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[EXEMPT FROM FILING FEES
GOV. CODE § 6103]

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13 City of Riverside, a California charter
City and municipal corporation

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15
16 **FOR THE COUNTY OF RIVERSIDE**

18 JAVIER MORENO, an individual; and VIVIAN
19 MORENO, an individual,

20 Petitioners and Plaintiffs,

21 v.

22 CITY OF RIVERSIDE; and DOES 1 through 10,

23 Respondents and Defendants.

CASE NO. RIC 1210249
Unlimited Jurisdiction

(Case assigned to Hon. John Vineyard)

**DEFENDANT CITY OF RIVERSIDE'S
RESPONSE TO PLAINTIFF JAVIER
MORENO AND VIVIAN MORENO'S
FIRST SET OF FORM
INTERROGATORIES**

Complaint Filed: 7/6/2012

26 PROPOUNDING PARTY: JAVIER MORENO and VIVIAN MORENO, Plaintiff

27 RESPONDING PARTY: CITY OF RIVERSIDE, Defendant

28 SET NO.: ONE

1
2 Pursuant to Code of Civil Procedure section 2030.210, Respondent and Defendant City of
3 Riverside (“City” or “Respondent”) hereby responds to Petitioners and Plaintiffs Javier Moreno and
4 Vivian Moreno’s (“Petitioners”) First Set of Form Interrogatories as follows:
5

6 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

7 1. These responses are made solely for purposes of this action. Each response is subject
8 to all of the appropriate objections, including but not limited to objections concerning privilege,
9 competency, relevancy, materiality, propriety and admissibility, which would require the exclusion
10 of any statement contained herein if the interrogatory were responded to by a witness present and
11 testifying at trial. All such objections and grounds are reserved and may be interposed at the time of
12 trial.

13 2. Investigation and discovery in this action is ongoing. Respondent has not yet
14 completed its investigation of the facts relating to this action, has not yet reviewed all documents
15 relating to this action (such as those potentially in the possession of third parties), has not yet
16 interviewed all witnesses to this action, and has not yet completed its preparation for trial.
17 Consequently, the following responses are given without prejudice to Respondent’s right to produce
18 at the time of trial subsequently discovered evidence relating to proof of presently known material
19 facts and to produce all evidence, whenever discovered, relating to the proof of subsequently
20 discovered material facts.

21 3. No admissions of any nature whatsoever are implied or should be inferred from these
22 responses. The fact that responses to any interrogatories herein have been provided should not be
23 taken as an admission or acceptance of the existence of any facts set forth or assumed by such
24 response, or that such responses constitute admissible evidence.

25 4. Because some of these responses may have been ascertained by Respondent’s
26 attorneys and investigators, Respondent may not have personal knowledge of the information from
27 which these responses are derived.
28

1 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

2 Jon di Cristina and Holly Whatley, Colantuono & Levin, PC, 300 South Grand Avenue, Suite
3 2700, Los Angeles, California 90071, (213) 542-5700, Attorneys for Respondent.

4 Susan Wilson, Deputy City Attorney, Office of the City Attorney, City of Riverside, 3900
5 Main Street, Riverside, CA 92522, Attorney for Respondent.

6 Scott Catlett, Assistant Finance Director, City of Riverside.

7
8 **FORM INTERROGATORY NO. 17.1:**

9 Is your response to each request for admission served with these interrogatories an
10 unqualified admission? If not, for each response that is not an unqualified admission:

11 (a) state the number of the request;

12 (b) state all facts upon which you base your response;

13 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
14 knowledge of those facts; and

15 (d) identify all DOCUMENTS and other tangible things that support your response and state
16 the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

17 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

18 (a) **Request for Admission No. 1.**

19 (b) The revenues discussed in this Request for Admission constitute payments in lieu of
20 taxes ("PILOT"), as described in *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127
21 Cal.App.4th 914, 921–22. Under section 1204, subd. (f) of the City's charter, this PILOT was
22 transferred from the City's water utility ("Utility") to its general fund to cover costs that were
23 associated with the Utility's operations, and that were paid out of the City's general fund. To be
24 valid under Proposition 218, PILOT need not correlate directly to the costs it covers, but simply
25 must be reasonably related to those costs. (See *id.* at p. 923; *Howard Jarvis Taxpayers Assn. v. City*
26 *of Roseville* (2002) 97 Cal.App.4th 637, 648; see also *Collier v. City and County of San Francisco*
27 (2007) 151 Cal.App.4th 1326, 1349; *Bay Area Cellular Telephone Co. v. City of Union City* (2008)
28 162 Cal.App.4th 686, 694–95.)

1 Moreover, the costs attributable to the Utility are not fully recovered by the City's general
2 cost allocation plan and the transfer covers those otherwise unrecovered costs.

3 (c) City staff as follows: Brent Mason (Finance), Scott Catlett (Finance), Kevin Milligan
4 (Water), Laura Nomura (RPU CFO), Tom Boyd (PW Director). Staff may be contacted through
5 counsel for Respondents.

6 (d) Cost Allocation Reports (bates numbers RIV002087 to RIV 010734); Safe W.A.T.E.R.
7 Plan (bates numbers RIV000821 to RIV001134); Map of Corporate Yard with Titles and Boundaries
8 (bates number RIV010761).

9
10 **(a) Request for Admission No. 2.**

11 (b) The revenues discussed in this Request for Admission constitute payments in lieu of
12 taxes ("PILOT"), as described in *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127
13 Cal.App.4th 914, 921–22. Under section 1204, subd. (f) of the City's charter, this PILOT was
14 transferred from the City's water utility ("Utility") to its general fund to cover costs that were
15 associated with the Utility's operations, and that were paid out of the City's general fund. To be
16 valid under Proposition 218, PILOT need not correlate directly to the costs it covers, but simply
17 must be reasonably related to those costs. (See *id.* at p. 923; *Howard Jarvis Taxpayers Assn. v. City*
18 *of Roseville* (2002) 97 Cal.App.4th 637, 648; see also *Collier v. City and County of San Francisco*
19 (2007) 151 Cal.App.4th 1326, 1349; *Bay Area Cellular Telephone Co. v. City of Union City* (2008)
20 162 Cal.App.4th 686, 694–95.)

21 Moreover, the costs attributable to the Utility are not fully recovered and the transfer covers
22 those otherwise unrecovered costs.

23 (c) City staff as follows: Brent Mason (Finance), Scott Catlett (Finance), Kevin Milligan
24 (Water), Laura Nomura (RPU CFO), Tom Boyd (PW Director). Staff may be contacted through
25 counsel for Respondents.

26 (d) Cost Allocation Reports (bates numbers RIV002087 to RIV 010734); Safe W.A.T.E.R.
27 Plan (bates numbers RIV000821 to RIV001134); Map of Corporate Yard with Titles and Boundaries
28 (bates number RIV010761).

1 (a) **Request for Admission No. 3.**

2 (b) To be valid under Proposition 218, revenues need not correlate directly to the costs they
3 cover, but simply must be reasonably related to those costs. (See *Collier v. City and County of San*
4 *Francisco* (2007) 151 Cal.App.4th 1326, 1349; *Bay Area Cellular Telephone Co. v. City of Union*
5 *City* (2008) 162 Cal.App.4th 686, 694–95.)

6 (c) City staff as follows: Scott Catlett (Finance), Laura Nomura (RPU CFO). Staff may be
7 contacted through counsel for Respondents.

8 (d) Riverside Public Utilities, 2012 Financial Report (2012) available at
9 <<http://www.riversideca.gov/utilities/admin-annualreports.asp>> (as of Dec. 18, 2012).

10

11 (a) **Request for Admission No. 4.**

12 (b) To be valid under Proposition 218, revenues need not correlate directly to the costs they
13 cover, but simply must be reasonably related to those costs. (See *Collier v. City and County of San*
14 *Francisco* (2007) 151 Cal.App.4th 1326, 1349; *Bay Area Cellular Telephone Co. v. City of Union*
15 *City* (2008) 162 Cal.App.4th 686, 694–95.)

16 (c) City staff as follows: Scott Catlett (Finance), Laura Nomura (RPU CFO). Staff may be
17 contacted through counsel for Respondents.

18 (d) Riverside Public Utilities, 2012 Financial Report (2012) available at
19 <<http://www.riversideca.gov/utilities/admin-annualreports.asp>> (as of Dec. 18, 2012).

20

21 (a) **Request for Admission No. 5.**

22 (b) The City is authorized to collect payments in lieu of taxes (“PILOT”) to cover the costs
23 associated with the City’s water utility’s service. (*Howard Jarvis Taxpayers Assn. v. City of Fresno*
24 (2005) 127 Cal.App.4th 914, 921–22, 923; *Howard Jarvis Taxpayers Assn. v. City of Roseville*
25 (2002) 97 Cal.App.4th 637, 648; see *Collier v. City and County of San Francisco* (2007) 151
26 Cal.App.4th 1326, 1349; *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162
27 Cal.App.4th 686, 694–95.) Section 1204, subd. (f) of the City’s Charter allows PILOT to constitute
28 “an amount not to exceed 11.5 percent” of the water utility’s gross operating revenues for the prior

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1 fiscal year. This language has been in the City's Charter since it was approved by 74 percent of the
2 voters in 1977.

3 Moreover, the Charter has contained the GFT concept since its inception. The original
4 charter (approved by a majority of voters on March 1, 1907), Section 162, provided that utility rates
5 "should preferably, but not necessarily, yield a reasonable profit and interest on the investment to the
6 city" Section 172 further provided that, on an annual basis, any funds remaining after the
7 utilities have paid their specified expenses shall be transferred to the general fund. Further still, the
8 voters approved a version of the Charter on June 4, 1968, effective July 16, 1968, that added a GFT
9 transfer of "an amount equal to 11.5% of the gross operating revenues."

10 (c) Susan Wilson, Deputy City Attorney, Office of the City Attorney, City of Riverside,
11 3900 Main Street, Riverside, CA 92522, Attorney for Respondent. Colleen Nicol, City Clerk, City of
12 Riverside, 3900 Main Street, Riverside, CA 92522.

13 (d) Charter of the City of Riverside, § 1204, subd. (f). Charter of the City of Riverside
14 (approved by voters March 1, 1907) available from City Clerk, City of Riverside. Charter of the City
15 of Riverside (approved by voters June 4, 1968) available from City Clerk, City of Riverside.

16
17
18 DATED: January 9, 2013

COLANTUONO & LEVIN, PC

19
20 

21 HOLLY O. WHATLEY
22 Attorneys for Defendant
23 City of Riverside
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I have read the foregoing RESPONSE TO PLAINTIFFS' FIRST SET OF SPECIAL INTERROGATORIES and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and to those matters I believe them to be true.

I am an officer a partner FINANCE DIRECTOR OF CITY OF RIVERSIDE, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 1/8/13, at RIVERSIDE, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

BRENT A. MASON

Type or Print Name

Brent A. Mason

Signature

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PROOF OF SERVICE

**Javier Moreno v. City of Riverside
Case No. RIC 1210249**

I, Martha C. Rodriguez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071. On January 9, 2013, I served the document(s) described as **DEFENDANT CITY OF RIVERSIDE'S RESPONSE TO PLAINTIFF JAVIER MORENO AND VIVIAN MORENO'S FIRST SET OF FORM INTERROGATORIES** on the interested parties in this action as follows:

By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Eric J. Benink, Esq
Mary K. Wyman, Esq.
KRAUSE, DALFAYAN, BENINK & SLAVERNS, LLP
550 West C Street, Suite 520
San Diego, CA 92101
619 232-0331 - office
619 232-4019 fax


(Courtesy Copy)
GREGORY P. PRIAMOS, City Attorney #136766
SUSAN D. WILSON, Deputy City Attorney #157652
CITY OF RIVERSIDE
City Hall, 3900 Main Street
Riverside, CA 92501
951 826-5540

Attorneys for Defendant
City of Riverside, a California charter
City and municipal corporation

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 9, 2013, at Los Angeles, California.


Martha C. Rodriguez