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1 and

2 WHEREAS, the Perlman Memorandum further states that the rate of
3 pay provided for the COO is determined to be “appropriate”, under the
4 terms of the Administrative Instruction, if the COO returns to classified
5 service with the City; and

6 WHEREAS, it is believed that Mr. Adams rate of pay currently
7 approximates \$147,000; and

8 WHEREAS, on December 21, 2009, in an Interoffice Memorandum
9 (“City Attorney Memorandum”) to David Campbell, City Attorney Robert
10 White opined that the Perlman Memorandum “does form an enforceable
11 employment contract with the City consistent with the authority granted
12 to the CAO...”; and

13 WHEREAS, the City Attorney further opined that the MSO provisions
14 that require a pay plan can be ignored by the CAO and that the CAO is
15 empowered to enter into contracts to provide any salary to any
16 employee; and

17 WHEREAS, the salary range for an M-20 classification starts at about
18 \$34 per hour and goes to about \$56 per hour and should not exceed
19 approximately \$104,000 annually; and

20 WHEREAS, the City Attorney Memorandum purports to be based on
21 three provisions of the City’s Merit System Ordinance (“MSO”) as well
22 as AI No. 7-46 quoted above; and

23 WHEREAS, it also appears that Mr. Adams was appointed CAO in
24 violation of Section 3-1-6 of the MSO and without benefit of City Council
25 consideration of the contract indicated at Section 3-1-6; and

26 WHEREAS, as reported in the press, the City Attorney has now
27 concluded that contrary to the MSO, the previous administration
28 inappropriately contracted, and, waived or caused to be waived various
29 probationary and other requirements of the MSO regarding select City
30 employees; and

31 WHEREAS, the City Council is specifically empowered under the City
32 Charter to: “Preserve a merit system by ordinance.” Art. IV, § 10(e); and

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1 WHEREAS, the City Council has established a specific process to
2 determine the salaries to be paid to classified employees; and

3 WHEREAS, the "anti-donation clause" at Article IX, Section 14 of the
4 New Mexico Constitution, in part, prohibits the City from making "a gift,
5 an allocation or appropriation of something of value, without
6 consideration to a person, association or public or private corporation";
7 and

8 WHEREAS, contracts that are not otherwise provided for in another
9 portion of the City Code must comply with the Purchasing Ordinance. In
10 part, that ordinance requires that professional services contracts for
11 more than \$55,000 require City Council approval. § 5-5-19(A)(3)(c) ROA
12 1994. The Perlman Memorandum was not approved by the City Council;
13 and

14 WHEREAS, there are any number of arguments to dispute the claim that
15 the Perlman Memorandum is an enforceable contract; and

16 WHEREAS, the administration should be directed to investigate, to
17 the fullest extent of the law, the enforceability and legality of the
18 Perlman Memorandum, Administrative Instruction No. 7-46, the previous
19 Administration's violation of the MSO, the Purchasing Ordinance and
20 possibly the State Constitution.

21 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
22 ALBUQUERQUE:

23 Section 1. The Administration is directed to investigate and take all
24 necessary and legal action, including the filing of a declaratory judgment
25 proceeding, to ascertain the legality and enforceability of the Perlman
26 Memorandum and Administrative Instruction No. 7-46.

27 Section 2. The Administration should give due regard to:

- 28 a. The authority of the CAO to issue AI No. 7-46;
- 29 b. Whether the Perlman Memorandum and the Administrative
30 Instruction violate the MSO;
- 31 c. Whether the Perlman Memorandum and the Administrative
32 Instruction violate the Purchasing Ordinance;

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- d. Whether the Perlman Memorandum and the Administrative Instruction violate the State Constitution;
- e. Whether the Perlman Memorandum and the Administrative Instruction violate the Municipal Code or any other provision of state law; and
- f. Whether the CAO is empowered to negotiate employment contracts, and, if so, the limits of such authority.

Section 3. The Administration is further directed to develop ordinance amendments that preclude any practice that permits unclassified employees to be compensated for work not performed on behalf of the City.