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#21

APR 24 2008

MEMORANDUM

Law Department - Council Memo No. 56

DATE: APRIL 24, 2008

TO: MAYOR AND COUNCIL

THRU: MARY WADE, CITY ATTORNEY *mw*

FROM: CYNTHIA J. HAGLIN, ASSISTANT CITY ATTORNEY *CA*

SUBJECT: RESOLUTION NO. 4179 APPROVING A CONTRACT FOR LEGAL SERVICES AND AN INTERGOVERNMENTAL AGREEMENT (IGA) AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE AND SCOTTSDALE RELATING TO JOINT REPRESENTATION IN SETTLEMENT EFFORTS RELATING TO THE WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE

RECOMMENDATION: Recommend approval of Resolution No. 4179 which authorizes the City Mayor on behalf of the City of Chandler to execute the Intergovernmental Agreement and the City Attorney to execute the Contract for Legal Services Among the Cities of Avondale, Chandler, Glendale and Scottsdale Relating to Joint Representation in Settlement Efforts Relating to the Water Rights Claims of the White Mountain Apache Tribe by Engelman Berger, P.C.

BACKGROUND/DISCUSSION: The Cities of Avondale, Chandler, Glendale and Scottsdale (the "Cities") have asserted water rights claims for their use of water from the Gila River Adjudication. The United States, on behalf of the White Mountain Apache Tribe, has asserted water rights claims in the Gila River Adjudication which are in conflict with the water rights claims of the Cities in the Gila River Adjudication. The Cities would like to be jointly represented in settlement activities which have been undertaken in an attempt to resolve and settle the water rights claims of the Tribe.

The effective date of this Contract will be March 17, 2008 and it will expire upon the latest of the date at which: (1) a settlement agreement as to the quantification of the water rights of the White Mountain Apache Tribe and the Cities of Avondale, Chandler, Glendale and Scottsdale ("Settlement Agreement") becomes enforceable; and (2) the effective date of any other agreements that are exhibits to that Settlement Agreement and to which any or all of the Cities of Avondale, Chandler, Glendale or Scottsdale are parties. Should any appeal(s) be filed

April 24, 2008

Page 2

challenging the adjudication court's or courts' order(s), decree or decrees approving the Settlement, this Contract shall be extended until the final determination of any and all such appeals.

FINANCIAL IMPLICATIONS: The total cost of this contract for legal services is no more than \$120,000, which is divided equally among the four Cities. The results in costs to Chandler is not more than \$30,000.

Funds for this litigation are available in the 605.3840.0000.5215 account.

PROPOSED MOTION: Move to approve Resolution No. 4179 which authorizes the City Mayor on behalf of the City of Chandler to execute the Intergovernmental Agreement and the City Attorney to execute the Contract for Legal Services Among the Cities of Avondale, Chandler, Glendale and Scottsdale Relating to Joint Representation in Settlement Efforts Relating to the Water Rights Claims of the White Mountain Apache Tribe by Engleman Berger, P.C.

cc: W. Mark Pentz, City Manager

RESOLUTION NO. 4179

**A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA
AUTHORIZING THE CONTRACT FOR LEGAL SERVICES AND
INTERGOVERNMENTAL AGREEMENT, AMONG THE CITIES
OF AVONDALE, CHANDLER, GLENDALE AND SCOTTSDALE,
RELATING TO THEIR JOINT REPRESENTATION IN
SETTLEMENT EFFORTS RELATED TO THE WATER RIGHTS
CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE**

WHEREAS, the Cities of Avondale, Chandler, Glendale and Scottsdale (the "Cities") have asserted water rights claims in the Gila River Adjudication which is an ongoing judicial proceeding to determine the nature and priority of water rights in the Gila River system; and

WHEREAS, the United States has asserted water rights claims in the Gila River Adjudication on behalf of the White Mountain Apache Tribe which are in conflict with the water rights claims of the Cities; and

WHEREAS, settlement activities are being undertaken in an attempt to develop a settlement agreement with the White Mountain Apache Tribe to quantify and resolve its water rights claims; and

WHEREAS, joint projects among the Cities allow the Cities to maximize their effectiveness and minimize their costs; and

WHEREAS, it is prudent for the City of Chandler to enter this Intergovernmental Agreement and Contract for Legal Services for joint representation of the Cities as to these negotiations by outside counsel.

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

Section 1. That the Mayor of the City of Chandler is hereby authorized on behalf of the City of Chandler to execute the Intergovernmental Agreement and the City Attorney is hereby authorized to execute the Contract for Legal Services Among the Cities of Avondale, Chandler, Glendale and Scottsdale Relating to Joint Representation in Settlement Efforts Relating to the Water Rights Claims of the White Mountain Apache Tribe.

Section 2. That the various City officers and employees are hereby 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 _____, 2008.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4179 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2008, and that a quorum was present thereat.

City Clerk

INTERGOVERNMENTAL AGREEMENT

**AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE, AND
SCOTTSDALE RELATING TO JOINT
REPRESENTATION IN SETTLEMENT EFFORTS RELATING TO THE WATER
RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE**

This Intergovernmental Agreement is made to be effective the 17 day of March, 2008, among the Cities of Avondale, Chandler, Glendale, and Scottsdale, municipal corporations, hereafter collectively referred to as the "Cities."

Whereas, joint projects among the Cities allow the Cities to maximize their effectiveness and minimize their costs; and

Whereas, settlement activities are currently ongoing relating to the White Mountain Apache Tribe's water rights claims and the Cities agree that they want joint legal representation to assist them with these settlement efforts, which will require an initial budget of \$120,000 for this representation.

NOW, THEREFORE, for and in consideration of the terms and conditions of this Intergovernmental Agreement, the Cities agree as follows:

1. The purpose of this Intergovernmental Agreement is to identify and define the responsibilities of the Cities relating to joint funding for outside legal counsel to represent the Cities in settlement activities relating to the White Mountain Apache Tribe's water rights claims.

2. Subject to the terms of this Intergovernmental Agreement and the contract negotiated with outside counsel, the Cities agree to share in the costs of joint legal representation by outside counsel in settlement activities relating to the White Mountain Apache Tribe's water rights claims. Unless terminated or extended as provided within the contract negotiated with outside counsel, the term of this Contract shall expire upon the latest of the dates at which: 1) a settlement agreement as to the quantification of the water rights of the White Mountain Apache Tribe and the Cities of Avondale, Chandler, Glendale and Scottsdale ("Settlement Agreement") becomes enforceable; and 2) the effective date of any other agreements that are exhibits to that Settlement Agreement, and to which any or all of the Cities of Avondale, Chandler, Glendale or Scottsdale are parties. Should any appeals(s) be filed challenging the adjudication court's or courts' orders(s), decree or decrees approving the Settlement, this Contract shall be extended until the final determination of any and all such appeals. The total expense of joint representation shall not exceed \$120,000, including all expenses of any description. The Cities agree to share the total cost of joint representation on a one-fourth basis. Costs shall be allocated as follows:

	%	\$
Avondale	25%	\$30,000
Chandler	= 25%	= \$30,000

Glendale	=	25%	=	\$30,000
Scottsdale	=	25%	=	\$30,000
	=	100%	=	\$120,000

3. Pursuant to the Contract among the Cities and the law firm of Engelman Berger, P.C. ("Contract"), each of the Cities shall pay directly outside legal counsel its per capita share of the total costs of joint representation in response to monthly bills from outside counsel.

4. Subject to the Contract and the provisions of the Supreme Court's Rules of Professional Responsibility for Attorneys, each of the Cities agrees to cooperate in good faith with the other Cities in an effort to make the joint representation a success.

5. This Intergovernmental Agreement may be cancelled pursuant to A.R.S. § 38-511.

6. This Intergovernmental Agreement shall become effective upon approval and execution by the authorized representatives of all Cities and upon delivery of a fully executed original to each of the Cities.

7. This Intergovernmental Agreement shall be extended or terminated in accordance with the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement to be effective the date first written above.

ATTEST:

CITY OF AVONDALE

By: _____

Its: _____

Its: _____

ATTEST:

CITY OF CHANDLER

By: _____

Its: _____

Its: _____

ATTEST:

CITY OF GLENDALE

By: _____

Its: _____

Its: _____

ATTEST:

CITY OF SCOTTSDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorneys who have determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the respective public entities they represent.

Avondale City Attorney

Chandler City Attorney

MLC

Glendale City Attorney

Scottsdale City Attorney