



City Council Report

Date: October 5, 2020
To: City Council
Through: Karolyn Kent, Assistant City Manager
From: Jake West, Water Resources Department Director
Subject: Authorizing a Second Amendment to Intergovernmental Agreement related to joint legal representation in the Gila River General Stream Adjudication (Citywide)

Purpose and Recommendation

Council is requested to approve and authorize the City Manager to enter into a Second Amendment to Intergovernmental Agreement (“Amendment”) among the cities of Avondale, Glendale, Mesa and Scottsdale related to joint legal representation with Engelman Berger, P.C. in the Gila River General Stream Adjudication, whereby the City of Tempe will be added as a party.

Background/Discussion

Engelman Berger, P.C. has represented the cities of Avondale, Chandler, Glendale, Mesa and Scottsdale (the “Cities”) for many years in the Gila River General Stream Adjudication (the “Adjudication”). The Adjudication is a complex lawsuit that has been pending for over 40 years and ultimately will determine rights to use water from the Gila River and its tributaries, including the Salt and Verde River’s which provide much of the supply delivered and used by residents of the City. Mesa, along with thousands of other parties, is a claimant in the Gila Adjudication. The Cities most recently entered an Intergovernmental Agreement (“IGA”) dated July 1, 2019 regarding the joint representation.

This Amendment adds the City of Tempe, which recently elected to enter the IGA. Over the course of the many years during which the Adjudication has been pending, various Cities and Towns have joined and withdrawn from the joint legal representation. The City Attorney’s Office and Water Resources Department believes that the joint representation remains beneficial to the City, and the Second Amendment will authorize Mesa’s continued participation with the other named Cities with the addition of Tempe, which will also share evenly in the payment of attorney’s fees and expert witness fees incurred in the Adjudication. The IGA will remain in effect until a decree is entered unless terminated sooner by the Parties.

Under the IGA, a contract for legal services between Mesa and Engelman Berger, P.C. will be renewed annually at the discretion of the City Attorney in consultation with the City Manager and designee, the Water Resources Department Director. The City Attorney’s Office also

continuously monitors the Adjudication and the effort of legal counsel retained in accordance with the IGA. In some cases, an attorney from the City Attorney's Office also appears jointly with outside counsel.

Alternatives

Council may choose not to authorize the Amendment to the IGA. In this case, the City would lose the economic and other benefits of joint legal representation.

Fiscal Impact

The contract amount for legal fees under the IGA for fiscal year 2020-21 is a maximum of \$137,600 to be split equally among the five Cities. Therefore, Mesa's share will be a maximum of \$27,520.00 (reduced from \$34,400.00 prior to Tempe's joining the IGA). Mesa may also pay up to \$4,000 as shared expert witness fees in the event that an expert is retained, for a total of \$31,520 annually. The amount for legal fees is anticipated to increase in future years, but will continue to be split five ways.

Coordinated With

The development of IGA was coordinated with the City Attorney's Office.