief, directing the City Council to schedule a veto
13 override vote on or before April 7, 2018 to address the Mayor's veto on February 6, 2018 of the City
14 Council's approval of the City Manager's renegotiated mid-term Contract ("the Contract") a true and
15 correct copy of which is attached hereto as **Exhibit A**. The City Council and the Mayor Pro
16 Tempore, upon the advice of the City Attorney, have taken the position that there is no ministerial
17 duty to schedule an override vote because the Mayor has no veto power in the first instance as to the
18 Contract, and they have undertaken to sign and arbitrarily commence substantial performance under
19 the Contract. Petitioner has obtained a certified copy of the Contract from the City Clerk and will
20 provide it to this Court upon request. Request is hereby made that this Court take judicial notice of
21 the Contract pursuant to Evidence Code section 452 subdivisions (c) and (d).

22 3. The petition also requests that a peremptory writ, or other appropriate relief, including
23 a directive that the City Council shall disqualify the City Attorney and his staff from providing legal
24 counsel with regard to the Contract and the Mayor's veto authority as to the Contract approval
25 because the validity of the Contract and the Mayor's veto authority are directly related and subject to
26 Charter provisions that affect the City Attorney's own employment with the City. As a result, the
27 City Attorney, his staff and any outside counsel he retains have a conflict of interest.

28 ///

1 At any time before the adjournment of a meeting, the Mayor may, by public
2 declaration spread upon the minutes of the meeting, veto any formal action taken by
3 vote of the City Council including any ordinance or resolution, except an emergency
4 ordinance, the annual budget or an ordinance proposed by initiative petition.
5 Thereupon, pending the vote to override the veto as herein provided, such ordinance,
6 resolution or action shall be deemed neither approved nor adopted. The Mayor shall,
7 no more than twenty days following the veto, provide to Council members, in writing,
8 reasons for the Mayor's veto. If the Mayor fails to provide a written veto message
9 within the time allotted, the original action of the Council shall stand. At any regular
10 or adjourned meeting held not less than thirty days, nor more than sixty days after
11 veto the City Council shall reconsider such ordinance, resolution or action and vote
12 on the question of overriding the veto. Five affirmative votes shall be required for an
13 override vote. The Mayor shall have no right to veto the veto override of any
14 ordinance, resolution or action. (Underline and bold added.)

15 11. The Charter also describes two (2) types of City employees: (1) the City Attorney,
16 City Manager and City Clerk who serve at the pleasure of the City Council (Exhibit B, at Sections
17 600 and 700), and (2) city employees who are hired, managed and terminated by the City Manager
18 (Exhibit B, at Section 407). Specifically, Section 600 of the Charter provides, in pertinent part, that
19 the City Council "shall appoint, by a majority vote" a City Manager who "shall serve at the pleasure
20 of the City Council." (Exhibit B at Section 600.)

21 12. Section 700 of the Charter also states: "In addition to the City Manager, there shall
22 be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City
23 Council."

24 13. City Council Resolution No. 23035 ("Resolution 23035") is entitled "RESOLUTION
25 OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA, ESTABLISHING
26 RULES OF PROCEDURE AND ORDER OF BUSINESS FOR THE CITY COUNCIL OF THE
27 CITY OF RIVERSIDE AND RELATED FUNCTIONS AND ACTIVITIES AND RESCINDING
28 ALL PRIOR ACTIONS TAKEN THERETO, AND REPEALING RESOLUTION NO. 22980." It

1 was prepared by the office of the City Attorney, passed by a unanimous formal vote of the City
2 Council on July 26, 2016, and signed by Petitioner as Mayor. A true and correct copy of Resolution
3 23035 is submitted herewith as **Exhibit C**. Petitioner has obtained a certified copy of Resolution
4 23035 and will provide it to this Court upon request. Request is hereby made that this Court take
5 judicial notice of Resolution 23035 pursuant to Evidence Code section 452 subdivisions (c) and (d).

6 14. Resolution 23035 states in pertinent part at Article IV, section A:

7 A. DUTIES OF MAYOR; MAYOR PRO TEMPORE

8 The Mayor shall be the presiding officer at all meetings of the City Council
9 and shall have a voice in all its proceedings but shall not vote except for appointments
10 to City Boards & Commissions or to break a City Council tie vote which exists for
11 any cause. The Mayor shall be the official head of the City for all ceremonial
12 purposes. The Mayor shall have the primary but not exclusive responsibility for
13 interpreting the policies, programs and needs of the city government to the people,
14 and of informing the people of any major change in policy or program. The Mayor
15 shall advise the City Council on all matters of policy and public relations and perform
16 such other duties as may be prescribed by the City Charter. At any time before the
17 adjournment of a meeting, the Mayor may, by public declaration spread upon the
18 minutes of the meeting, veto any formal action taken by vote of the City Council
19 including any ordinance or resolution, except an emergency ordinance, the annual
20 budget or an ordinance proposed by initiative petition. Thereupon, pending the vote
21 to override the veto as herein provided, such ordinance, resolution or action shall be
22 deemed neither approved nor adopted. The Mayor shall, no more than twenty
23 days following the veto, provide to Council members, in writing, reasons for the
24 Mayor's veto. If the Mayor fails to provide a written veto message within the time
25 allotted, the original action of the City Council shall stand. At any regular or
26 adjourned meeting held not less than thirty days, nor more than sixty days after the
27 veto the City Council shall reconsider such ordinance, resolution or action and vote
28 on the question of overriding the veto. Five affirmative votes shall be required for its

1 adoption or approval. The Mayor shall have no right to veto the veto override of any
2 ordinance, resolution or action.

3 In the absence of the Mayor, the Mayor Pro Tempore shall assume the duties
4 of the Mayor. . . (Underline and bold added.)

5 15. On February 6, 2018, and pursuant to Section 413, paragraph 4 of the City Charter
6 and Article IV, Section A of Resolution 23035, Petitioner “ spread upon the minutes of the meeting”
7 his veto of the City Council’s formal action taken by a vote of 5 to 2 to approve the Contract.
8 Attached hereto as **Exhibit D** is a true and correct copy of the minutes of the February 6, 2018
9 meeting evidencing Petitioner’s veto at the end of the meeting. Petitioner has obtained a certified
10 copy of Exhibit D and will provide it to this Court upon request. Request is hereby made that this
11 Court take judicial notice of Exhibit D pursuant to Evidence Code section 452 subdivisions (c) and
12 (d).

13 16. Thereafter, and within 20 days as required by Section 413 of the Charter and Article
14 IV, section A of Resolution 23035, Petitioner submitted his written bases for the veto to the City
15 Council. Attached hereto as **Exhibit E** is a true and correct copy of that writing. Request is hereby
16 made that this Court take judicial notice of Exhibit E pursuant to Evidence Code section 452
17 subdivisions (c) and (d).

18 17. Petitioner also personally obtained an opinion from independent counsel which
19 opinion supports Petitioner’s veto power. Attached hereto as **Exhibit F** is a true and correct copy of
20 that written opinion which examines the legislative history of the Charter.

21 18. Notwithstanding Petitioner’s veto in compliance with the Charter and Resolution
22 23035, the City Council, based on a purported “ruling” by the City Attorney, has taken the position
23 that Petitioner has no veto authority over City Council’s approval of the Contract. They base this on
24 an opinion the City Attorney obtained from a sympathetic outside counsel (“the City Attorney’s
25 Outside Counsel”) which was later reduced to writing. A true and correct copy of that writing is
26 submitted herewith as **Exhibit G**. Petitioner has obtained a certified copy of Exhibit G and will
27 provide it to this Court upon request. Request is also hereby made that this Court take judicial notice
28 of Exhibit G pursuant to Evidence Code section 452 subdivision (c).

1 19. As noted in Exhibit G, the City Attorney's Outside Counsel opined that because the
2 Charter provides that the City Manager serves at the pleasure of the City Council, Petitioner, as
3 Mayor, has no veto power over the City Council's formal vote to approve the Contract. The City
4 Attorney's Outside Counsel describes this as a weak mayor/strong city council and city manager
5 paradigm.

6 20. This opinion by the City Attorney's Outside Counsel is beneficial to the City
7 Attorney because the Charter provides that the City Attorney and City Clerk, as well as the City
8 Manager, "serve at the pleasure of the City Council." (See Exhibit B, §§ 600 and 700.) Therefore,
9 the issues raised in the within dispute as to the Contract and as interpreted by the City Attorney and
10 the City Attorney's Outside Counsel render the City Attorney's employment subject to the same
11 democratic processes as the Contract for the City Manager. This creates a conflict of interest in the
12 City Attorney because the resolution of this dispute over the veto of the Contract for the City
13 Manager has the potential also of insulating the City Attorney from scrutiny by the Mayor
14 (Petitioner) in the future when it comes to his own employment contract.

15 21. Section 419 of the Charter provides that the City will not be bound by a contract
16 unless it is signed by the Mayor and the City Clerk "or by such other officer or officers as shall be
17 designated by the City Council." Section 405 of the Charter provides that "[i]n the absence of the
18 Mayor, the Mayor Pro Tempore shall assume the duties of the Mayor." Petitioner is informed and
19 believes that, although Petitioner was not absent, the Mayor Pro Tempore immediately signed the
20 Contract on or about February 8, 2018 and the City immediately thereafter began to perform under
21 the Contract expending thousands of taxpayer dollars. Petitioner is informed and believes that the
22 City Council designated the Mayor Pro Tempore to sign the Contract because they knew, based on
23 Petitioner's veto two days earlier, he would not sign the Contract. However, petitioner was not
24 "absent."

25 22. Petitioner attempted to preserve the veto power of his office by urging
26 councilmembers to schedule an override vote, noting that the same vote of 5 to 2 would override his
27 veto and preserve the veto power of the Mayor's office. Thereafter, the City Council voted on
28 February 20, 2018, based on the City Attorney's recommendation and a presentation in closed

1 session by the City Attorney's Outside Counsel not to honor Petitioner's veto. As a result, no veto
2 override vote has been placed on any City Council agenda.

3 23. As noted *supra*, Section 415 of the Charter and Article IV, section A. of Resolution
4 23035 provide that "[a]t any regular or adjourned meeting held not less than thirty days, nor more
5 than sixty days after the veto the City Council shall reconsider such ordinance, resolution or action
6 and vote on the question of overriding the veto. Five affirmative votes shall be required for its
7 adoption or approval. The Mayor shall have no right to veto the veto override of any ordinance,
8 resolution or action." (Underline added.) Therefore, if the February 6, 2018 City Council meeting
9 whereupon Petitioner verbally vetoed the approval of the Contract commences the time for an
10 override vote, that time period begins today, Friday, March 9, 2018 and continues up to an including
11 Saturday, April 7, 2018. Petitioner has been informed by the Respondent City that the City Council
12 has no intention of reconsidering his veto and voting on the question of overriding the veto.

13 24. In the meantime, Petitioner is informed and believes that Respondent has already
14 undertaken to perform under the renegotiated contract by expending thousands of dollars of taxpayer
15 funds for the City Manager's mortgage as provided by the Contract and by allowing the City
16 Manager to cash out tens of thousands of dollars of his "bonus" vacation and/or administrative leave
17 before the end of 2018, as provided for by the Contract (which limits his ability to do so beginning in
18 2019), all at the expense of and the detriment to the taxpayers of the City of Riverside.

19 25. Moreover, the City Manager and City Attorney have undertaken to act, consistent
20 with the written opinion by the City Attorney's Outside Counsel, that the City of Riverside's Charter
21 provides for a "weak Mayor and a strong City Manager reporting to a strong City Council." To that
22 end, they have undertaken to exclude the Office of the Mayor, Petitioner's office, from City matters
23 with conduct which includes, but is not limited to, declining to participate in the traditional Monday
24 morning meetings with the Mayor (a practice that began with the prior Mayor and has continued
25 until now during Petitioner's term of office). They are unilaterally issuing press releases on behalf
26 of the City, although all press releases traditionally have been circulated through the Mayor's office,
27 whose responsibility it is under the Charter to communicate with the citizens of Riverside. Petitioner
28 has also learned that some City personnel have been instructed by the City Manager and/or the City

1 employment with the City.

2 3. For a temporary stay order restraining Respondent, its agents, employees, officers,
3 and representatives from any performance under the Contract unless and until the City Council
4 successfully votes to override Petitioner's veto of the Contract approval.

5 4. For a peremptory writ of mandate or other extraordinary relief directing the City to
6 *set aside* the Contract due to the fact that it is void *ab initio* pursuant to section 413 of the City
7 Charter and Article IV, section A, of Resolution 23035, and directing the City to recover all taxpayer
8 dollars paid out thereunder forthwith unless and until the City Council timely overrides the
9 Petitioner's veto of February 6, 2018 as to the Contract.

10 5. For an award of Petitioner's attorneys' fees and costs in bringing this petition
11 pursuant to Code of Civil Procedure section 1021.5.

12 7. For such other relief that this Court deems proper.

14 DATE: March 9, 2018

THOMPSON & COLEGATE LLP

15
16 By: 

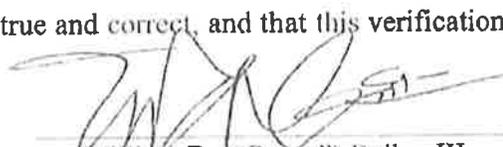
17 JOHN A. BOYD
18 MICHAEL J. MARLATT
19 DIANE MAR WIESMANN
20 GARY T. MONTGOMERY
21 CRAIG M. MARSHALL
22 SUSAN KNOCK BECK
23 Attorneys for Petitioner
24 William R. ("Rusty") Bailey III

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VERIFICATION

I, William R. ("Rusty") Bailey III, declare as follows:

I am the Petitioner herein. I have read the foregoing petition for writ of mandate or other extraordinary relief and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true. As to those facts alleged based on information and belief, I believe those facts to be true. I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this verification is executed on March 9, 2018.



William R. ("Rusty") Bailey III

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 This petition requests that the City perform its ministerial duties under the Charter,
3 Resolution 23035 and established law with regard to attorney conflicts of interest (including
4 Government Code section 1090, et seq.) Thus, the authority for this petition is found in Code of
5 Civil Procedure section 1085, et seq.

6 Charters are to be interpreted as statutes are interpreted (see *Creighton v. City of Santa*
7 *Monica* (1984)160 Cal.App.3d 1011, 1017) and a statute that clearly defines the course of action that
8 a government body or official must take in specified circumstances imposes a ministerial duty (see
9 *Great W. Sav. & Loan Ass'n v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413).

10 I.

11 THE CHARTER ALLOWS THE MAYOR TO VETO ANY FORMAL ACTION TAKEN
12 UPON A VOTE BY THE CITY COUNCIL THAT IS NOT EXPRESSLY EXEMPTED
13 FROM HIS VETO, AND THE APPROVAL OF THE CITY MANAGER'S CONTRACT IS
14 NOT EXPRESSLY EXEMPTED FROM THE MAYOR'S VETO POWERS

15 "A city's charter is, of course, the equivalent of a local constitution. It is the supreme organic
16 law of the city, subject only to conflicting provisions in the federal and state constitutions and to
17 preemptive state law. (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017; citing
18 *San Francisco Fire Fighters v. City and County of San Francisco* (1977) 68 Cal.App.3d 896, 898;
19 *Brown v. City of Berkeley* (1970) 57 Cal.App.3d 223, 231.) " '[Charter] cities may make and enforce
20 all ordinances and regulations subject only to restrictions and limitations imposed in their several
21 charters.... Within its scope, such a charter is to a city what the state Constitution is to the state.' "
22 (*Ibid.*; quoting *Campen v. Greiner* (1971) 15 Cal.App.3d 836, 840.)

23 "Under settled rules of statutory interpretation, the various sections of a charter must be
24 construed together, giving effect and meaning so far as possible to all parts thereof, with the primary
25 purpose of harmonizing them and effectuating the legislative intent as therein expressed."
26 (*Creighton v. City of Santa Monica, supra*, 160 Cal.App.3d at p. 1017; citing *Hanley v. Murphy*
27 (1953) 40 Cal.2d 572, 576.) "Where it is impossible to reconcile conflicting provisions, special
28 provisions control more general provisions and later enacted provisions control those earlier in

1 time.” (*Id.* at pp.1017-1018; citing *County of Placer v. Aetna Cas. Etc. Co.* (1958) 50 Cal.2d 182,
2 189; *City of Petaluma v. Pacific Telephone & Telegraph Co.* (1955) 44 Cal.2d 284, 288; *Diamond*
3 *International Corp. v. Boas* (1979) 92 Cal.App.3d 1015.) The courts first look to “the language of
4 the charter, giving effect to its plain meaning.” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9
5 Cal.4th 161, 172; citing *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) “Where the words of the
6 charter are clear, [the court] may not add to or alter them to accomplish a purpose that does not
7 appear on the face of the charter or from its legislative history.” (*Ibid.*)

8 Here, special controlling provisions in Section 405 of the Charter provide at Section 405 that
9 “[t]he Mayor shall be the presiding officer at all meetings of the City Council and shall have a voice
10 in all its proceedings.” (Exhibit A, at Section 405, underline added.) The Mayor shall also vote to
11 “break a City Council tie-vote.” (*Ibid.*) Additionally, at Section 413 and as noted in the petition, the
12 Mayor may “veto any formal action taken by vote of the City Council,” except under three
13 specifically delineated circumstances: (1) an emergency ordinance, (2) the annual budget, or (3) an
14 ordinance proposed by initiative petition. (Underline added.) The City Manager’s contract is not
15 mentioned in this clear and unambiguous recitation of matters that are excepted from the Mayor’s
16 veto authority.

17 Because Petitioner spread his veto upon the minutes of the meeting of February 6, 2018 and
18 followed up within 20 days with his written veto and reasons therefor as required by the Charter, his
19 veto controls and the Contract could not legally be executed or performed without an override vote.

20 II.

21 **THE POSITION TAKEN BY THE CITY IS NOT ONLY CONTRARY TO THE CHARTER,**
22 **IT IS CONTRARY TO RESOLUTION 23035, CREATED IN THE OFFICE OF THE CITY**
23 **ATTORNEY, PASSED UNANIMOUSLY BY THE CITY COUNCIL, AND SIGNED BY**
24 **PETITIONER IN JULY OF 2016**

25 As noted in the body of the verified petition, City Council Resolution No. 23035 is entitled
26 “RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA,
27 ESTABLISHING RULES OF PROCEDURE AND ORDER OF BUSINESS FOR THE CITY
28 COUNCIL OF THE CITY OF RIVERSIDE AND RELATED FUNCTIONS AND ACTIVITIES

1 AND RESCINDING ALL PRIOR ACTIONS TAKEN THERETO, AND REPEALING
2 RESOLUTION NO. 22980.” It shows on its face that it was prepared by the office of the City
3 Attorney, passed by a unanimous formal vote of the City Council on July 26, 2016, and signed by
4 Petitioner as Mayor. Consistent with the Charter provisions, Resolution 23035 also expressly states,
5 in pertinent part, at Article IV, section A:

6 A. DUTIES OF MAYOR; MAYOR PRO TEMPORE

7 The Mayor shall be the presiding officer at all meetings of the City Council
8 and shall have a voice in all its proceedings but shall not vote except for appointments
9 to City Boards & Commissions or to break a City Council tie vote which exists for
10 any cause. The Mayor shall be the official head of the City for all ceremonial
11 purposes. The Mayor shall have the primary but not exclusive responsibility for
12 interpreting the policies, programs and needs of the city government to the people,
13 and of informing the people of any major change in policy or program. The Mayor
14 shall advise the City Council on all matters of policy and public relations and perform
15 such other duties as may be prescribed by the City Charter. At any time before the
16 adjournment of a meeting, the Mayor may, by public declaration spread upon the
17 minutes of the meeting, veto any formal action taken by vote of the City Council
18 including any ordinance or resolution, except an emergency ordinance, the annual
19 budget or an ordinance proposed by initiative petition. Thereupon, pending the vote
20 to override the veto as herein provided, such ordinance, resolution or action shall be
21 deemed neither approved nor adopted. The Mayor shall, no more than twenty days
22 following the veto, provide to Council members, in writing, reasons for the Mayor's
23 veto. If the Mayor fails to provide a written veto message within the time allotted, the
24 original action of the City Council shall stand. At any regular or adjourned meeting
25 held not less than thirty days, nor more than sixty days after the veto the City Council
26 shall reconsider such ordinance, resolution or action and vote on the question of
27 overriding the veto. Five affirmative votes shall be required for its adoption or
28 approval. The Mayor shall have no right to veto the veto override of any ordinance,

1 resolution or action.

2 In the absence of the Mayor, the Mayor Pro Tempore shall assume the duties
3 of the Mayor. . . (Underline and bold added.)

4 The opinion of the City Attorney's Outside Counsel does not acknowledge Resolution
5 23035. However, the language is consistent with the Charter and evidences that, as late as July of
6 2016, until the recent vote on the Contract, the City acknowledged by formal resolution that the
7 Mayor's veto power extends to "any formal action taken by vote of the City Council" unless
8 specifically exempted. Moreover, the City Council's approval of a City Manager's contract is not
9 one of those expressly enumerated exemptions.

10 III.

11 **THE GENERAL STATEMENT IN SECTION 600 OF THE CHARTER THAT PROVIDES**
12 **THAT THE CITY MANAGER SERVES AT THE PLEASURE OF THE CITY COUNCIL**
13 **DOES NOT OVERCOME THE EXPRESS LANGUAGE IN SECTION 415 THAT THE**
14 **MAYOR MAY VETO CITY COUNCIL APPROVAL OF HIS CONTRACT**

15 "Serves at the pleasure of" is a phrase used frequently in lawsuits where an employee who
16 serves at the pleasure of a board has been terminated and files a lawsuit for wrongful termination.
17 (See e.g., *Bogacki v. Board of Supervisors of Riverside County* (1971) 5 Cal.3d 771, 783.) The
18 phrase was analyzed by the California Supreme Court in *Bogacki* with regard to whether an
19 employee who serves at the pleasure of a board must be terminated only for cause. (*Ibid*) However,
20 in the context of the Charter of the City of Riverside, serving "at the pleasure of the City Council"
21 does nothing more than establish that there are two (2) types of City employees: (1) the City
22 Attorney, City Manager and City Clerk who serve at the pleasure of the City Council (Exhibit B, at
23 Sections 600 and 700), and (2) city employees who are hired, managed and terminated by the City
24 Manager (Exhibit B, at Section 407). Moreover, and specifically at Section 600, the Charter requires
25 that the City Council appoint the City Manager "by a majority vote." That appointment by majority
26 vote is not specifically identified anywhere else, and it most certainly is not in Section 415 as an
27 exception to the actions taken by formal vote of the City Council that the Mayor can veto. Nor
28 should it be.

1 The Charter must be reviewed as a whole, and the fundamental rules of statutory construction
2 apply equally to the interpretation of the Charter's provisions. (*San Francisco International*
3 *Yachting Center Development Group v. City and County of San Francisco* (1992) 9 Cal.App.4th 672,
4 682. A statutory interpretation "that renders related provisions nugatory must be avoided." (*J.M. v.*
5 *Huntington Beach Union High School District* (2017) 2 Cal.5th 648, 655.) Therefore, the only
6 reasonable interpretation of the Charter as a whole, that does not result in an absurdity, is that all
7 matters that come before the City Council begin with the City Council (even the service of the City
8 Manager, City Attorney and City Clerk), action is then taken by a formal vote of the City Council,
9 and then the prospect of the Mayor's veto arises unless the express language in the Charter creates
10 an exemption to that power. Those expressly created exemptions are: (1) an emergency ordinance,
11 (2) the annual budget, or (3) an ordinance proposed by initiative petition. (See Charter at Section
12 415.) As to the annual budget, there is no express language that says that any matter that would have
13 an impact on an annual budget is beyond the Mayor's veto. If that were the case, the City Council
14 could avoid the Mayor's veto authority merely by including dollars and cents and/or matters with
15 fiscal impact in every action it takes by formal vote. To be sure, the Contract that is the subject of
16 this petition is a seven-year contract. It does not refer to or identify any specific budget. However, it
17 has the potential to affect each and every budget for the next seven years. And that is one reason
18 why Petitioner vetoed it.

19 IV.

20 THE CITY ATTORNEY, HIS STAFF AND HIS DESIGNEES MUST BE DISQUALIFIED 21 FROM PROVIDING COUNSEL TO THE CITY ON THE VALIDITY OF PETITIONER'S 22 VETO

23 In *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, the California Supreme Court stated "[i]f
24 a public official is pulled in one direction by his financial interest and in another direction by his
25 official duties, his judgment cannot and should not be trusted, even if he attempts impartiality." (*Id.*
26 at p. 1073; citing *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1330.)
27 "Where public and private interests diverge, the full and fair representation of the public interest is
28 jeopardized." (*Ibid.*) This discussion in *Lexin* arose from an analysis of Government Code section

1 1090 which provides, in pertinent part, that “. . . city officers or employees shall not be financially
2 interested in any contract made by them in their official capacity, or by any body or board of which
3 they are members.” (Gov. Code, § 1090, subd. (a).)

4 Here the Charter identifies three (3) city employees who serve at the pleasure of the City
5 Council. One is the City Manager (Section 600). The other two are the City Attorney and the City
6 Clerk (Section 700). The opinion of the City Attorney and the City Attorney’s Outside Counsel are
7 that the checks and balances set forth in the Charter and Resolution 23035 (e.g., that the Mayor can
8 veto any formal action taken by vote of the City Council) do not apply to votes taken with regard to
9 employees who serve at the pleasure of the City Council – which would include the City Attorney.
10 However, this approach, the approach that the City Attorney has been counselling the City Council
11 on, places him squarely in a position where his official duties for the benefit of the City and its
12 taxpayers are in conflict with the benefit he stands to gain by limiting the democratic process (the
13 e.g., the Mayor’s veto authority) when it comes to his own employment.

14 As a result, the City Attorney, his staff who are presumed to be loyal to him, and any outside
15 counsel he hires to opine on matters relative to city employees who serve at the pleasure of the City
16 Council have a conflict of interest with the City, the City Council, the Mayor and the taxpayers.
17 Thus, they should be disqualified from rendering or securing opinions on such matters.

18 **V.**

19 **THIS PETITION IS TIMELY, SUPPORTED BY THE LAW, AND SHOULD BE GRANTED**

20 There are no provisions in the Charter that specify when legal action to interpret its
21 provisions must be taken. This is also not a petition under the Brown Act (codified at Government
22 Code section 54950, et seq.), which carefully delineates the time periods for seeking judicial review
23 for violations of its provisions. Petitioner does not assert Brown Act violations that have already
24 occurred. Petitioner seeks to avoid the calamity that will ensue if the City is not compelled by this
25 Court to perform its ministerial act of scheduling and taking a veto override vote which acts are
26 expressly required under the Charter and Resolution 23035 before the Contract may be executed or
27 performed. The time for that override vote begins today, March 9, 2018 and extends up to and
28 including April 7, 2018. If the override vote is successful and the City Council reaches a 5 to 2 vote

1 to override Petitioner's veto, the democratic process will have been satisfied and rightful powers of
2 the Mayor's office will be preserved. That is, the Constitution of the City of Riverside will be
3 honored and upheld.

4 If a timely override vote is not take on or before April 7, 2018, then the City will have
5 entered into an illegal contract, *void ab initio* and subject to all manner of legal proceedings,
6 including but perhaps not limited to, reverse validation under Code of Civil Procedure section 860,
7 et seq. and/or other challenges by the public, all at the expense of taxpayer dollars.

8 VI.

9 CONCLUSION

10 The Respondent excuted and is performing under a contract that is void under the express
11 provisions of the Charter of the City of Riverside because the City Council's formal vote to approve
12 the contract was duly vetoed by Petitioner, as Mayor, and no override vote has been taken. The
13 plain language of the Charter and Resolution 23035 make it clear that the veto was proper.
14 Petitioner has no other adequate remedy but to seek an order of this Court compelling Respondent to
15 schedule and conduct a timely veto override vote on or before April 7, 2018, and staying
16 performance under the Contract until it can be known upon a timely override vote whether the
17 Petitioner's veto has been overturned and, whether the Contract is, in fact, valid. If no timely and
18 successful override vote occurs, Petitioner requests that this Court issue an order directing
19 Respondent to ccase all performance and to recover all taxpayer monies paid thereunder.

20 Respectfully submitted,

21 THOMPSON & COLEGATE LLP

22 DATED: March 9, 2018

23 By: 

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