

**SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT**

**AMONG THE CITIES OF AVONDALE, GLENDALE, MESA, SCOTTSDALE AND
TEMPE RELATING TO JOINT LEGAL REPRESENTATION IN THE
GILA RIVER GENERAL STREAM ADJUDICATION**

This Second Amendment (“Second Amendment”) to the Intergovernmental Agreement among the cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale with an Effective Date of July 1, 2019 as amended by the First Amendment to Intergovernmental Agreement with an Effective date of July 1, 2020 (collectively, the “Original Agreement”) is entered into to be effective October 1, 2020, among the cities of Avondale, Glendale, Mesa, Scottsdale and Tempe (hereinafter the “Cities”).

WHEREAS, the City of Tempe desires to become a party to the Original Agreement as amended by this Second Amendment; and

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

WHEREAS, the Gila River General Stream Adjudication is an extremely important legal case that will adjudicate the surface water rights of the Cities in the Gila River watershed;

NOW, THEREFORE, in consideration of the terms and conditions of this Second Amendment, the Cities agree as follows:

1. The foregoing Recitals are true and correct and incorporated herein by this reference.

2. The purpose of this Second Amendment is to include the City of Tempe as a party to the Original Agreement and identify and define the responsibilities of the parties relating to joint funding for the outside legal counsel to represent the Cities in the proceedings known as the Gila River General Stream Adjudication and the Little Colorado River General Stream Adjudication (collectively, “the Adjudications”), any related special action proceedings, and proceedings involving the Public Trust Doctrine and Arizona streams. In addition, this Second Amendment authorizes joint funding for outside experts to assist the Cities, if necessary, in responding to any

Adjudication activities related to the resolution of the claims for the Gila River Indian Community and to address other issues in the Adjudications as needed.

3. The Cities desire to continue with the Contract for Legal Services (as defined below) as amended with the City of Tempe.

4. Subject to the terms of this Second Amendment, and the Contract for Legal Services (as defined below) as amended, the Cities agree to share equally in the costs of joint legal representation by outside legal counsel and experts, for the period beginning October 1, 2020, which share currently is as follows:

CITY	LEGAL FEE %	EXPERT FEE %
Avondale	20%	20%
Glendale	20%	20%
Mesa	20%	20%
Scottsdale	20%	20%
Tempe	20%	20%
Totals:	100.0000%	100.0000%

5. Pursuant to the contract among the Cities and the law firm of Engelman Berger, P.C. ("Contract for Legal Services"), each of the Cities shall directly pay outside legal counsel its share of the total cost of joint representation and experts in response to monthly bills from outside counsel.

6. Subject to the Contract for Legal Services and subject to 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.

7. The Original Agreement as amended by this Second Amendment may be canceled pursuant to A. R. S. § 38-511.

8. This Second Amendment shall become effective upon approval and execution by the authorized representative of each of the Cities.

9. The term of the Original Agreement as amended by this Second Amendment shall be until a final decree is entered adjudicating all the Cities' water rights in *In Re: The General Adjudication of All Rights to Use Water In the Gila River System and Source* (Nos. W-1, W-2, W-3 and W-4 Consolidated). The Original Agreement as amended by this Second Amendment may be terminated upon the unanimous written consent of all of the Cities subject to the requirements and obligations of the Contract for Legal Services.

10. Any property, tangible, intangible, personal, real or mixed which may be acquired under the terms of the Original Agreement as amended by this Second Amendment will, upon partial or complete termination of the Original Agreement as amended by this Second Amendment, be disposed of in equal pro-rata shares among the Cities.

11. The provisions of the Original Agreement as amended by this Second Amendment are severable. If any portion or portions of the Original Agreement as amended by this Second Amendment are declared to be unlawful or void in a final court of competent jurisdiction, the remaining portion or portions of the Original Agreement which survive any such determination shall remain valid and enforceable according to their terms.

12. All provisions of the Original Agreement shall remain in full force and effect except as amended by this Second Amendment.

13. This Second Amendment may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to be effective as of October 1, 2020.

ENGELMAN BERGER, P.C.

By: _____
William H. Anger
Title: Partner/Shareholder

[city signatures on following pages]

ATTEST:

CITY OF AVONDALE

City Clerk

By: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amendment has been reviewed by the undersigned attorney who has 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 he or she represents.

Date

City Attorney

ATTEST:

CITY OF GLENDALE

City Clerk

By: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amendment has been reviewed by the undersigned attorney who has 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 he or she represents.

Date

Michael Bailey
Glendale City Attorney

ATTEST:

CITY OF MESA

City Clerk

By: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amendment has been reviewed by the undersigned attorney who has 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 he or she represents.

Date

Jim Smith
Mesa City Attorney

ATTEST:

CITY OF SCOTTSDALE

City Clerk

By: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amendment has been reviewed by the undersigned attorney who has 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 he or she represents.

Date

Sherry R. Scott
Scottsdale City Attorney

ATTEST:

CITY OF TEMPE

City Clerk

By: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Second Amendment has been reviewed by the undersigned attorney who has 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 he or she represents.

Date

Judith R. Baumann
Tempe City Attorney