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19 Attorneys for Petitioner  
20 WILLIAM R. ("RUSTY") BAILEY III

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF RIVERSIDE, CENTRAL DISTRICT

23 WILLIAM R. ("RUSTY") BAILEY  
24 III,

25 Petitioner,

26 v.

27 CITY OF RIVERSIDE,

28 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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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

MAR 09 2018

**P. CLARK**

Petitioner alleges:

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

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

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

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

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4. The petition also requests that this Court issue a temporary stay order, restraining the City, its agents, employees, officers, and representatives from undertaking any action in performance of the Contract unless and until the City Council timely and successfully votes to override the veto on or before April 7, 2018.

5. Finally, if the City Council fails to timely override the Mayor's veto as to the Contract, the petition requests that this Court issue a peremptory writ, or other appropriate relief, directing the City to *set aside* the contract due to the fact that it is void *ab initio* pursuant to section 413 of the City Charter and Article IV, section A of Resolution 23035, and directing the City to recover all taxpayer dollars paid out thereunder forthwith.

**BENEFICIAL INTEREST OF THE PETITIONER AND LEGAL BASES FOR THE  
REQUESTED RELIEF**

6. Petitioner is the Mayor of the City of Riverside, a California Charter City.

7. Respondent is the City of Riverside, a California Charter City organized under the laws of the State of California, including Article XI, section 5 of the California Constitution.

8. Respondent is subject to the provisions of the City Charter ("the Charter"), a copy of which is submitted herewith as **Exhibit B**. Petitioner has obtained a certified copy the Charter and will provide it to this Court upon request. Request is hereby made that this Court take judicial notice of the Charter pursuant to Evidence Code section 451 subdivision (a).

9. Petitioner is a person beneficially interested in, and aggrieved by, the acts, decisions and omissions of Respondent as alleged in this petition. Petitioner has fundamental vested rights and interests under the Charter which are adversely affected by the acts, decisions, and omissions of Respondent as alleged herein.

10. The plain language of the Charter provides that “[t]he Mayor shall be the presiding officer at all meetings of the City Council and shall have a voice in all its proceedings.” (Exhibit A, at Section 405.) The Mayor shall also vote to “break a City Council tie-vote.” (*Ibid.*) Additionally, the Charter provides at Section 413:

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

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

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

13. City Council Resolution No. 23035 ("Resolution 23035") is entitled "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA, ESTABLISHING RULES OF PROCEDURE AND ORDER OF BUSINESS FOR THE CITY COUNCIL OF THE CITY OF RIVERSIDE AND RELATED FUNCTIONS AND ACTIVITIES AND RESCINDING 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 Attorney that they may not meet with him.

2 26. The City's position is that, because the City Manager serves "at the pleasure of the  
3 City Council" pursuant to Section 600 of the Charter, Petitioner has no veto authority over the  
4 approval of the City Attorney's contract. However, such a position ignores and wrongfully attempts  
5 to render nugatory section 413 of the Charter and Article IV, section A, of Resolution 23035 that  
6 state any City Council action taken by a formal vote can be vetoed by the Mayor, except with regard  
7 to specifically delineated exclusions in the Charter that are not present here. (See *San Francisco*  
8 *International Yachting Center Development Group v. City and County of San Francisco* (1992) 9  
9 Cal.App.4<sup>th</sup> 672, 682 ["The fundamental rules of statutory construction apply equally to the  
10 interpretation of city charter provisions."]; see also *J.M. v. Huntington Beach Union High School*  
11 *District* (2017) 2 Cal.5<sup>th</sup> 648, 655 ["An interpretation that renders related provisions nugatory must  
12 be avoided...."].)

13 27. Petitioner has no plain, speedy, or adequate remedy at law in that, if the City  
14 Manager's renegotiated contract is allowed to stand over Petitioner's veto, Petitioner's veto power as  
15 Mayor will be irreparably harmed, for which harm money and other legal remedies cannot  
16 adequately compensate him or his Office. Moreover, thousands of dollars in taxpayer funds will be  
17 needlessly spent in performance of the Contract which is in fact, at this time, *void ab initio*.

18 WHEREFORE, Petitioner requests judgment against Respondent as follows:

19 1. For a peremptory writ of mandate or other extraordinary relief directing Respondent  
20 to acknowledge and honor Petitioner's veto of February 6, 2018 with regard to the City Council's  
21 approval of the Contract and to schedule a veto override vote during the period set forth in Section  
22 415 of the Charter and Article IV, section A. of Resolution 23035, e.g., which period begins on  
23 March 9, 2018 and continues up to and including Saturday, April 7, 2018.

24 2. For a peremptory writ of mandate or other extraordinary relief directing Respondent  
25 to disqualify the City Attorney, his staff, and any outside counsel he retains from providing legal  
26 advice to the City Council with regard to the Contract and the Mayor's veto authority as to City  
27 Council approval of the Contract. This is because the validity of the Contract and the Mayor's veto  
28 power over the Contract are directly subject to Charter provisions that affect the City Attorney's own

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.

13  
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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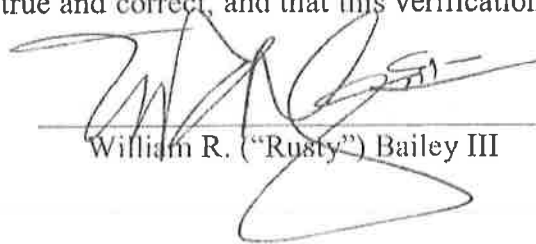
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VERIFICATION

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 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.4<sup>th</sup> 161, 172; citing *Burden v. Snowden* (1992) 2 Cal.4<sup>th</sup> 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.4<sup>th</sup> 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.5<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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 executed 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 cease all performance and to recover all taxpayer monies paid thereunder.

20 Respectfully submitted,

21 THOMPSON & COLEGATE LLP

22 DATED: March 9, 2018

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