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MEMORANDUM

Law Department - Council Memo No. 12

DATE: OCTOBER 22, 2007

TO: MAYOR AND COUNCIL
W. MARK PENTZ, CITY MANAGER

THRU: DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR ^{DS}
MICHAEL D. HOUSE, CITY ATTORNEY ^{MDH}

FROM: DOUG TOY, SENIOR ENGINEER ^{DT}
CYNTHIA J. HAGLIN, ASSISTANT CITY ATTORNEY ^{CH}

SUBJECT: RESOLUTION NO. 4124 AUTHORIZING THE MAYOR FOR THE CITY OF CHANDLER TO EXECUTE AMENDMENT NO. 2 TO THE AMENDED AND RESTATED GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT

RECOMMENDATION: Recommend approval of Resolution No. 4124, which authorizes the Mayor on behalf of the City of Chandler to execute Amendment No. 2 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement.

BACKGROUND: On December 15, 2005, through Resolution No. 3921, the City Council approved the Gila River Indian Community Amended and Restated Water Right Settlement Agreement (the "Settlement Agreement") and its associated exhibits. The City Council also approved an Amendment No. 1 to that Settlement Agreement on July 27, 2006.

Now, because the final wording of two Court orders approving the Settlement Agreement varies from the proposed court orders provided in two exhibits to that agreement, a second amendment is required. Also, the parties to the Settlement Agreement decided to make certain changes to their proposed stipulation which sets forth the terms of the settlement, and which was included as a separate exhibit to the Settlement Agreement. This exhibit will also be changed by this Amendment No. 2, so that it comports with the parties' final stipulation.

DISCUSSION: Amendment No. 2 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement ("Amendment No. 2") amends certain exhibits of that Settlement Agreement. The changes to these exhibits facilitate the timely completion of the prerequisites for the final enforceability of the Settlement Agreement as required by the Arizona

Water Settlements Act (Pub. L. 108-451). These changes do not substantively alter the City's rights and duties as stated in the Settlement Agreement, and approval of this Amendment No. 2 will assist in achieving final court approval and implementation of the Settlement Agreement. A copy of this Amendment No. 2 and the amended exhibits are available for review at the City Clerk's Office.

FINANCIAL IMPLICATIONS: This Amendment No. 2, which adopts amendments to three exhibits to the Settlement Agreement, will not result in any financial impacts to the City of Chandler.

PROPOSED MOTION: Move to approve Resolution No. 4124 approving and authorizing the Mayor to execute Amendment No. 2 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement.

RESOLUTION NO. 4124

A RESOLUTION OF THE COUNCIL OF THE CITY OF
CHANDLER, MARICOPA COUNTY, ARIZONA,
APPROVING AND AUTHORIZING THE MAYOR TO
EXECUTE AMENDMENT NO. 2 TO THE AMENDED
AND RESTATED GILA RIVER INDIAN COMMUNITY
WATER RIGHTS SETTLEMENT AGREEMENT

WHEREAS, the Arizona Water Settlements Act, Public Law 108-451 (the "Act") effective December 10, 2004, resolves a number of long-standing issues related to the substantial water rights claims of the Gila River Indian Community ("Community") to the waters of the Gila River; and

WHEREAS, the Gila River Indian Community ("Community"), its Members, the United States, the City of Chandler ("City") and other named parties have agreed to permanently settle their respective adverse claims to water as set forth in a written agreement consistent with the Act; and

WHEREAS, the City of Chandler by Resolution No. 3921 approved and has executed such written agreement, the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement (the "Settlement Agreement") and by Resolution No. 3991, approved Amendment No. 1 to that Settlement Agreement; and

WHEREAS, the *Settlement Agreement* includes various exhibits, several of which are agreements among named parties other than the City whereby such parties agree to settle water rights disputes among themselves and the Community; and

WHEREAS, all signatory parties to the Settlement Agreement must approve certain proposed amendments to Exhibits 25.18A1, 25.18A2 and 25.18B in order to assure all terms and conditions of the Settlement Agreement and the Exhibits are binding; and

WHEREAS, the parties to the Settlement Agreement have conferred and agree Amendment No. 2 To The Amended and Restated Gila River Indian Community Water Rights Settlement Agreement sets forth the required corrections to Exhibits 25.18A1, 25.18A2 and 25.18B; and

WHEREAS, the best interests of the City will be served by consenting to and executing Amendment No. 2 to the Amended and Restated Gila River Indian Community Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City Council hereby approves Amendment No. 2 To The Amended and Restated Gila River Indian Community Water Rights Settlement Agreement Among the United States of America; the State of Arizona; the Gila River Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale, and Tempe; the Arizona Towns of Florence, Mammoth, Kearny, Duncan and Gilbert; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and Drainage District; Franklin Irrigation District; Gila Valley Irrigation District, the San Carlos Irrigation and Drainage District; the Hokokam Irrigation and Drainage District, the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; Phelps Dodge Corporation; and the Arizona Game and Fish Commission, ("Amendment No. 2") which, with all Attachments including corrected Exhibits 25.18A1, 25.18A2 and 25.18B, is on file at the City Clerk's Office.

Section 2. The Mayor of the City of Chandler is hereby authorized to execute Amendment No. 2 to the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement.

Section 3. That the various City officers and employees be and they hereby are authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2007.

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney *CH*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4124 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2007, and that a quorum was present thereat.

City Clerk