



**Chandler • Arizona**  
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# 11

OCT 30 2008

**MEMORANDUM**

**Law Department - Council Memo No. 22**

**DATE:** OCTOBER 22, 2008

**TO:** MAYOR AND COUNCIL

**THRU:** MARY WADE, CITY ATTORNEY *mw*

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

**SUBJECT:** RESOLUTION NO. 4233 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. 4233 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 White Mountain Apache Tribe, the Cities, and numerous other parties have drafted a White Mountain Apache Tribe Water Rights Quantification Agreement ("Settlement Agreement"). These parties have also worked on the White Mountain Apache Tribe Water Rights Quantification Agreement Act of 2008, which is now pending before Congress. The parties must ensure that the final Settlement Agreement comports with the Act, and complete several other steps which are required by the Act, before the Settlement Agreement can become enforceable. The Cities would like to continue to be jointly represented in order to finalize the Settlement Agreement and complete the steps required to make that Settlement Agreement legally enforceable.

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The effective date of this Contract will be November 1, 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 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. 4233 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.

cc: W. Mark Pentz, City Manager

RESOLUTION NO. 4233

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 ("Tribe") which are in conflict with the water rights claims of the Cities; and

WHEREAS, the Cities undertook an Intergovernmental Agreement dated March 13, 2008 for joint representation by Engelman Berger, P.C. as to negotiations 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, the Cities and their outside counsel dedicated extensive efforts to work with the Tribe and other parties to draft the White Mountain Apache Tribe Water Rights Quantification Agreement ("Settlement Agreement"); and

WHEREAS, the Cities want to continue this joint representation by outside counsel to finalize this Settlement Agreement and take the steps necessary for the Settlement Agreement to become enforceable; 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:

\_\_\_\_\_  
*MW*  
CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4233 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 1st day of November, 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 a 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

\_\_\_\_\_  
Glendale City Attorney

\_\_\_\_\_  
Scottsdale City Attorney