February 2017

California Bar Examination

Performance Test B

INSTRUCTIONS AND FILE

CLAIM BY BLANCHARD ENGINEERING, INC.
AGAINST CITY OF CORSON

CLAIM BY BLANCHARD ENGINEERING, INC.
AGAINST CITY OF CORSON

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. Although there are no parameters on how to apportion your time, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

Trammell, Simmons and Volz, PC

433 Corson Courthouse Square

Corson, Columbia

MEMORANDUM

TO: Applicant

FROM: John Trammell

DATE: February 23, 2017

RE: Claim by Blanchard Engineering, Inc. against City of Corson

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We have received a request from Mike Bryant, the city attorney for the City of Corson, to evaluate a potential lawsuit against the City. Blanchard Engineering, Inc. performed services for the City as part of a potential upgrade to the City's wastewater treatment plant.

However, Blanchard claims that the City owes it over $200,000 for services rendered pursuant to discussions that never resulted in a contract formally approved by the City Council. Blanchard sent an invoice to the City requesting payment, which the City has denied. Blanchard acknowledges that the contract never received a formal vote from the City Council. However, Blanchard's attorney has told the city attorney that, unless this case settles, Blanchard intends to file suit on a *quantum meruit* claim.

Please prepare an objective memorandum answering these questions:

1) Whether the City is immune from Blanchard's claim for *quantum meruit*.

2) Whether Blanchard can prove its claim for *quantum meruit.*

3) How a court might go about evaluating damages if Blanchard were to recover under *quantum meruit*.

Do not prepare a separate statement of facts, but make sure to use the facts in your analysis of the questions.

CITY OF CORSON

OFFICE OF THE CITY ATTORNEY

800 Main Street

Corson, Columbia

MEMORANDUM

TO: John Trammell

FROM: Mike Bryant, City Attorney, City of Corson

DATE: February 22, 2017

RE: Claim by Blanchard Engineering, Inc. against City of Corson

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John: This memo asks your firm to assess a potential claim by Blanchard Engineering, Inc. against the City of Corson. Blanchard has demanded payment on an invoice it sent to the City, for services it began and completed before the last election. The new mayor and City Council refused payment in January 2017. Blanchard's lawyer called me several times to indicate that his client takes its demand seriously, and will file suit unless we can work something out. If the City decides not to settle, I anticipate asking your firm to handle the litigation.

Briefly, this dispute involves services that Blanchard rendered in connection with the City's efforts to upgrade its wastewater treatment facility, which the City owns and operates. The City hired Blanchard to help it put together an application for a state infrastructure grant to upgrade the plant. The City entered into a distinct contract, approved in compliance with the City Charter, to get Blanchard's initial advice on how to prepare an application for this funding. Blanchard provided that advice and the City paid Blanchard. That contract is not in dispute.

On June 10, 2016, Mayor Justine Reyes presented me with a new proposal from Blanchard, encompassing additional work in pursuit of the grant. On the same

day, I drafted a proposed contract embodying those terms and returned it to Mayor Reyes for further handling.

The progress of discussions concerning the June proposal appears in my interview notes with Mayor Reyes. She spoke with Bill Blanchard on June 13, 2016, and committed to bring the June proposal to the City Council for review and approval. For various reasons, that did not occur until August 8, 2016. The meeting that day was a public meeting; present were myself, Mayor Reyes, a majority of the Council and Bill Blanchard. I attach a transcript of all portions of the meeting concerning Blanchard's work. As you will see, I had signed a copy of the June proposal, as had Bill Blanchard, but the proposal never received a formal vote, and no entry concerning the June proposal ever appeared in the council journal.

By October 2016, Blanchard had completed substantially all of the work detailed in the June proposal. However, on October 18, 2016, we learned that the City of Corson's application for infrastructure funding was denied. Renovation of the facility never began.

On election day in early November 2016, Mayor Reyes lost her re-election bid. Moreover, because of attrition and contested seats, a majority of the council seats changed hands. In general, the new mayor and new council members articulated a more fiscally conservative position than the outgoing holders of those seats. The new mayor and Council came into office in early January of this year.

Blanchard submitted its invoice in mid-November 2016, but the City took no action before the new administration came into office in January 2017. After that, the new mayor contacted me about Blanchard's invoice. He indicated that, in his view, Blanchard had no claim. He said that, since the City didn't get the grant, he

didn’t think that the City got any value from Blanchard’s work. The City wrote Blanchard in January 2017, refusing to pay the invoice.

In the conversations I have had with Blanchard’s attorney, he acknowledged that the June 2016 proposal had never received a final vote. At the same time, he indicated his belief that the City got exactly what it bargained for, on time and under budget.

CITY OF CORSON

OFFICE OF THE CITY ATTORNEY

800 Main Street

Corson, Columbia

MEMORANDUM

TO: File

FROM: Mike Bryant, City Attorney, City of Corson

DATE: February 13, 2017

RE: Claim by Blanchard Engineering, Inc. against City of Corson

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I spoke with former Mayor Justine Reyes about her contact with Blanchard Engineering and Bill Blanchard in the course of their work on the City of Corson wastewater treatment facility. This memorandum summarizes what she told me. I believe that, if required to do so, she will testify consistently with the facts stated in this memorandum, and that she will be credible.

Mayor Reyes became mayor in 2012. The City experienced slow but steady growth during her tenure. It became increasingly clear that the City's wastewater treatment facility could not keep up with the demand posed by the growing population. The facility badly needs upgrading. It also became clear that the City could not afford major expenditures on improvements to the facility. Mayor Reyes held periodic conversations with representatives of various state and federal regulatory agencies about the facility. Those representatives made clear that, while the facility was currently in compliance, it would fall out of compliance within the next several years. Mayor Reyes understood the representatives to say that failure to upgrade the facility could result in fines totaling several million dollars.

In the fourth year of her term, Mayor Reyes became aware of state grants that would support infrastructure projects, including improvements in wastewater treatment facilities. After some research, she entered into an arrangement with Blanchard Engineering, Inc., an engineering firm from Columbia City with whom neither she nor the City had had prior dealings. Blanchard had expertise in designing and managing wastewater treatment facilities, and in assisting state and local governments in obtaining funding for significant wastewater improvement projects.

Reyes arranged for Blanchard to give the City advice on the steps the City would have to take to obtain the state funding. Blanchard did so promptly, and received payment for that advice from the City. That advice made clear that, in order to qualify for the funding, the City would need to prepare actual design engineering specifications, since the project needed to be "shovel-ready" by November 2016. This work included assessment of the facility's existing capacity, analysis of the relevant EPA and Columbia EPA regulatory requirements, preparation of specific engineering and building designs, negotiations with contractors and suppliers, and applications for relevant permits and permissions. Blanchard Engineering prepared a proposal to accomplish this work for $210,000. It presented that proposal to Mayor Reyes on June 9, 2016.

Mayor Reyes obtained a draft contract based on those terms from the city attorney on June 10, and met again with Bill Blanchard on June 13. On that date, Bill Blanchard told Mayor Reyes that it would take almost the entire time between then and November to get the project "shovel-ready." He wanted assurances that the City would follow through on the contract if Blanchard invested its time and expertise in the project. Mayor Reyes assured him that she had the support of the City Council, and that she would present the contract for review and approval by the Council at the earliest opportunity. She told Blanchard to go ahead with the project.

Mayor Reyes did not get the project on the council agenda until August 8, 2016. She indicated that a transcript of that meeting would provide full details about what was said. However, she confirmed that, while all seven members of the Council voiced support for the June proposal, due to the press of business, the Council did not vote on the June proposal. She also confirmed that no vote was ever taken, nor was any note of the Council's opinion ever entered into the council journal. Mayor Reyes explained that neither she nor the Council thought that the project posed a controversial issue. Moreover, she and many council members were locked in difficult re-election fights, which distracted them through much of the fall.

Mayor Reyes received regular reports from Blanchard Engineering and Bill Blanchard on progress under the plan. By October 14, 2016, preparations were substantially complete, and Blanchard had delivered all its designs for the plant, along with a full schedule for construction, to Mayor Reyes. On October 18, 2016, the City received notice that its application had been denied. Slightly over two weeks later, Mayor Reyes lost her re-election bid.

She remained in her position as mayor through the beginning of January 2017. When the invoice from Blanchard Engineering arrived in November, Mayor Reyes consulted with the incoming mayor, who told her not to take action on it, but to leave it for him and the incoming City Council to handle.

TRANSCRIPT
CORSON CITY COUNCIL MEETING
August 8, 2016

Mayor Reyes called the roll. All council members present, including the Mayor, Council Members Frank, O'Bryan, Finzler, Manton, Sidney, and Baldwin. Also present: City Attorney Bryant, Mr. William Blanchard.

Abbreviations:
CM = Councilman
CW = Councilwoman

Mayor: I see that all are present . . . .

* * * *

Mayor: I want to turn to the wastewater treatment facility issue now. Mike Bryant, as city attorney, has some information for us. We also have Bill Blanchard from Blanchard Engineering on hand to give us an update. Mike, would you start us off?

Attorney Bryant: Yes, Madam Mayor. As the Council can see from the notice of today's meeting, the City got advice from Blanchard Engineering, Inc. in May on how to apply for funding to upgrade the wastewater treatment plant. That told us that the improvement project had to be ready to go as of mid-November. Madam Mayor, do you want to say more about this?

Mayor: Of course. In working with Bill Blanchard, we realized that we have to get the whole project ready to start on November 15th of this year. To do that, we have to have a design; we have to have permits; we have to have contractors and subcontractors and suppliers and what have you; we have to have the EPA and the Columbia EPA signing off . . . and if we don't have all of this in time, we won't get the funding. It was my judgment that there was no way that we could do this on our own. I also knew that the City had to do this; we can't rely on a private utility to take this off our hands.

So I talked with Bill Blanchard, who had been doing really great work for us. He said that his firm could do it on a short deadline, so he put together a proposal. I ran it by Mike Bryant, who drafted a contract for me to talk over with Blanchard. On my authority, Blanchard got started in mid-June.

Attorney Bryant: The contract that you have in your hands today was the one that I prepared for Mayor Reyes in June. The City Charter requires that I review and sign it before you vote on it, which I have done. You'll see that Bill Blanchard has signed it on behalf of Blanchard Engineering. The only thing left to do is for the Council to vote, and then to enter it into the council journal.

Mayor: Maybe in a minute we can hear from Bill Blanchard about his progress on the project. But first I want to see if you have questions about this. Before you do, I want to say that I would not have authorized this without having talked with each of you privately beforehand. I think I remember having

your okay then. And let me say that this is a great chance to improve a key component of our infrastructure at minimal cost to the City.

CM Frank: I remember, Justine. I agree that this is a good project, and see no reason not to move forward. I'll want to hear from Bill Blanchard about progress though, and the chances that we'll get the money.

Mayor: Okay.

CW O'Bryan: I remember this project from May. I remember thinking then that the application would be harder than we thought. So it makes sense that we get some expert help with this.

Mayor: Any other questions or comments?

CM Finzler: None here. I'm comfortable with this direction.

CM Manton: I have only one question. If I read the contract right, you're going to need $200,000 . . . no, $210,000 to get this project ready. Is that right, Mr. Blanchard?

Mr. Blanchard: That's correct.

CM Manton: That's a lot of money. The Mayor's told us why she thinks it takes that much. Can you explain it in your words?

Mr. Blanchard: Of course. The funding application requires that the funds be committed within the fiscal year of award. Since the City's fiscal year runs until June 30, an award this year would

require you to begin construction on improvements no later than mid-November of this year. That means all conditions necessary to start construction have to be satisfied by that time. These conditions include creating a design for the improvements, something for which we already have substantial expertise, and which we can do within very tight time limits. Some other conditions take a little more time, but can also be accomplished fairly quickly. For example, finding and negotiating with contractors and suppliers.

But some of these conditions take months to complete. For example, the City has to obtain several different permits from several different agencies, and has to file regular periodic reports at defined intervals with specific bodies. We cannot reduce these time periods, and needed to get started in mid-June to make sure the City was ready in time.

All of these activities require us to devote staffing and resources in a coordinated and efficient way. With a longer term project, we could invest fewer teams, and perhaps save some staff time. With the shorter time period, we had to have multiple teams working simultaneously. Overall, the contract amount of $210,000 represents good value for a project of this size and time sensitivity.

CM Manton: Thank you. That was very clear. No objections here.

CW Sidney: Mayor, I'm worried that you didn't get formal council approval for this contract before they started work in June. Could we have avoided that?

Mayor: I'm afraid not. You all remember the budget mess we faced in late June and July. I think I'm right in saying that we had to deal with that mess first. This is the earliest we could take this up.

CW Sidney: I don't have any objection to the project. It's just that, what if we don't get the grant?

Mayor: Then we're committed to pay Blanchard. There's no guarantee that we'll get the grant. This just puts us in the best position to get the funds. That's what we're getting.

CW Sidney: Why do we have to upgrade the wastewater treatment plant at all?

Mayor: Well, first, the agencies are forcing our hand. And we're the ones who have to do it. The private market won't step in to do it for us.

CW Sidney: Okay. No objection.

CW Baldwin: I'm interested in how the work is going. Mr. Blanchard, could you give us an update on your progress?

Mr. Blanchard: Yes . . . .

*** * ***

CW Baldwin: So you're telling us you're optimistic about our chances.

Mr. Blanchard: Let me stress, Councilwoman, that these applications are very competitive. I know from reliable sources that many cities in the region are going after these funds. But we think that you make a compelling case for need, given your population growth and your facility's condition. And we have confidence in our ability to make a convincing proposal for upgrade.

CW Baldwin: I'm sold! You should do this for a living, Mr. Blanchard!

[Laughter]

Mayor: Okay. Okay. Thank you, Mr. Blanchard. I think we've heard what we need to from members of the Council. I note for the record that Attorney Bryant has had to go. I'm also worried about time. We have to make sure to deal with the complaints about police conduct in District 3. Shall we turn to that next?

* * * *

Blanchard Engineering, Inc.

Innovation – Imagination – Integrity

4345 Battlefield Industrial Park
Columbia City, Columbia
accounting@blanchengineers.com

INVOICE

For services rendered to:
City of Corson
Justine Reyes, Mayor
1 Town Hall Plaza
Corson, Columbia

Contract Date: June 13, 2016

Contract Name: City of Corson Wastewater Treatment Facility Upgrade

ITEMIZATION

TIME AND LABOR:

Review and analysis of existing facility	$15,000.00
Assessment and analysis of EPA and Columbia EPA mandates	$25,000.00
Design of upgraded wastewater treatment facility	$75,000.00
Applications for permits, variations, etc.	$40,000.00
Preparation of reports to EPA / CEPA	$10,000.00
Negotiations with subcontractors and suppliers	$25,000.00
MATERIALS:	$13,409.00
TOTAL DUE:	$203,409.00

Dated: November 15, 2016

B. Blanchard
Bill Blanchard, President

February 2017

California Bar Examination

Performance Test B

LIBRARY

CLAIM BY BLANCHARD ENGINEERING, INC.
AGAINST CITY OF CORSON

LIBRARY

Corson City Charter Section 17-4

No contract with the city shall be binding on the city unless the contract is in writing, is signed after review by the city attorney, and is approved by the city council subsequent to its signature by the city attorney, with such council approval entered on the council journal.

Lyman v. Town of Barnet

Columbia Supreme Court (1958)

Mrs. Estella Lyman filed an action against the town of Barnet for two purposes: first, to establish whether her property lies within the town's corporate limits; and second, if her property falls within the town, to get reimbursement for a water line that she constructed to obtain water from the town water supply. The trial court determined that her property lay entirely within the town, but denied her request for reimbursement. Mrs. Lyman appeals.

The facts are not in dispute. Mrs. Lyman's property has been wholly within the corporate limits of Barnet since the land was sold to her. However, through an error, both town and county officials treated the property as lying outside the town but within the county. As a result, the town refused to supply it with water. When Mrs. Lyman constructed her own line, the town charged her an increased rate for the same reason. Mrs. Lyman paid taxes to the county, and not the town.

Several years after she built the water line, Mrs. Lyman upgraded it to a higher capacity pipe. At the same time, she subdivided her property, and sold off several lots to purchasers who built residences on their lots. The town connected these residences to the pipe laid by Mrs. Lyman, and collected water rents from each of these new owners.

In 1954, the town resurveyed its boundaries, as part of a potential annexation of several unrelated portions of the county. During this resurvey, a town official informally notified Mrs. Lyman that the resurvey tentatively indicated that her property lay within the town. Despite this, the town continued to charge Mrs. Lyman a higher rate, while also supplying water to other users off of the common pipe that she had built. After several years of unsuccessful negotiation, Mrs. Lyman filed this suit.

We think that the present case must be decided upon the principles of *quantum meruit*. The line became a part of the town water system and was used by the town in its water

business. It produced valuable water rentals and now accommodates many families. Where a town takes over and controls a water line built by others and uses it for the benefit of the town and consumers generally, and through it delivers water for a profit, it is obligated to pay those who constructed the line on a *quantum meruit* claim.

The town contends that it entered into no contract with Mrs. Lyman, other than the contract to supply her with water. Moreover, the town contends that it cannot be bound to pay for facilities that it uses in its governmental capacity.

A function is governmental in nature if it is directly related to the general health, safety, and welfare of the citizens. In contrast, a function is proprietary in nature if the municipal corporation provides a service that other private commercial businesses also provide, and that benefits the municipal corporation financially. When a municipality operates a water plant, it acts in its proprietary capacity by exercising business functions that another private business might also have provided. In such a case, the municipality must comply with the same rules that apply to private corporations or individuals engaged in the same business.

A municipality may become obligated under *quantum meruit* to pay the reasonable value of benefits it has accepted or appropriated, provided it has the power to contract on that subject matter. In such a case, the municipality can be held liable where, with the knowledge and consent of the members of the council, it has received benefits procured by its agents, either without a contract or where an express contract is invalid because of mere irregularities.

To be sure, Mrs. Lyman must still establish the elements of a claim for *quantum meruit*. To recover under this doctrine, a plaintiff must establish that: 1) valuable services and/or materials were furnished, 2) to the party sought to be charged, 3) which were accepted by the party sought to be charged, and 4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient.

In this case, the trial court denied Mrs. Lyman's request for reimbursement on the grounds that the law provided her with no remedy against the town. Mrs. Lyman had no opportunity to offer evidence on the elements of her *quantum meruit* claim. Accordingly, we reverse this portion of the trial court's order, and remand the case for trial on the *quantum meruit* claim.

Reversed and remanded.

Galax Consultants, Inc. v. Town of Avalon Beach

Columbia Supreme Court (1994)

Plaintiff Galax Consultants, Inc. (Galax) appeals from a judgment of the trial court in favor of the defendant, the town of Avalon Beach (Town). The trial court held that, although Galax had proven all of the requirements of *quantum meruit* against the Town, immunity precludes Galax's recovery in this case. In addition, the trial court addressed the issue of damages in the event that Galax should prevail on this appeal. Galax appeals this portion of the trial court's ruling as well.

In the spring of 1988, the Town owned a ballpark in Avalon Beach, which it had contracted to sell to Banyan Partners, Inc. (Banyan). Banyan orally agreed with Galax for Galax to perform repairs and renovations to the ballpark. Galax completed the work in a competent manner and within a tight timetable, and the park was ready for the 1988 baseball season.

The purchase and sale agreement between the Town and Banyan required the Town to reimburse Galax for the costs of any repairs that Galax might make, even if the sale did not go through. The purchase and sale agreement was executed in compliance with the city charter. Moreover, testimony at trial indicated that the town manager had promised Galax that the Town would require any other purchaser of the ballpark to pay Galax what it was owed. The sale to Banyan did not take place; the Town operated the ballpark that summer and then sold it to another buyer. However, the Town absolved that buyer of liability for expenses incurred prior to the sale, including Galax's bill.

Galax sued Banyan and the Town for $61,479, and obtained a judgment against Banyan. (Banyan has paid only $10,000 of that judgment.) However, the trial court granted the Town's motion for judgment notwithstanding the verdict, on the ground that Galax could not maintain a *quantum meruit* suit against a city.

At trial, Galax offered evidence in support of its claim for $61,479. This consisted of physical improvements to the park of $35,000, overhead costs of $20,000 and anticipated profits of $6,479. In that portion of its ruling dealing with damages, the trial court ruled that, should Galax prevail on appeal, it should receive only the actual value of improvements to the park, and not the other two items.

The trial court erred in denying Galax's *quantum meruit* claim. No question exists that the Town owned and operated the park in the exercise of its proprietary function. Galax has proven that it has conferred a benefit on the Town in circumstances where it would be unfair for the Town to retain that benefit were it not a municipality. In such a case, a plaintiff should not be barred from recovering the retained benefit *solely* because the defendant is a municipality. This reasoning comports with our longstanding precedent. *Lyman v. Town of Barnet* (Col. Supreme Ct. 1958).

The trial court limited Galax's damages to the value of the physical improvements to the ballpark. The measure of damages for *quantum meruit* is the value of the benefit actually received and retained by the defendant. A plaintiff may prove the value of this benefit by proving not only the value of physical improvements, but also the value of work, labor, services and materials furnished. Other points of proof may include: the increase in the sale price of the property resulting from the plaintiff's work; the value of the risks avoided as a result of the plaintiff's work (e.g., through design and installation of safety measures); and similar items.

The trial court appears to have categorically excluded Galax's overhead expenses and profit from its calculation of the benefit received by the Town. Such a blanket exclusion of a plaintiff's overhead, costs, and profits is improper.

We therefore reverse, and remand for reconsideration of Galax's damages.

Reversed and remanded.

Hiram Grant Partnership v. City of Vanderbilt

Columbia Court of Appeals (2005)

The City of Vanderbilt (City) negotiated the purchase of a right-of-way from appellant Hiram Grant Partnership (Partnership). A written nine paragraph contract memorialized the resulting agreement. In Paragraph 4 of the contract, the City agreed to reclaim wetlands on property owned by the Partnership and to employ a wetlands specialist to do so.

The mayor and two council members executed the contract on the City's behalf. However, those three officers did not constitute a quorum, as defined by the City's charter. The city attorney did not review or sign the contract, nor did the city council approve it, both of which are required by the City's charter.

The City performed most of its obligations under the contract, including payment of all money due to the Partnership. However, the City failed to perform its obligations under Paragraph 4. It did not reclaim the wetlands, nor employ a wetlands specialist. The Partnership requested voluntary compliance with Paragraph 4, but the City refused.

The Partnership sought a court order to compel the City to validate the contract by entering it into the council's official minutes. The Partnership argued that the City was estopped from denying its obligations under the contract, given both the explicit terms and its substantial performance of all other parts of the contract. The City argued that the entire contract was *ultra vires* because neither that city council nor the city attorney has approved it, nor had it been recorded in the council's official minutes.

The trial court denied Partnership's petition, holding that because the contract was *ultra vires,* it was not legally binding on the City. The Partnership filed this appeal.

A municipality has no inherent power. It may only exercise power to the extent the state has delegated it the authority to act. Accordingly, we must construe a municipality's

allocations of power from the state strictly. If a local government enters a contract in abrogation of its delegated power or in excess of its authority to enter contracts, then the contract is deemed *ultra vires* and void.

The exact status of a defective contract depends upon the type of limitation that the local government has ignored in making it. An imperfect or irregularly executed contract may not necessarily be completely ineffective, as long as it falls within the type of contract that the municipality has the power to make. But if the imperfection or irregularity places the contract completely beyond the power or competence of the local government, then the contract is *ultra vires*: it becomes an absolute nullity.

Where a city charter specifically provides how the city must make and execute a municipal contract, the city may only do so in the method prescribed. A municipality's method of contracting, once prescribed by law or charter, is absolute and exclusive. In this case, the General Assembly enacted the City's charter, which in turn sets forth the parameters of the City's authority to take official action, including its ability to enter into contracts.

The City's charter provides in relevant part that: the Mayor may sign contracts when authorized by the city council to do so; a quorum of the council requires at least three council persons and the Mayor; no contracts shall bind the City unless approved by the council; and the city attorney must either draft the contract or review it before authorization by the council. In this case, the undisputed facts indicate that the city attorney neither drafted nor reviewed the contract before the Mayor and two council members signed it. Only two council members approved the contract; no quorum was present.

Thus, the City entered the contract outside of its limited grant of authority; in other words, the City acted beyond the power or competence of the local government. We have no choice but to conclude that the contract is *ultra vires,* null and void.

This is not a case where the City simply exercised its legitimate powers in an unusual or irregular fashion. Rather, it involves a situation where the City acted with a total absence of power and in direct contradiction to the strictures of its charter. Where, as here, a municipality contracts with a total absence of power, it is not estopped from denying the resulting agreement's validity.

Accordingly, the Partnership cannot seek whole or partial performance of the contract through mandamus or other means. Moreover, the City's substantial performance under the contract will not be treated as a ratification. Furthermore, the City is not estopped from asserting the contract's invalidity, even though the Partnership has performed its part of the bargain and might even have relied upon the contract to its detriment.

We are not persuaded by appellant's reliance on *Wreck-It Co. v. City of Lossoth* (Col. Ct. App. 2001). In that case, a wrecker company sued the city on a *quantum meruit* theory to recover for the cost of storing vehicles seized by city police. The company had entered into the storage arrangement orally with members of the police department; the city charter required that all contracts "other than for the ordinary needs of the city" be in writing. The Court of Appeals held for the company, stating that "provided a contract is within the scope of its corporate powers, a municipality may be held liable on a contract implied in law, to prevent the municipality from enriching itself by accepting and retaining benefits without paying just compensation." The court in that case did not address the *ultra vires* arguments presented by appellee in this case. Moreover, the city charter provisions differ. There, the storage of vehicles seized by police arguably falls within the "ordinary needs of the city."

Our conclusion here may appear unfair, but compelling policy concerns support it. The limitations placed on the City's ability to contract include numerous checks that prevent improper action by the City, and protect against disastrous consequences for taxpayers.

To allow an *ultra vires* agreement to appear effective in any sense, even quasi-contractually, would amount to a license to local government to expand its own powers without state legislative delegation. Indeed, this would annul the limitation itself and permit the local government to do indirectly that which it could not do directly. It would be but a short step to governmental extravagance with unreasonable risks and liabilities heaped upon the shoulders of local taxpayers. A strict rule of absolute nullity will nip these dangerous tendencies at the outset.

Because the City acted without any power, we conclude the trial court did not abuse its discretion in denying relief that would have compelled the City to validate the contract.

Judgment affirmed.

Judge Bandy joins this opinion.

Judge Quantrill issues the following dissenting opinion:

I dissent. Our Supreme Court's cases make clear that claims for *quantum meruit* may be sustained, even where the City has not fully complied with formal requirements for contracting under the city charter. *Lyman v. Town of Barnet* (Col. Supreme Ct. 1958); *Galax Consultants. Inc. v. Town of Avalon Beach* (Col. Supreme Ct. 1994). Cities should not be unjustly enriched at the expense of an innocent plaintiff by the simple expedient of failing to comply with purely formal requirements in the city charter.

1) Please type the answer to PT-B below. *(Essay)*

Trammell, Simmons and Volz, PC
433 Corson Courthouse Square
Corson, Columbia

MEMORANDUM

TO: John Trammell
FROM: Applicant
DATE: February 23, 2017
RE: Claim by Blanchard Engineering, Inc. against City of Corson

After reviewing the documents you sent me and researching the relevant law, I prepared this memorandum in response to our request from the Corson City ("City") Attorney's Office to evaluate the likelihood of Blanchard Engineering's ("Blanchard") potential *quantum meruit* claims against the City. Ultimately, I determined that the City is not likely to prevail in seeking immunity from Blanchard's claims, and can apply a weak defense to those claims if it commits to never using any of Blanchard's completed work.

First, you inquired as to whether the City is immune from Blanchard's claim for quantum meruit. Although the City could potentially raise a defense that the contract is *ultra vires* and thereby void, such a defense is not likely to succeed in this situation. The doctrine of *quantum meruit* indeed binds cities which accept and use private facilities and services. Second, you asked whether Blanchard would be able to prove its claim for *quantum meruit*. To recover under *quantum meruit*, they must prove that valuable services and/or materials were furnished to the party sought to be charged, were accepted by the party sought to be charged, and under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient. Based on the

circumstances, Blanchard is likely to be able to prove each of these elements. Finally, you asked me how a court might go about evaluating damages if Blanchard were to recover under *quantum meruit*. The measure of damages for quantum meruit is the value of the benefit actually received and retained by the defendant. The City has a weak potential defense if it essentially repudiates Blanchard's work and commits to never taking advantage of it.

1. The City is Unlikely to Receive Immunity from Blanchard's *Quantum Meruit* Claim

The first issue was whether the City is immune from Blanchard's claim for quantum meruit. The City can potentially raise a defense that the contract is *ultra vires* and thereby void, but such a defense is not likely to succeed in this situation. The doctrine of *quantum meruit* indeed binds cities which accept and use private facilities and services.

a) Doctrine of Quantum Meruit Binds Cities Which Accept and Use Private Facilities and Services

Before considering any defenses, I analyzed whether Blanchard even had a viable claim under the doctrine of *quantum meruit*. Based upon our Supreme Court's consistent rulings over the past five decades, I determined that a trial court would likely find that the doctrine of *quantum meruit* applies to the City's situation. In the present scenario, Mayor Justine Reyes enlisted the help of Blanchard to prevent the City's wastewater treatment facility from falling out of compliance with its respective state and federal regulations. If the City failed to maintain the facility's compliance, the City could incur fines totaling several million dollars. It is worth mentioning that Blanchard's potential *quantum meruit* claims may not yet be ripe on account that the facility has not been built, and that the City might be able to avoid liability by refusing to proceed. As the new mayor has put it, the City did not receive the grant and thus technically derived no

benefit from Blanchard's work. But the mayor's argument overlooks the potential cost of halting the facility upgrade. To save $210,000 the City would face millions of dollars in regulatory fines, which does not include the costs and consequences of the wastewater treatment facility breaking down as the City's poplation continues to grow.

"A municipality may become obligated under quantum meruit to pay the reasonable value of benefits it has accepted or appropriated, provided it has the power to contract on that subject matter. In such a case, the municipality can be held liable where, with the knowledge and consent of the members of the council, it has received benefits procured by its agents, either without a contract or where an express contract is invalid because of mere irregularities." *Lyman v. Town of Barnet* (Col. Supreme Ct. 1958). In the *Lyman* case, there was not even an agreement between the plaintiff and the municipality. To the contrary, the town outright refused to supply the *Lyman* appellant with water, erroneously claiming that her property was outside of the municipal boundaries. When she built a water line, the town charged her an increased rate based on that same erroneous claim. After she had personally built and subsequently upgraded this water line, the town took it over and controlled it for the benefit of its residents, still charging her the increased rate. In that case, where there had not even been an agreement between the builder and the municipal government, our Supreme Court held that the *quantum meruit* doctrine required the City to reimburse the builder. "Where a town takes over and controls a water line built by others and uses it for the benefit of the town and consumers generally, and through it delivers water for a profit, it is obligated to pay those who constructed the line on a *quantum meruit* claim." *Lyman, supra*.

The City's case differs from that in *Lyman* in two relevant ways: the City had actively recruited Blanchard's assistance and affirmatively promised Blanchard it would be compensated, and that Blanchard's completed services have been strictly preparatory in nature and have yet to be used or relied upon. Our

Supreme Court applied the *quantum meruit* doctrine in a situation where the complainant had voluntarily built their own water line before developing any apparent expectation of compensation by the city. If the City were ever to use the benefit of Blanchard's work, Blanchard has an even stronger case for applying the *quantum meruit* doctrine.

The City sought out Blanchard for the specific purpose of upgrading the wastewater treatment facility. At the August 8, 2016 City Council Meeting, the Mayor and every one of the Councilmembers approved the contract with Blanchard. (Transcript). They expressly considered the possibility that the grant might be denied, and determined to proceed without respect to the grant.

"CW Sidney: I don't have any objection to the project. It's just that, what if we don't get the grant?
Mayor: Then we're committed to pay Blanchard. There's no guarantee that we'll get the grant. This just puts us in the best position to get the funds...
* * *
CW Sidney: Okay. No objection." (Transcript).

Our new Mayor seems to rely heavily on the sole technical deficiency of the contract. Indeed, the unanimous approval of the councilmembers was never put to a formal vote and entered on the council journal as required by the City Charter. Section 17-4. But our Supreme Court has already ruled that irregularities will not invalidate *quantum meruit*, indicating a strong likelihood that Blanchard would prevail on such a claim.

b) While Contracts Deemed *Ultra Vires* are Void, Such a Defense is Unlikely to Succeed

The new Mayor's basis for ignoring the City's contract with Blanchard does point to one viable legal defense. The City Charter requires -- among other things --

that the City Council vote on and approve a contract for it to be binding. "No contract with the city shall be binding on the city unless the contract is in writing, is signed after review by the city attorney, and is approved by the city counsel subsequent to its signature by the city attorney, with such council approval entered on the council journal." Corson City Charter, Section 17-4. While minor technical deficiencies might not withstand a *quantum meruit* claim, a contract deemed *ultra vires*, or made outside the scope of the governmental power, can be immune from a *quantum meruit* claim. However, such a defense is unlikely to succeed in the City's case.

"If a local government enters a contract in abrogation of its delegated power or in excess of its authority to enter contracts, then the contract is deemed *ultra vires* and void. The exact status of a defective contract depends upon the type of limitation that the local government has ignored in making it. An imperfect or irregularly executed contract may not necessarily be completely ineffective, as long as it falls within the type of contract that the municipality has the power to make. But if the imperfection or irregularity places the contract completely beyond the power or competence of the local government, then the contract is *ultra vires*: it becomes an absolute nullity." *Hiram Grant Partnership v. City of Vanderbilt* (Col. Ct. App. 2005). The *Hiram* court carefully qualified the *ultra vires* doctrine only to apply in situations where the contested contract was made "completely" outside of the government's power, still noting that imperfections might be insufficient to give rise to the *ultra vires* doctrine.

Unlike the City's situation, the *Hiram* case dealt with a contract that failed a number of the city charter's requirements: the *Hiram* contract was approved by fewer councilmembers than required, the city attorney did not draft the contract, and the city attorney did not review the contract. It "involve[d] a situation where the City acted with a total absence of power and in direct contradiction to the stictures of its character. Where, as here, a municipality contracts with a total absence of power, it is not estopped from denying the resulting agreement's

validity." *Hiram Grant Partnership v. City of Vanderbilt* (Col. Ct. App. 2005). By comparison, the City Council and Mayor unanimously approved the contract at a recorded public hearing with Blanchard present. They addressed the possibility that the City might not receive the grant and decided that the grant was incidental to the contract, expressly "committ[ing]" to pay Blanchard if the grant was denied.

As is such, the *ultra vires* doctrine will not likely immunize the City from a *quantum meruit* claim by Blanchard.

2. Blanchard Can Meet Its Burden for a *Quantum Meruit* Claim

Having determined that the City is unlikely to be immune from a *quantum meruit* claim by Blanchard, the second issue you asked me to evaluate is whether Blanchard would be able to prove such a claim. Again, the answer to that question may turn on whether the City decides to ever use the preparatory services Blanchard has completed, particularly if it proceeds with constructing the proposed upgrades. But even if the new Mayor decides to maintain his position that the services are of "no value," it is not certain that he would prevail on such a defense. Three of the four elements needed to prevail on a *quantum meruit* theory have undoubtedly been met. The City would have to convince a court that valuable services were not furnished.

"To recover under [*quantum meruit*], a plaintiff must establish that: 1) valuable services and/or materials were furnished, 2) to the party sought to be charged, 3) which were accepted by the party sought to be charged, and 4) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient. *Lyman, supra*.

a) Valuable services and/or materials were furnished

This first element leaves some room for the City to argue has not been satisfied.

The City's situation differs from many of the cases considered by our courts thus far in that the contested contract was limited strictly to the preparation of a construction project. Blanchard seems to have carried out all its obligations in the contract, even completing the preparations ahead of schedule. There also seems to be no question as to the quality of the services as measured by industry standards. But the apparent purpose of the contract was to put together an application for a grant, and that application was denied. Without the contract, I cannot determine whether Blanchard is in substantial breach. But if the terms are consistent with the commitment Mayor Reyes provided to Blanchard at the City Council meeting, the contract was by no means contingent upon approval of the grant. The City may be able to assert the services' lack of value on account of the rejected application, but it would have to answer for affirmatively sitting on regular reports sent in by Blanchard up to the point of the application denial.

b) to the party sought to be charged

While the value of the services have some room for contention, there is no denying that the City sought out, solicited, and approved Blanchard's services. The exchange of leadership in governmental bureacracy is another issue not addressed in the relevant case law, though I find it unlikely a court would consider election cycles to serve as an effective statute of limitation on *quantum meruit* claims.

c) which were accepted by the party sought to be charged, and

There is no question as to whether the City accepted the services. Again, the City Council and Mayor unanimously approved and accepted the contract. They assured Blanchard that the contract did not turn on the receipt of the grant, and expressly stated the City would fulfill its end of the bargain even if the application was denied.

d) under such circumstances as reasonably notified the recipient that the plaintiff, in performing, expected to be paid by the recipient.

Blanchard was present for the City Council meeting, defended and justified his proposal and its cost, and told by the Mayor and Councilmembers that he would be compensated for performance even if the grant application was turned down. Moreover, the City received regular progress reports from Blanchard and expressed no dissatisfaction. At no point duriing the project did the City reasonably notify Blanchard that it would not be paid for performing.

For all the foregoing reasons, I have concluded that Blanchard can likely prove its *quantum meruit* claim.

3. Court's Calculation of Damages

Finally, you asked me to determine how a court would calculate the damages if Blanchard did prevail on a *quantum meruit* claim.

"The measure of damages for *quantum meruit* is the value of the benefit actually received and retained by the defendant." *Galax Consultants, Inc. v. Town of Avalon Beach* (Col. Supreme Ct. 1994). In the *Galax Consultants* case, the municipal government refused to pay the contractor's overhead costs and anticipated profits, paying only for the physical improvements. Our Supreme Court found the government's action to be illegal in that situation. "The trial court appears to have categorically excluded Galax's overhead expenses and profit from its calculation of the benefit received by the Town. Such a blanket exclusion of a plaintiff's overhead, costs, and profits is improper." *Galax Consultants*, *supra*.

Applying the same rationale to Blanchard's invoice results in a similar effect -- that the City is responsible for the entire bill. Again, the City's new governance can refuse to proceed with the facility plans and commit to never using the fruits of Blanchard's services, but would do so at the risk of facing millions of dollars in regulatory fines as well as a broken wastewater treatment facility. But even then,

Blanchard seems to have carried out all of its obligations in the contract. If a court considers the remarks of the City Council meeting where the purpose of the contract was to follow through with the upgrade irrespective of receiving the grant, the City will not succeed in showing that the value of the services was received.

If the City tries to dispute the validity of any specific charges on the invoice, they will have to demonstrate that the service was somehow performed unsatisfactorily, even though the City did not respond to any of Blanchard's progress reports. At the City Council meeting, Blanchard was questioned about the $210,000 proposal. He provided a detailed defense of the expenses and their necessity to meet the City's demands. The final invoice Blanchard sent matches the estimate from the proposal to exaction. The City is unlikely to be able to mitigate any of the expenses listed in Blanchard's invoice.

In sum, a court is not likely to find the City immune from Blanchard's *quantum meruit* claim. Blanchard would likely be able to prove the claim at trial. And upon prevailing, the court would likely award Blanchard the entire $210,000 it has demanded.

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