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JUN 12 2008

MEMO TO: Mayor and City Council

THRU: Mary Wade, City Attorney *MW*

FROM: Glenn A. Brockman, Assistant City Attorney *GAB*

SUBJECT: Approval of contract for legal services with Mariscal, Weeks

DATE: June 4, 2008

RECOMMENDATION: Staff recommends approval of a contract for legal services with Mariscal, Weeks, McIntyre & Friedlander, P.A. to represent the City of Chandler in connection with quiet title claims against Chandler Improvement Company (CIC), its successors and assigns, and any persons purporting to be represented by CIC, to be acting on behalf of CIC, or to be officers or shareholders, or the their spouses, heirs, devisees or beneficiaries, in asserting a property interest, whether a fee interest, easement interest, or other interest, in and to those streets and alleys of the City of Chandler as identified and depicted in the Map of the Townsite of Chandler, recorded with the Maricopa County Recorder at Book 5 of Maps, Page 34, on June 22, 1912, and/or depicted in the Map of Block "I", Townsite of Chandler, recorded with the Maricopa County Recorder at Book 9 of Maps, Page 2, on February 9, 1920.

BACKGROUND/DISCUSSION: Since 2004, CIC, for itself and/or for the persons it purports to represent or on whose behalf it purports to being acting, being the CIC shareholders and their spouses at the time of CIC's corporate dissolution in 1944 or the heirs, devisees, or beneficiaries thereof, has claimed a property interest in and to the street and alleys in Downtown Chandler. In connection with west expansion of Chandler High School, the Chandler Unified School District was forced to file a legal action (in which the City was a party) challenging CIC's claim. The developer of 123 Washington felt it necessary to "settle out" with CIC in order to be able to effectively market its townhouse units. CIC filed a quiet title action against the developer, the City and others associated with the development of Downtown sites 1, 2 and 3, and alleged it held title to the streets and alleys that were vacated as part of that development.

The trial courts in both the School District action and the suit involving sites 1, 2 and 3 have ruled against CIC and held that CIC holds no property interest in the streets and alleys involved in the two suits. CIC has appealed in both cases. An action by the City to clear any claim of CIC to any other portions of the streets and alleys in the downtown area is needed in order to avoid a continuing impediment to future development of the downtown area.

Mariscal Weeks has effectively represented the defendants in the action concerning sites 1, 2 and 3, and is familiar with the issues that have been raised by CIC. These types of actions can be time consuming and involve development of substantial documentation, but, because of the prior suits, it is believed that litigation expenses can be minimized. It is also possible that the City can recover some of its expenses and attorneys' fees if the action is successful. This is a mere possibility, not necessarily a probability. A successful outcome in a quiet title action against CIC does seem likely given the result in the other two actions.

FINANCIAL IMPLICATIONS: The City will be responsible for its own litigation expenses and attorneys' fees. Based on the prior suit, the cost to the City could be as high as \$50,000. However, because of the prior suits, it is believed the expenses may be less. There is also a

possibility that the City may be able to recoup some portion of its expenses and fees if the outcome of the action is successful. The converse may be true if the action is unsuccessful, but the prior two actions suggest a successful outcome.

PROPOSED MOTION: Move to approve a contract for legal services with Mariscal, Weeks, McIntyre & Friedlander, P.A. to represent the City of Chandler in connection with quiet title claims against Chandler Improvement Company and related persons and entities.

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