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**A RESOLUTION BY THE CITY OF AVONDALE ESTATES**

**WHEREAS**, the City of Avondale Estates has employed Roy Claiborne Brown as City Manager since 2008 pursuant to that certain Employment Contract dated February 11, 2008; and

**WHEREAS**, by letter dated December 6, 2017, Mr. Brown tendered his resignation from such position, effective February 16, 2018; and

**WHEREAS**, subsequent to Mr. Brown's letter of resignation, the current Board of Mayor and Commissioners became aware for the first time of a purported First Amendment to the above-referenced Employment Agreement, dated February 23, 2015; and

**WHEREAS**, the purported First Amendment, amongst other provisions, calls for Mr. Brown to be paid one year's salary and substantial benefits in the event of his resignation; and

**WHEREAS**, Mr. Brown has engaged an attorney and demanded to be paid the resignation bonus pursuant to the purported First Amendment to the Employment Agreement; and

**WHEREAS**, the City has calculated the present cash value of the resignation bonus demanded by Mr. Brown to be approximately \$300,000; and

**WHEREAS**, the City's records reveal that the purported First Amendment has never been properly approved in a public meeting; and

**WHEREAS**, Mr. Brown was present and seated at the dais during the February 2015 meeting; and

**WHEREAS**, the following factors undermine any claim that the purported First Amendment was approved at the February 23, 2015, Board meeting:

(a) neither the agenda nor the minutes of that meeting mention amending the contract with Mr. Brown,

(b) the "agenda packet" for that meeting contains 61 pages and includes all written documents that were considered and/or approved at the meeting, but does not include the purported First Amendment, and

(c) the audio recording of the meeting reveals that neither the resignation bonus nor Mr. Brown's compensation were mentioned at the meeting and in fact Mayor *Pro Tem* Giager made certain comments suggesting that the agenda item entitled "Annual Evaluation of City Manager Employment Agreement" was for the purpose of acting to retain Mr. Brown for another year (rather than replacing him); and

**WHEREAS**, as City Manager, Mr. Brown was responsible for making sure that the agenda packet for the February 2015 meeting contained all relevant materials; and

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**WHEREAS**, on or about December 11, 2016, Mr. Giager told a group of citizens at City Hall that he had orchestrated the purported First Amendment “to protect Clai from the new mayor” (in February 2015 the office of mayor was vacant and due to be filled by special election); and

**WHEREAS**, even if the purported First Amendment had been properly adopted, a promise by a prior board to pay such an exorbitant resignation bonus cannot legally bind the current Board unless the current Board elects to ratify it (See: O.C.G.A. Section 36-30-3(a) and City of McDonough v. Campbell, 289 Ga. 216 (2011)); and

**WHEREAS**, Mr. Brown failed to disclose the existence of the purported First Amendment during his performance evaluation in 2016 and 2017; and

**WHEREAS**, upon investigation, it appears that Mr. Brown has concealed the purported First Amendment from the current members of the Board, the City’s internal finance officer and the City’s external auditors; and

**WHEREAS**, applicable government accounting principles require compensated absences (accrued vacation and sick leave) to be reported in the annual audit; and

**WHEREAS**, the withholding of the purported First Amendment from the City’s auditor has caused the City’s 2016 audit to be materially inaccurate to the extent that the purported First Amendment is an enforceable obligation of the City; and

**WHEREAS**, in light of the burdensome amount of the demanded resignation bonus (approximately 9% of the City’s annual budget), the Board advised Mr. Brown on January 9, 2018, that it would not enact nor ratify the First Amendment and would not pay him severance in connection with his tendered resignation; and

**WHEREAS**, Mr. Brown responded on January 11<sup>th</sup> by offering to rescind his resignation and promising to “continue to do my job and provide the very best service to our residents and business owners”; and

**WHEREAS**, on January 18<sup>th</sup>, Mr. Brown communicated to the Board through his attorney that he was “resolved to remain in the position”; and

**WHEREAS**, on January 19<sup>th</sup>, the Mayor informed Mr. Brown that the Board was willing to allow him to remain on as City Manager and that the Board was committed to working openly and honestly with him to resolve any issues between them, so as to further the best interests of the citizens of the City of Avondale Estates; and

**WHEREAS**, on January 20<sup>th</sup>, the Mayor informed Mr. Brown that the Board intended to renounce the purported First Amendment but to ratify the original Employment Contract at its next meeting (including a provision for severance pay of six months’ salary if Mr. Brown was later terminated without cause); and

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**WHEREAS**, Mr. Brown responded through his attorney that he did not wish to remain as City Manager long term, that he was only committed to stay “until he and the Board can reach agreed upon terms regarding his departure” and that “litigation would be inevitable” if the Board renounced the purported First Amendment, even if the Board ratified the original Employment Agreement.

**WHEREAS**, on \_\_\_\_\_ the Board conducted its annual performance review of City Manager Brown pursuant to Section 5 of the Employment Contract and determined Mr. Brown’s performance to be “unsatisfactory” due to his failure to advise the Finance Director, the City’s auditor and the Board of the purported First Amendment to his contract.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Mayor and Commissioners of the City of Avondale Estates as follows:

- 1) The City declines to enact or ratify the document entitled “First Amendment to the Employment Contract between The City of Avondale Estates and Roy Claiborne Brown” dated February 23, 2015, and instead hereby renounces the purported First Amendment and declares it to be a nullity having no legal effect.
- 2) The City hereby acts to terminate Mr. Brown’s employment, for cause and effective immediately, pursuant to Section 7(B) of the Employment Agreement.

**SO RESOLVED**, this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

BOARD OF MAYOR AND  
COMMISSIONERS, CITY OF AVONDALE  
ESTATES, GEORGIA

By **DRAFT**  
Gina Hill, City Clerk

**DRAFT**  
Jonathan Elmore, Mayor

(SEAL)

Approved as to Form

**DRAFT**  
Robert E. Wilson, City Attorney