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FILING FEE EXEMPT PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SHASTA

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, AFL-CIO, A Recognized Employee Organization on its Own Behalf, and on Behalf of its Represented Members in the Employ of the City of Redding,

Petitioner,

v.

CITY OF REDDING, a General Law City and Governmental Subdivision of the State of California; CITY COUNCIL OF THE CITY OF REDDING; and Does I through and including V,

Respondents.

Case No. 176478

RESPONDENTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S MOTION [FOR JUDGMENT CCP § 1094 PER STIPULATION AND ORDER] FOR WRIT OF MANDATE AND FOR INJUNCTIVE RELIEF

FILED BY FAX

JFAP: Honorable Stephen H. Baker
Dept.: 3
Date: May 10, 2013

Action Filed: January 17, 2013
Trial Date: None Set

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I. INTRODUCTION

This action is brought by SEIU Local 1021 ("SEIU") on behalf of itself and its City of Redding employee members against the City of Redding ("City") and the City Council of the City of Redding ("City Council" collectively "City Respondents"). Both SEIU's first cause of action for traditional mandate under Code of Civil Procedure ("CCP") section 1085 (See Pet. caption.) and its second, for injunctive relief under CCP section 526a, assert that the City Council had no legal authority to exercise its legislative discretion in contracting with a private corporation, Orcom Solutions, LLC, d.b.a. Vertex Business Services ("Vertex") to operate a call center for customers of the City's electric, water, wastewater, solid waste, and storm drain utilities.

The parties stipulated and this Court ordered that the instant motion would be "the equivalent of a motion for judgment under CCP §1094" (Stipulation ¶ 1, p. 1) on the assumption that there may be "no disputed issues of material fact " (*id*) and that the cause of action for injunctive relief would be governed by the same law and facts as the writ of mandate cause of action. (*Id.* at ¶ 2, p.1.) CCP section 1094 permits a writ of mandate to be decided on the motion of either party, if it raises "only questions of law," or disputed "immaterial statements, not affecting the substantial rights of the parties." The gravamen of Petitioner's legal contentions is that the City Council of the City of Redding had no legal authority to take the challenged actions.

To the contrary, the Redding City Council's legislative actions rested on its broad constitutional and statutory powers. Indeed, the record in this case reveals that City staff and the City Council acted thoughtfully and deliberately, based on careful research, to correct longstanding deficiencies in the performance of call center services provided to City utility customers, by dramatically improving the service, bringing it up to industry standards and saving the City hundreds of thousands of dollars in the bargain. No statute requires cities to maintain a bloated under-performing bureaucracy when residents could be better served at a lower cost by contracting for services with private vendors. Conscientious elected local officials regularly exercise such budgetary legislative discretion, and the City has done so for at least ten years without any objections from SEIU based on statutes enacted in 1949 and 1952.

II. STATEMENT OF FACTS

A. Redding Electric Utility Customer Service Division

Barry Tippin, an Assistant City Manager for the City, is the Director of the Redding Electric Utility (REU), a Division of which is Customer Service, and has been involved in customer service issues since he assumed the job (Declaration of Barry Tippin In Opposition To Petitioner's Motion For Writ of Mandate ["Tippin Dec."] p. 1, ¶¶ 1, 3). The Customer Service Division ("Division") is responsible for administering the utility billing and collection process for the electric, water, wastewater, solid waste and storm drain utilities. (*Id.* at. ¶ 2.) The critical element of this process is performed by specially trained administrative staff referred to as Customer Service Representatives (CSRs). (*Id.*)

1. The Inability To Meet Industry Standards

Mr. Tippin points out that a small customer service center like Redding's has significant challenges to meet industry service levels. (*Id* at ¶ 4.) This is due mostly to the inability to flex staffing levels up or down to meet customer demand. (*Id.*) In Redding, both the walk-in center and the call center have historically been staffed by the same people who float between the two or are permanently assigned to one or the other depending on demand. (*Id.*) Service levels suffer the most when there is high demand in both centers making it necessary to "choose" which customers are served, those on the phone or those who are in the walk-in center. (*Id.*) Additionally, once the queues for service reach unacceptable levels, it takes hours to reduce the backlog much like a congested freeway. (*Id.*) The effort to reduce such backlogs is intense and stressful for both the customer and the CSR, escalating the chance for bad encounters and resultant complaints. (*Id.*) To exacerbate matters further, technological advances in billing systems provide much more access to information for customers, but also drive the need for more highly trained staff to access, interpret and implement customer transactions, which often require more time to complete. (*Id.*)

The Customer Service Division has historically been unable to meet industry standard service levels of the two main call center indicators: call abandonment rate and percentage of calls answered within 30 seconds. There are a variety of contributing factors including lack of personnel, lack of fully trained personnel, hindrances to personnel availability (absenteeism,

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furloughs, etc.), variability in call volume by month of the year, day of the week, and so on; however, the primary factor affecting service level is the lack of flexibility to increase and decrease staffing levels to meet customer demand. (Tippin Dec. ¶ 5.)

The call abandonment rate is a percentage of the total incoming calls during a specified period of time. An abandoned call is defined as an incoming call where the caller disconnects or aborts the call before a Customer Service Representative is able to answer. Industry standards are to limit the percent of abandoned calls to 5-7%. The City of Redding calculates its call abandonment rate as the total number of abandoned calls divided by the total of incoming calls into the Express and Express Customer Transaction (ECT; payment only) queues as reported by the Department's Avaya phone system. (Tippin Dec. ¶ 6.) The City's call abandonment rate exceeded the industry standards every year from 2004-2012. (Exh. A, Tippin Dec. ¶6.)

The second indicator is defined as the percentage of total calls which are answered by a Customer Service Representative within 30 seconds. (Tippin Dec. ¶ 7.) The industry standard is to answer 80% of all calls within 30 seconds. (*Id.*) The City of Redding calculates this percentage as the total number of incoming calls answered in less than 30 seconds divided by the total of incoming calls into the Express and ECT queues as reported. (*Id.*) The City's performance on this indicator was also below industry standards in this regard every year from 2004-2012. (Exh. B, Tippin Dec.¶ 7; Bryan Dec. ¶4.)

2. 2011 Public Private Partnership Study, No SEIU Statutory Objections

In 2011, the City Council asked City staff to suggest areas of City operations which might benefit from public-private partnerships in delivering services. The City identified several areas including the Customer Service Division. Although many of these areas affected staff represented by SEIU, it failed to raise any objections in 2011 that any such contracting out of services would violate state law. (Tippin Dec. ¶ 8, p. 2-3.) The Council did not, at that time, direct that the Customer Services Division be included in the study. (*Id.*) The consultants retained by the City recommended against contracting for services in any of the other service areas. (Tippin Dec. ¶ 9.)

3. The Vertex Proposal

The Customer Service billing system was in need of upgrade because it had not been upgraded since it was purchased in 1998. (Tippin Dec. ¶ 10.) In November of 2011, the City asked Vertex to make a high level assessment to determine the ability to, and the costing of, an upgrade to the billing system. (*Id.*) In the spring of 2012, when Vertex provided its assessment to the staff it also included unsolicited information and projected costs of Vertex taking over the City's call center to enhance the City's ability to serve its customers, and Vertex offered a $700,000 discount on the billing system upgrade if the City used the Vertex call center. (Tippin Dec. ¶ 10, p. 3-4.) In May 2012, the City Council directed the Personnel Director to meet and confer with the Union regarding potential impacts of the possible outsourcing of the call center. (*Id* at ¶ 10, p. 4.) City staff and Vertex completed a feasibility study of the call center transfer and technology upgrade, including staff observation of the Vertex Call Center operations. The study concluded that there were no fatal flaws and the staff recommended that the City Council proceed.

4. City Efforts To Protect Existing Staff

In May, 2012 the Council concurred and directed staff to negotiate a contract with Vertex to upgrade the City's billing system and to provide call center services but to do so *without the displacement of City staff if possible*. After the initial assessment by Vertex, in the spring of 2012, Barry Tippin placed a hiring freeze on appointing new CSRs in order to minimize any impact to City staff should the Council decide to utilize a contract call center. He retained $122,660 in temporary agency staffing for cashiering and clerical work, re-assigned staff from billing to customer contact, assigned supervisory and management staff to customer contact and modified several internal processes to assist in maintaining service levels. (Tippin Dec. ¶ 12.) These efforts were successful at maintaining existing levels of service, which still fell short of industry standards. (Exhs. A & B Tippin Dec., Bryan Dec. ¶¶ 3-4.) The City Council approved outsourcing on September 4, 2012 and the contract on December 4, 2012. (RJN Exhs. A-G.)

B. <u>The City's Ten Year History of Contracting With Private Vendors</u>

Redding City Manager Kurt Starman has been a full-time City employee since 1991 including positions as Administrative Services Director, Deputy City Manager, Assistant City

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Manager and City Manager. (Declaration of Kurt Starman In Opposition to Petitioner's Motion for Writ of Mandate ["Starman Dec".] ¶ 1, p.1.) Mr. Starman thereby acquired a comprehensive understanding of the resources needed to provide services to the general public. (*Id.* at ¶ 3. p.1.) The City of Redding is a full service City providing public safety (police and fire), highways and streets, public improvements, planning and zoning, recreation and parks, library, airports, convention and auditorium facility, utilities (electric, water, wastewater, storm drainage, and solid waste collection and disposal) and general administrative services. The City's annual budget exceeds $293,000,000. (*Id.* at ¶ 2, p.1.)

As of March 30, 2013, the active City workforce consisted of 708 regular full time positions, 38 full time temporary positions and 296 part time positions. (Starman Dec. ¶ 4.) In addition to, or as an alternative to services being provided by persons employed by the City, the City contracts with private sector service providers for many specialized services. (Starman Dec. ¶ 5.) Mr. Starman confirms the accuracy of a chart prepared by Chris Carmona which describes the services the City has contracted for either on an exclusive or supplementary basis over a ten year period, including in the Customer Services Division. These services are contracted for in a wide range of areas where related or the same services are also provided by City staff, including ones represented by SEIU and other unions. (*Id.* at ¶ 5, p.1; Exh. A Declaration of Chris Carmona in Opposition to Petitioner's Motion for Writ of Mandate [Carmona Dec."].) As Mr. Starman emphasizes, the City of Redding, like cities all across California, use contracts with private entities to provides citizens the highest quality services and the best value for their money. (Starman Dec. ¶¶ 6-8, 10.) Indeed, "contract cities" follow the model pioneered by the City of Lakewood and obtain many or most of their services from private and public entities. (*Id.* at ¶ 9.)

C. SEIU-MOU Authorizes Contracting Out As A City Management Right

As SEIU's own moving papers reveal, Article 3, section 3.1 of the current SEIU contract with the City effective in 2008 ("SEIU-MOU") explicitly authorizes the City, as a management right, not subject to grievance, to contract for work to be done or services rendered:

> Notwithstanding anything to the contrary the Union accepts the right of City of Redding to manage the City. This recognition includes the fact that management rights listed below are not subject to either the grievance procedures or the

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> meeting and conferring process provided for by the Meyers Milias Brown Act . . . [M]anagement rights include . . . (i) the right to contract out work to be done or services to be rendered, provided however, that the impact and effect of any such decision may be subject to the meet and confer process . . . .
> (Emphasis added.) (Cutty Dec. Exh. A p. 2.)

City Personnel Director, Sheri DeMaagd first notified SEIU Chapter President Marcia Aimes in May 2012 of the Council's direction as to possible contracting with the Vertex call center while protecting existing staff, sent her and SEIU's business agent Stephen Cutty a link to the staff report for the City Council's September 4, 2012 Council meeting and (see RJN Exh. A-C) invited the Union to meet and confer over the impacts of the decision, which SEIU never accepted once the Council had made the policy decision to contract out on September 4, 2012. (DeMaagd Dec. *passim*.)

D. Call Center Service Dramatically Improves Using Vertex

Using the same billing system used by City staff, except for a one week learning curve, the Vertex call center dramatically improved customer service for Redding residents when it became operational on January 28, 2013 despite a record high volumes of calls. (Tippin Dec. ¶¶14, 15, Exh. C; Bryan Dec.¶5.) Complaints regarding call center services coming into the Electric Department's general phone number and to the City Manager's have noticeably declined since. (*Id.* at ¶ 16.)

E. The March 20, 2013 Contract Amendment Only Increases Cap

The Vertex contract payment terms are based on hourly charges for the CSRs not to exceed monthly caps which were based on historical volumes. The calls for February 2013 were 21% higher than in 2012, 33% higher than the average calls in February from 2009-2012, and 17 percent higher than the highest call volume over that same time period. The cap was thus increased.

F. The City's Severe Hardship If Vertex Contract Cannot Be Implemented

Mr. Tippin states that if the City is unable to continue to provide call center service through Vertex the customer service levels will suffer because the City will have to hire and train new CSRs which will take months and service levels will still not be as good as Vertex. The City will incur the cost of hiring and training new employees and will also incur the cost of approximately

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$300,000 in Call Center contract obligations to Vertex over the same time period assuming a transition period to avoid a precipitous decline in service. The $700,000 Vertex discount on the new billing system could be in jeopardy and the City may be subject to Vertex claims for additional damages. (Tippin Dec. ¶ 18.)

G. The Record of the City Council's September 4, and December 4, 2012 Actions

City Respondents' Request for Judicial Notice ("RJN") is identical to the RJN they filed in support of their prior motion. It attaches the legislative record of the City Council's actions in connection with the Vertex contract, first on September 4, 2012 and then on December 4, 2012. The written and oral reports, Council's questions and the statements made by the Councilmembers who supported the recommendation uniformly indicate that the Council action was intended to correct longstanding performance deficiencies in call center performance by availing the City of the economies of scale and expertise of the Vertex call center while realizing significant costs savings and protecting existing staff.

III. ARGUMENT

A. The City's Broad Powers Are Derived From the California Constitution

The City's powers stem from the California Constitution under both the broad legislative power contained in Article XI section 7 and the more specific power to operate utilities contained in Article XI section 9. SEIU is plain wrong when it asserts that the City needs statutory authority to enter into the Vertex contract.

1. Article XI Section 7 Confers Broad Powers on All Cities

"At all times since adoption of the Constitution in 1879, section 7 of article XI has specified that 'Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.'" (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61.) Former Californian Supreme Court Associate Justice and Hastings College of the Law Professor Joseph Grodin, in his seminal work on the Californian Constitution explains the scope of Section 7:

> Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all

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> cities and counties, regardless of their charter status; however, it has no application to other forms of local government entities, such as special districts:. Section 7 empowers cities and counties to use their general authority, called the police power, to control and regulate any matter or activity that is otherwise an appropriate subject for governmental concern.
>
> . . . .
>
> The drafters intended that local authorities "ought to be left to do all those things that in their judgment are necessary to be done, and that are not in conflict with the general laws of the state." The decision was made then not to restrict local governments narrowly to those specified powers that are overtly granted to them by the legislature but to allow them to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action."
>
> (Emphasis added) (Grodin et al., The Cal. State Constitution: A Reference Guide (2011) p.208 [citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention].); Exhibit D to Declaration of Chad Herrington ["Herrington Dec."].)
>
> The California Supreme Court observed much the same thing:
>
> [L]ocal governments (whether chartered or not) do not lack the power, nor are they forbidden by the Constitution, to legislate upon matters which are not of a local nature, nor is the Legislature forbidden to legislate with respect to the local municipal affairs of a home rule municipality. Instead, in the event of conflict between the regulations of state and of local governments, or if the state legislation discloses an intent to preempt the field to the exclusion of local regulation, the question becomes one of predominance or superiority as between general state laws on the one hand and the local regulations on the other."
>
> [*Bishop v. City of San Jose*, *supra*, 1 Cal.3d at p. 62 [emphasis added].)

The police power granted by the Constitution is "the power of local governments to legislate for the general welfare." (*Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 689) and is "an inherent attribute of political sovereignty." (*Id* at p. 690.) It embraces actions "to promote the economic welfare, public convenience and general prosperity of the community." (*Miller v. City of Los Angeles* (1925) 195 Cal. 477, 485 [citations omitted].) Cities thus have broad powers. (*Sunset Amusement Co. v. Board of Police Comm'rs* (1982) 7 Cal.3d 64, 72.)

General law cities have wide latitude in deciding what municipal services they will provide or services they need. (See *Myers v. City of Calipatria* (1934) 140 Cal.App. 295, 298 ["It was discretionary with the city council whether the office of city attorney should be filled or not."].) General law cities also have broad power to decide the instrumentalities by which

municipal services will be provided. Government Code section 36505 provides: "The City Council shall appoint the chief of police. It *may* appoint a city attorney, superintendent of streets, a civil engineer, and such other subordinate officers or employees *as it deems necessary.*" (Emphasis added.)

A city has the implied powers to carry out its purposes: "In general, powers given to municipal corporations include the further power to employ such modes of procedure as are appropriate and necessary for their effective exercise. (*Ravettino v. San Diego* (1945) 70 Cal. App. 2d 37, 47.) Municipal powers include the power to contract to accomplish municipal functions: "[A] city has authority to enter into contracts which enable it to carry out its necessary functions, and this applies to powers expressly conferred upon a municipality and to powers implied by necessity. [Citation.]" (*Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal.App.3d 724, 734.). Indeed, the very case relied upon so heavily by Petitioner accepts this principle. (*Costa Mesa City Employees Association v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 310 ["cities have the implied authority to enter into contracts to carry out their necessary functions."].)

2. The City Exercised Powers Under Article XI, Section 9

Article XI section 9 provides as follows:

> (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.
>
> (b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law.

Language substantially similar to the language of this section was previously contained in Article XI, Section 19 adopted in 1919.[1] Cases construing its scope date back to Article XI,

[1] Article XI, section 19, provided: "Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such services to inhabitants outside its boundaries; provided, that it shall not furnish any service to the

Section 19. "This section of the Constitution is self-executing, and the Legislature could not, even if it would, limit such authorization and therefore does not require enabling legislation." (*Sacramento Mun. Util. Dist. v. Pac. Gas & Elec. Co.* (1946) 72 Cal. App. 2d 638, 653; [emphasis added] accord *Glenbrook Dev. Co. v. City of Brea* (1967) 253 Cal. App. 2d 267, 273-74 ["Article XI, section 19 of the California Constitution is self-executing, and therefore does not require enabling legislation."]) Thus, on the basis of this Constitutional section alone, the City Council had the power to award the Vertex contract in the absence of any state law regulating utilities with which the City's actions conflict. Petitioner has invoked none and none exist.[2]

B. School Districts And Special Districts Have No Constitutional Powers

By contrast with cities and counties, which have special home rule powers under Article XI section 7, special districts do not:

> Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all cities and counties, regardless of their charter status; however, it has no application to other forms of local government entities, such as special districts:.
>
> (Grodin et al., The Cal. State Constitution: A Reference Guide (2011) p.208 [emphasis added].).

School districts and special districts are creatures of the legislature and possess only those powers conferred on them by the legislature. (See e.g. *Turlock Irrigation Dist. v. Hetrick* (1999) 71 Cal.App.4th 948, 952-953; *People ex rel. City of Downey v. Downey County Water Dist.* (1962) 202 Cal.App.2d 786, 796 ["[e]ven in the limited field of water supply the city appears to have broader powers than a county water district."]; *Wilson v. State Bd. of Ed.* (1999) 75 Cal.App.4th 1125, 1135 [The "Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools;" the power is plenary, subject only to certain constitutional restraints on how the legislature exercises that power.] While school districts and special districts

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inhabitants of any other municipality owning or operating works supplying the same service to such inhabitants without the consent of such other municipality, expressed by ordinance."

[2] At oral argument on Respondents' prior motion, Petitioner's counsel cited an inapposite 1939 case *People v. Willert* (1939) 37 Cal.App.2d Supp. 729. It held only that a motor bus company was required to obtain a permit from the State Railroad Commission's under the state Public Utilities Act and rejected the argument that the motor bus company only needed a permit from the local municipality to conduct business under this section of the Constitution. This case is irrelevant to City Respondents' argument that Article XI § 9 provides self-executing authority to the City of Redding to operate utilities

may indeed be subject to more restrictions on their powers, 53060 was apparently enacted to provide all entities subject to it with the same powers as cities and counties and to codify the case law exempting special services from competitive bidding. (See section C *infra.*)

C. Contemporaneous Construction of the Government Code Sections In Attorney General Opinions Confirms That These Sections are Merely Codification of Cities' Pre-Existing Inherent Powers And the Cases Construing Contracts For Specialized Services As Exempt From Competitive Bidding

1. Government Code section 14 Provides That "May" Is Permissive And An Attorney General's Opinion Concurs

Enacted in 1943, Government Code section 14 provides that, within the Government Code, "'Shall' is mandatory and 'may' is permissive." Relying on section 14, a 1947 Opinion of the Attorney General (Herrington Dec.; Exhibit A) concluded that then Government Code section 4334, which provided for a 5 percent differential for Californian manufacturers in awarding public works contracts, was "optional" because it used the word "may."

2. Gov't Code 37100, 37112, & 53060 Codify Pre-Existing Law

Government Code section 37112 enacted in 1949 provides: "In addition to other powers, a legislative body may perform all acts necessary or proper to carry out the provisions of this title." The Attorney General has opined that this inherent power codified in Government Code section 37112 authorized a city to contract with a private operator to operate a city jail (74 Ops. Cal. Atty. Gen. 109 (1991)) concluding that since the Government Code recognized city jails, a city council may enter into a contract with a private entity to operate a local detention facility as a "necessary or proper" way in which to exercise its power to establish a city jail.

Government Code section 37103 (which Petitioner argues is preemptive) was also enacted in 1949: "The legislative body may contract with any specially trained and experienced person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters. It may pay such compensation to these experts as it deems proper." It did not then nor does it now refer to the operation of a City jail. Yet, without even referring to section 37103, the Attorney General concluded that the contract for the operation of the jail was authorized pursuant to section 37112 as an exercise of necessary and

proper powers to establish a City jail.

Government Code section 53060 was adopted in 1951. It reads:

> The legislative body of any public or municipal corporation or district may contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. The authority herein given to contract shall include the right of the legislative body of the corporation or district to contract for the issuance and preparation of payroll checks. The legislative body of the corporation or district may pay from any available funds such compensation to such persons as it deems proper for the services rendered.

In addressing whether a school district may contract for special legal counsel, the Attorney General determined "that the proper interpretation of section 53060 and allied section 31000, is that a county or school district may employ persons with unique and special skills of the types mentioned when these services cannot be rendered by county or district officers or employees charged with the performance of such duties." ([Exhs. B & C Herrington Dec.; 19 Ops.Cal.Atty.Gen. 153 (1952) [emphasis added]; see also 20 Ops.Cal.Atty.Gen. 21 (1952) [Opining that a "board is without authority to contract with private parties for the performance of duties which the law enjoins upon county officers."].) The AG determined that 53060 and 31000 were "merely a clarification of existing law," which permitted municipalities to contract with persons with special skills without a formal bidding process, but prohibited legislative bodies, entrusted with the expenditure of public funds, from incurring a useless or unnecessary expense for services that another public entity or official already had a duty to perform." (19 Ops.Cal.Atty.Gen at 154; see also *Cobb v. Pasadena City Bd. of Ed.* (1955) 134 Cal.App.2d 93, 95 [Noting that prior to the enactment of Section 53060 it had long been held that where special skills are required and competitive proposals do not produce an advantage, a statute requiring competitive bidding does not apply.)

Had the state Legislature intended to handcuff municipalities with regard to their ability to contract, as suggested by the Petitioner, it simply needed to use the words "may only" instead of just "may" within the statute – a statutory structure the Legislature was certainly more than familiar with in 1951 when section 53060 was enacted. (See Govt. Code, § 16401 [Enacted in

1949 providing that state government revolving funds "may only be used in accordance with law for payment of compensation earned, traveling expenses, traveling expense advances, or where immediate payment is otherwise necessary."[3])

A statute "should be interpreted consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*McGee Street Productions v. Worker's Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 723.) Governments Code sections 14, 37103 and 53060 (all enacted between 1943 and 1951) codify pre-existing law. Cases law confirms that contracts are prohibited only when an existing official is required by law to perform it and can.

3. Case Law Confirms City Respondents' Construction

In *Jaynes v. Stockton* (1961) 193 Cal.App.2d 47, the court relied on the two 1952 Attorney General Opinions discussed above when it held that a school district was prohibited from contracting for specialized legal services because the Government Code and Education Code mandated that such services be performed by the district attorney. In relying on the 1952 Attorney General opinions, the court noted that the "contemporaneous construction of a statute by those charged with its enforcement and interpretation, although not necessarily controlling, 'is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.'" (*Id.* at 56 [citations omitted].) Because the intent of the state Legislature in enacting section 53060 and 31000 was for the statutes to act as "merely a clarification" of existing law at the time, they cannot be read to include an additional or expansive limitation on a municipality's ability to contract for all other services not explicitly mentioned. In *Jaynes*, the Stockton school district was precluded from contracting for legal services that the County Counsel was required and willing to provide to it.

In *Montgomery v. Superior Court* (1975) 36 Cal.App.3d 657, it was contended that a general law city could not remove prosecutorial duties from its city attorney and contract them out. The Court rejected this argument. It noted that the City of Vacaville is a general law city, the duties of city attorneys of general law cities are stated generally including that they "may"

[3] Section 16401 was amended in 1994 to add the phrase "in accordance with the law." (Stats.1994, c. 726 (A.B.3069), § 18, eff. Sept. 22, 1994.)

prosecute, and that "in the construction of the Government Code, the word 'may' is 'permissive' only." (*Id* at p. 665.) The Court held that the City could divest its city attorney of prosecutorial responsibilities and contract with outside counsel to perform them. It rejected the argument that the special services statutes precluded the city's ability to do so except where the duty imposed on a particular official was a mandatory one and it likewise rejected various other statutes describing permissive actions by city attorneys as preemptive. "None of the statutes cited reflect a general 'legislative scheme' under which the State has preempted the subject of a city attorney's duties." (*Id.*)

By analogy, no state statute mandates that City staff must engage in call center billing for utilities, cities have broad legislative powers and discretion under Article XI sections 7 and 9. In short, the attorney general opinions and cases construing the 1949 and 1951 statutes SEIU invokes, in light of the legislature's directive in Government Code section 14 that "may" shall be treated as permissive, treats them as mere codifications of pre-existing law which prohibits a city or county or public corporation from wasting public funds to contract for services that a public official is required to provide and is able and willing to do so. They provide an optional statutory basis for exercise of inherent constitutional power under Article XI sections 7 and 9 and under Government Code section 37112.

In this case Government Code section 36505 provides that the city "*may* appoint a city attorney, superintendent of streets, a civil engineer, and such other subordinate officers or employees *as it deems necessary.*" (Emphasis added.) It could choose instead to contract for services under its inherent power to contract described earlier. Since the 1950s when the City of Lakewood first pioneered its contracting out approach to the delivery of municipal services, 70 contract cities in California provide the vast majority of their services through contracting for services with governmental entities and private vendors as City Manager Kurt Starman notes in his declaration.[4] All cities, as Mr. Starman explains, whether charter or general law, contract with

[4] The movement began in Los Angeles County when a section of Long Beach decided to incorporate (See the following web sites for historical information about the contract cities movement begun by the City of Lakewood : the Los Angeles County public library, the contract cities organization web site and the City of Lakewood home page: http://www.colapublib.org/history/lakewood/faq.html#q3 http://contractcities.org/index.php/about/history; http://www.lakewoodcity.org/about_lakewood/default.asp.

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private individuals and entities to provide services to their residents. The City of Redding has done so for at least ten years, as he notes.

Indeed, even though the allegedly conflicting state statutes have been on the books since 1949 (§37103) and 1951 (§53060) respectively, the SEIU-MOU has provided since at least 2008, that contracting for work done or services rendered is the City's non-grievable management right (Cutty Dec. Exh. A). SEIU never asserted in 2011 (Tippin Dec. ¶ 8, p 3:6-8) or at the September 4, 2012 Council meeting that contracting out was unlawful conduct.

4. There Is No Three-Part Test Under The Special Services Statutes

The three part test for special services cited in more recent cases originated from four factors set forth in *Jaynes* and applies only to services which are mandated by state law to be provided by a particular official. The *Jaynes* court found that:

> As applicable to the statute in question, [the standard for special services] is the result of a composite consideration of various factors; at once apparent are those which relate the nature of the services required to the subject matter thereof (*Cobb v. Pasadena City Bd. of Education*, 134 Cal.App.2d 93, 95), to the qualifications of the person capable of furnishing them (*Kennedy v. Ross*, 28 Cal.2d 569, 574), to their availability from public sources, and to the temporary basis of the employment through which they are obtained. (*Handler v. Board of Supervisors*, 39 Cal.2d 282, 286.)
>
> (*Jaynes*, *supra*, 193 Cal.App.2d at 51-52.)

Notably, in setting forth these factors, the Jaynes court does not provide authority for the notion that "availability from public sources" should be considered, and while the *Handler* court discusses the "temporary basis of employment," it does so in the context of whether a contract for services might conflict with certain charter provisions regarding compensation for county officers. (*Handler*, *supra*, 39 Cal.2d at 286-287.)

Later on in the *Jaynes* opinion, however, when addressing the origins of section 53060 and the two 1952 Attorney General opinions, the court discusses the factor of availability of services from a public source in terms of whether the services are "required to be performed by a public official without charge." (*Id.* at 56-57.) Only then does the court "conclude that Government Code, § 53060 does not empower a school district to contract for special services obtainable from and which the law requires to be performed by a designated public official." (*Id.*

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at 57.)

After *Jaynes*, several courts looked at services contracts and applied a three part test which included an inquiry of "availability" of the services from public sources. (*Serv. Employees Internat. Union v. Bd. of Trustees* (1996) 47 Cal. App. 4th 1661, 1673-1675 [upholding a school district's contract with Barnes & Noble for services related to management and operation of bookstore operations]; *Darley v. Ward* (1982) 136 Cal. App. 3d 614, 627-628 [upholding a contract for management services for county hospitals]; *California School Employees Association v. Sunnyvale Elementary School District Santa Clara County* (1974) 36 Cal.App.3d 46, 60-62 [upholding a contract between the district and a private corporation for the rendition of research and development services].)

While these cases do examine whether existing law mandates that the services at issue be performed by a certain public entity or official, none of these cases link the "availability" factor to that inquiry – the key element in *Jaynes* and the Attorney General opinions the *Jaynes* court relied upon. Instead, these cases look merely to whether the services could be performed by any existing public source. This broad inquiry contradicts the holding of *Jaynes* and the intent of the special services statutes.

D. SEIU's Reliance On *Costa Mesa City Employees Association v. City of Costa Mesa* (2012) 209 Cal.App.4th 298 ("*Costa Mesa*") Is Misplaced

The *Costa Mesa* court stressed the limited nature of the issues before it arising from the trial court's issuance of a preliminary injunction based upon both a possible violation of the Memorandum of Understanding ("MOU") and a claim based on the special services statute. '"[A] preliminary injunction is an order that is sought by a plaintiff *prior to a full adjudication of the merits of its claim.*'" (*Costa Mesa*, *supra*, 209 Cal.App.4th at p. 305.) "The purpose of such an order 'is to preserve the status quo until a final determination following a trial.' It does not constitute a final adjudication of the controversy." (*Ibid* [emphasis added, citations omitted].) The court acknowledged "that cities have the implied authority to enter into contracts to carry out their necessary functions," (*Id.* at 310, [citing *Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal.App.3d 724, 734]) and conceded that the "Supreme Court has long recognized that cities

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derive their authority from . . . the California Constitution." (*Id.* at p. 810 n. 3.) Finally it recognized that "although . . . a city's constitutional authority is subject to the general laws of the state, 'it is otherwise as broad as that of the Legislature' itself." (*Id,* [citations omitted; emphasis added].)

The court described its holding thus: "At this point in the controversy, however, we are convinced CMCEA's members would suffer irreparable harm in the absence of a preliminary injunction, there is 'some possibility' they will prevail on both their contract and statutory claims (which are independent grounds for relief), and the relative harm to the parties favors preliminary relief." (*Id.* at p.316 [emphasis added].) In the body of the opinion the court did observe in dictum "[b]*y implication*, and as interpreted over the years, the statutes generally prohibit a city from contracting with a private entity for nonspecial services." (*Id.* at pp. 315-16 [emphasis added].) "Incidental statements of conclusions not necessary to the decision are not to be regarded as authority." (*Simmons v. Superior Court In and For Santa Barbara County* (1959) 52 Cal.2d 373.) In addition, the court itself also noted "[c]ases are not authority for issues they did not consider." (*Costa Mesa*, *supra*, 209 Cal.App.4th at p. 307.)

The *Costa Mesa* court did not have before it the detailed history of the Government Code sections 14, 37103, 37112, and 53060 as construed by the contemporaneous attorney general's opinions described above. Nor were the binding principles of the preemption doctrine articulated by the California Supreme Court briefed by the parties or discussed by the court.

The *Costa Mesa* Court relied on a 1993 Attorney General's opinion concluding that a general law county may not contract out services based solely on cost. That attorney general's opinion relied solely on the doctrine of *espressio unius exclusio alterius est (*the inclusion of the one excludes the other) citing W*ildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 196. It did not consider the effect of Government Code section 14, the prior Attorney General's 1952 opinions, which concluded that these sections were merely a codification of cities' and counties' inherent powers not to competitively bid specialized services, did not consider the county's Article XI section 7 inherent power which does not require legislative authority to implement, and did not even mention the California Supreme Court's preemption doctrine. Indeed the *expression unius*

principle is inapplicable if its operation would contradict a discernible and contrary legislative intent." (*People v. Anzalone* (1999) 19 Cal.4th 1074, 1079.)

E. No State Statutes Preempt The City's Constitutional Powers

1. Local legislation Must "Conflict" With State Law To Be Invalid

The Article XI, section 7 power is limited to an exercise not in conflict with state law: "A county or city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." (Emphasis added.) The California Supreme Court in *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal 4th 893, reiterated the doctrinal tests, under state preemption doctrine, that must be applied to ascertain whether such a constitutional conflict has occurred which preempts the challenged city action.

"A conflict exists if the local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'" (*Id.* at p. 897 [internal citations and quotations omitted].) "Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Id.*) It contradicts state law when it is "inimical to state law." (*Id.* at p. 898.) Local legislation can also conflict with state law where the legislature has fully occupied the field either expressly or by implication.

2. Government Code §§37103 and 53060 Are Not Preemptive

SEIU has not invoked any expressly preemptive statute. Implied preemption requires either "(1) the subject matter has been so fully and completely covered by general law as to *clearly indicate* that it has become *exclusively a matter of state concern*; (2) the subject matter has been partially covered by general law couched in such terms as to *indicate clearly* that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Id.*) None of these tests are met here.

Government Code section 37103 is a single statute relating to contracts for special services. The subject is neither completely and fully covered nor even partially covered in terms clearly indicating a paramount state concern which will not tolerate local interference. Indeed,

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both Government Code section 14 explicitly defining the use of the term "may" in the Government Code, and the contemporaneous Attorney Generals' opinions construing 37103 and 53060, concluded that they merely codified existing law.

Of course even a literal interpretation of statutes is to be rejected if it would lead to an absurd result. "[W]e may refuse to enforce a literal interpretation of the enactment if that interpretation produces an absurd result at odds with the legislative goal." (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 527 [citing *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735].) Reading 37103 in the manner urged by SEIU would lead to an absurd result as can readily be seen by applying this method to statutes preceding[5] and succeeding this section.[6] Indeed, section 37103 and 53060 do not even contain the same language even though they both apply to cities so each would have to be read to contradict the other. Fortunately, the legislative intent of this grocery list of unrelated powers is stated clearly by the Legislature in the Government Code itself; Government Code section 14 makes clear they are merely a list of permissive statutes.

Under preemption doctrine, the mere fact that the state has not acted cannot be read as a prohibition. "On the contrary, the absence of a statutory restraint is the very occasion for municipal initiative." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707.) The *Fisher* Court stressed that it will be reluctant to find implied preemption "when there is a significant local interest to be served that may differ from one locality to another." (*Id.*) Mr. Starman points out that the services that cities contract for vary significantly from one jurisdiction to another. The very principle of home rule enshrined in section 7 described by Justice Grodin quite obviously contemplates such local variation. Moreover, Petitioner's novel construction of these over 60

[5]For example section 37102 provides: "The legislative body may use any available funds to provide employment to the city's destitute or needy unemployed residents." SEIU would presumably have the Court read this section also to prohibit using public funds for unemployed residents who were not needy or destitute thus imposing a means test on City-run employment programs. It would also prohibit expenditures for other programs for the needy which were not related to employment (such as housing, health, food, and the like). Presumably the section would also prohibit the expenditure of funds for any programs which benefitted non-residents (for example subsidized child care programs for persons who happened to work in the City or preferential permit parking programs for local merchants).

[6] Reading section 37110 in the manner urged by SEIU would also result in an equally absurd result. "The legislative body may spend money from the general fund for music and promotion, including promotion of sister city and town affiliation programs." Again, under SEIU's approach, this section would preclude the expenditure of funds for anything other than the music promotion and sister city programs.

year old statutes would preclude the very existence of contract cities, which were an innovation created at the very dawn of the allegedly preemptive statutes.

F. The Council's Actions Were Authorized By The Special Services Statutes

We start with the plain meaning of 53060. It authorizes a legislative body of a municipal corporation to contract for "special services and advice in financial, economic, accounting, engineering, legal, or administrative matters . . ." According to Dictionary.com the very first meaning of the word "special" is "of a distinct or particular kind or character" and also "having a specific or particular function, purpose." In other words the statute simply provides that the legislative body may contract for particular and distinct services having a special function or purpose. Call center services are certainly distinct have particular character and have a specific or particular function or purpose.

Section 53060 goes on to state that "[t]he authority . . . given to contract shall include the right of the legislative body of the corporation or district to contract for the issuance and preparation of payroll checks." If issuing payroll and preparation of payroll checks is "included" within the special services enumerated (under SEIU's restrictive view of the statute) they must fall within one of the listed types of services described in the statute. Since these services are neither legal nor engineering services they must be services which concern financial, accounting, economic or administrative matters.

The position description for City CSRs (Exh. K, DeMaagd Dec.) requires that they utilize intermediate accounting skills and are involved in the administering of the customer call center. These services are more sophisticated than those issuing and preparing payroll checks so they too would fall into one of the four categories into which payroll services fall, that is financial, economic, accounting or administrative matters. These services involve "administrative matters" as the City's own Council Policy makes explicit. (RJN, Exh. H, p. 1.)

In any event it is far more likely that the list of services are illustrative rather than exhaustive. (See *In re Cox* (1970) 3 Cal.3d 205, 212-217 [Listed factors in Unruh Act are illustrative not exhaustive of the types of discrimination prohibited.]) This would also explain why the different types of services mentioned vary from 31000, (counties) to 37103 (cities) and

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53060 (public and municipal corporations and districts) even though the Attorney General's opinions from 1952 mentioned that they were intended to codify the same exemption from competitive bidding. In any event, whether viewed as illustrative or restrictive the Vertex services are special services within the meaning of section 53060.

Turning to the second prong of section 53060, it provides that the persons contracted should be "specially trained and experienced and competent to perform the special services required." As Barry Tippin's declaration establishes in detail, there is no question that Vertex staff are specially trained to operate a call center for several utilities and their performance since they went live on January 28, 2013 has already brought the performance of the City's call center services up to industry standards. This is actually all that the Government Code requires, even if it were read as restrictive. The issue of whether these services are mandated to be performed by public officials is the only basis to preclude the contract under the clear holdings of both *Jaynes*, *supra* and *Montgomery*, *supra*.

As described in greater detail in section III C, supra at pp. 15-16, *Jaynes*' review of 53060 considers the availability of the service from public sources to be relevant only where the contracted for service is "required to be performed by a public official without charge" (*Jaynes*, *supra*, 193 Cal.App.2d at 56-57.) No such duty is imposed on any public official in this case. Indeed, the services in question are provided under an Article of the Californian Constitution relating to municipalities operating utilities which the courts have found to be self-executing.

The City Council made detailed findings. (RJN, Exh. D, p, 9-10.) It found that, "the outsourcing of call center services will maintain a superior and more consistent level of service to Redding Customers due to the efficiencies of scale and the ability of Vertex to flexibly add and delete resources, including customer service representatives, to meet call demands coming from Redding utility customers;" it noted that the SEIU MOU "provided the City with the right to contract out work done and services rendered provided that the impact and effect of any such decision may be subject to the meet and confer process" it invoked its authority under sections 37103 and 53060 to contract for special services, it noted that "the Department of Labor recognizes 'Telephone Call Centers' as a type of specialized business and tracks labor statistics for that

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industry," it observed that "the United States Congress has recognized telephone call centers as a specialized businesses and a bill is currently pending in Congress called the United States Call Center Worker and Consumer Protection Act relating to address the growing trend of outsourcing call centers services to businesses in foreign countries" and lastly it resolved based on these findings the Council found "the call centers services are a specialized service and may be outsourced" and therefore approved the contract between the City and Vertex.

G. The Council's Discretionary Action May Not Be Set Aside Unless It Was Arbitrary and Capricious, Wholly Without Evidentiary Support Or Unlawful

"A court is without power to interfere with a purely legislative action, in the sense that it may not command legislative acts. The reason for this is a fundamental one: it would violate the basic constitutional concept of the separation of powers among the three coequal branches of government." (Witkin, 8 Cal. Proc. (5th ed.2008) Extraordinary Writs, §93, pp. 983.) The standard of review for a mandate action which challenges a discretionary decision on grounds of an abuse of discretion is whether the challenged decision was arbitrary or capricious and lacked evidentiary support. (*Id*) The California Supreme Court explains this standard of review similarly. The only relevant question is whether the legislative action "was arbitrary, capricious, entirely lacking in evidentiary support, or procedurally unfair" and "whether the [challenged action] is consistent with applicable law." (*Associated Building & Contractors Inc. v. San Francisco Airports Commission* (1999) 21 Cal.4th 352, 361.) Courts do not inquire "whether, if we had the power to do so, we would have taken the action taken by the agency." (*Id.*)

1. The Council's Decision Was Thoughtful And Well Considered.

The City Council acted to redress many years of deficient performance in its call center which fell far below industry standards and caused ongoing hardships for Redding utility customers. In other words, the Council realized that the City simply could not provide the requisite level of service with its own staff because of the small size of the operation and its inability to meet peak volume demand. Vertex is already meeting industry standards using the same software as staff before the billing system upgrade. The Council's decision also had the effect of saving the City $700,000 in the costs of the billing system upgrade and is projected to

save $500,00 a year once fully operational, without costing any employees their jobs. This is remarkable. The declaration from Tamra Ketcham submitted by SEIU is irrelevant because it was not presented to the Council, relies on speculation that a new system would somehow solve the problems of the small staff-operated call-center without ability to increase staffing in high call volume periods, and in any event the Vertex call center is already operating at or above industry standards using the old billing system, which has not yet been upgraded.

2. The Council's Decision Was Supported By Overwhelming Evidence

The staff written and oral reports before the City Council summarized the problems the City sought to correct, which are recounted in greater detail in the City's Declarations. No SEIU representative provided any information to the contrary. Thus, the evidence in the record before the Council was ample and consistent.

3. The City Council Acted In Accordance With Its Constitutional and Statutory Powers

As the City has exhaustively explained, the source of the City's power to act is the California Constitution in both Article XI section 7 and Article XI. Section 9. The former is the primary home rule provision intended by the framers to obviate the need for cities to seek legislative authority before taking action. Article XI section 9 specifically authorizes cities to operate utilities. This section has been found to be self-executing. Thus, the City Council acts pursuant to this section when it operates utilities. It may therefore operate these utilities in any manner it sees fit. A general statute having nothing to do with utilities cannot take away the City's constitutional powers.

City Respondents have systematically described the history of the 1949 and 1951 statutes and their contemporaneous construction by the Attorney General that they were merely intended as a clarification of preexisting laws that provided that specialized services did not have to be competitively bid and that contracts could not result in wasting funds to purchase services that were required to be performed by an existing official who was able to provide the services. They were not designed to keep a bureaucracy in place, when it could not meet residents' needs. SEIU's MOU explicitly recognizes this principle and the City has been contracting out for at least

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ten years. The case law has made that clear and in any event the Council's actions were well within the special services statutes and its powers under Government Code section 37112.

H. Petitioner Lacks Standing to Bring This Suit

"The standing requirement is jurisdictional and may be raised at any time in the [writ] proceedings. To establish a beneficial interest, the petitioner must show he or she has some special interest to be served or some particular right to be preserved or protected through issuance of the writ. Stated differently, the writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232 [internal citations and quotations omitted].) "This standard is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered an invasion of a legally protected interest that is both 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" (*California Association of Home Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 706 [Internal citations and quotations omitted].)

In a case previously relied on by SEIU, *Building Materials Union Teamster's Union Local 216 v. Farrell* (1986) 41 Cal.3d 651, the Teamster's union had standing to pursue a suit alleging that positions had been eliminated and employees terminated in violation of the employer's duty to meet and confer under the Meyers-Milias-Brown Act ("MMBA"). The remaining cases cited by Petitioner also involved collective bargaining issues and none involved standing under CCP § 1086[7]. No such allegation has been made in this case and could not have been made because the SEIU-MOU specifically authorizes contracting out. (Exh. A, Cutty Dec.)

"To establish associational standing, [an entity] must demonstrate that its members would otherwise have standing to sue in their own right." (*Associated Building & Contractors Inc. v. San Francisco Airports Commission* (1999) 21 Cal.4th 352, 361.) **Here seven vacant positions, not employees, have been eliminated**. No employee would have standing to sue in his or her

[7] See *Building Material & Construction Teamsters' Union v. Farrell*, 41 Cal.3d 651 (1986), *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. N.L.R.B.* ["*Int'l Union*"], 381 F.2d 265 (D.C. Cir. 1967), and *Office and Professional Emp. Intern. Union, Local 425, AFL-CIO v. N.L.R.B.*, 419 F.2d 314 (1969).

own right for lack of any concrete or particularized injury. Thus, SEIU likewise has no standing to sue given its associational status.

I. Petitioner's Claims Are Barred By Laches

SEIU previously cited to a case holding that a petitioner who unreasonably delays suit causing prejudice to the respondents is barred by laches. (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359.) Like the union in the *Costa Mesa* case SEIU could have filed suit right after September 4, 2012, when the City Council decided to outsource the call center rather than seeking relief now four months later when the City will suffer severe prejudice to its customer service operation and possibly hundreds of thousands of dollars in costs.

IV. CONCLUSION

SEIU has stood silently by for ten years, at minimum, without invoking its radical new theory that the City may never contract for services previously performed by any City employee even though the statutes that it now claims require this result were enacted respectively in 1949 (Government Code section 37103) and 1952 (Government Code Section 53060). SEIU does not even purport to represent any real human beings who have lost City employment and only seven vacant positions are at stake. In effect, this claim turns the City Council's budgetary and policy decisions to promote the welfare of all the citizens of Redding into a full employment act for public employees. Lawsuits would ensue every time any services are contracted for, further congesting an already overburdened and under-funded justice system and violating the separation of powers doctrine. This unwarranted intrusion into the Council's constitutional prerogatives should be firmly and roundly rejected.

Dated: April 18, 2013

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