

AGENDA ITEM SUMMARY

December 16, 2014

City Council

STAFF

Carrie Daggett, Interim City Attorney

SUBJECT

Resolution 2014-114 Approving an Intergovernmental Agreement Between the City of Fort Collins and the Poudre Fire Authority Regarding the Provision of Legal Services.

EXECUTIVE SUMMARY

The purpose of this item is to approve an intergovernmental agreement ("IGA") with the Poudre Fire Authority ("PFA") authorizing the City Attorney to provide legal advice to the PFA under certain circumstances. The IGA will authorize the City attorney and his or her staff to provide non-exclusive legal services on a matter-by-matter basis to the PFA in situations where there is not a direct conflict of interest between the two entities and where the City Attorney has the capacity and resources to provide the service. The PFA will pay the City an annual amount equal to 10% of the yearly salary of one full-time attorney in the City Attorney's Office. For 2015, the payment amount will be Seventeen Thousand Seven Hundred Fifty Dollars (\$17,750).

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Since the formation of the PFA in the 1980s, the City Attorney's Office has been providing legal advice to the PFA as permitted under the IGA between the City and the Poudre Valley Fire Protection District ("District") forming the PFA. With the adoption of a new IGA between the City and the District, the PFA Board was given the power to appoint, through a competitive selection process as determined by the PFA Board, an attorney to provide legal services to the PFA. The PFA is currently going through such a competitive selection process and may conclude that retaining the City Attorney to provide non-exclusive legal services for some matters makes the most sense considering that the City Attorney already has a positive and effective attorney-client relationship with PFA staff and the Board and is equipped to continue that relationship on a matter-by-matter basis, recognizing that there are certain subjects and situations that are better handled by other counsel.

The proposed IGA will permit the City Attorney to provide legal services on many routine matters (for example, IGAs with non-City entities, purchasing issues, financial issues), while not providing legal services when he or she determines that the City Attorney's Office does not have the capacity or resources to provide the services (for example, personnel issues, litigation services). Additionally, the City Attorney's Office would not provide legal services to PFA when there is a direct conflict of interest between the City and the PFA (for example, the negotiation and drafting of an IGA between the City and the PFA), in which case, the City Attorney would continue to provide legal services to the City and not the PFA. The IGA calls for the City and the PFA to waive indirect conflicts of interest based on past or future representation of the parties when the subject matter of the legal services to be provided to PFA doesn't constitute a direct conflict.

FINANCIAL / ECONOMIC IMPACTS

The proposed IGA calls for the PFA to annually pay the City an amount equal to the costs associated with 10% of one full-time attorney in the City Attorney's Office. This formula is based on an estimate of the time the City Attorney's Office staff will spend in order to provide legal support to PFA.

RESOLUTION 2014-114
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF FORT COLLINS AND THE POUFRE FIRE AUTHORITY
REGARDING THE PROVISION OF LEGAL SERVICES

WHEREAS, the City of Fort Collins (“City”) and the Poudre Valley Fire Protection District entered into an Amended and Restated Intergovernmental Agreement Establishing the Poudre Fire Authority (“PFA”) on July 15, 2014, (hereafter referred to as the “Establishing IGA”); and

WHEREAS, Section 2.3 of the Establishing IGA states that the Board of the PFA shall have the power to appoint, through a competitive process as determined by the Board, an attorney to provide legal services to the PFA; and

WHEREAS, the PFA is in the process of completing a competitive process for the provision of legal services to the PFA and may determine that the appointment of the City Attorney for the City of Fort Collins (hereafter, “City Attorney”) to provide legal services to the PFA, as described in this Agreement, would be in the best interests of the PFA; and

WHEREAS, the City Council believes that the City Attorney is capable of providing legal services to the PFA pursuant to the terms of this Agreement and consents to such appointment by the PFA.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, that the Mayor is hereby authorized to enter into the Intergovernmental Agreement Between the City of Fort Collins and the Poudre Fire Authority for the Provision of Legal Services in substantially the form attached hereto as Exhibit “A” and incorporated herein by this reference, with such modifications or additional terms and conditions as the Mayor, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City and effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of December, A.D. 2014.

Mayor

ATTEST:

City Clerk

INTERGOVERNMENTAL AGREEMENT
 BETWEEN THE CITY OF FORT COLLINS AND THE POUFRE FIRE AUTHORITY
 FOR THE PROVISION OF LEGAL SERVICES

THIS AGREEMENT is entered into this ___ day of _____, _____, pursuant to Section 29-1-201 et seq., C.R.S., by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as the "City"), and THE POUFRE FIRE AUTHORITY, a fire authority organized pursuant to Section 29-1-203(4), C.R.S. (hereinafter referred to as the "PFA").

WITNESSETH:

WHEREAS, the City and the Poudre Valley Fire Protection District entered into an Amended and Restated Intergovernmental Agreement Establishing the PFA on July 15, 2014, (hereafter referred to as the "Establishing IGA"); and

WHEREAS, Section 2.3 of the Establishing IGA states that the Board of the PFA shall have the power to appoint, through a competitive process as determined by the Board, an attorney to provide legal services to the PFA; and

WHEREAS, the PFA is in the process of completing a competitive process for the provision of legal services to the PFA and has determined that the appointment of the City Attorney for the City of Fort Collins (hereafter, "City Attorney") to provide to the PFA a portion of the legal services needed by the PFA, as described in this Agreement, may be in the best interests of the PFA; and

WHEREAS, the City Council believes that the City Attorney is capable of providing to the PFA a portion of the legal services required by the PFA pursuant to the terms of this Agreement, and consents to such appointment by the PFA.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Appointment.

A. The PFA hereby appoints the City Attorney to serve as a non-exclusive legal advisor to the PFA pursuant to the terms of this Agreement. This appointment shall include those members of the City Attorney's staff who are designated by the City Attorney to provide legal services pursuant to the terms of this Agreement.

B. The City hereby consents to and directs that the City Attorney provide legal services to the PFA pursuant to the terms of this Agreement. While providing such services, the City Attorney and those members of the City Attorney's staff designated by the City Attorney to provide the legal services shall remain at all times employees of the City and shall be deemed to be carrying out such services in the course of their employment by the City.

2. Term and Termination.

This Agreement shall commence on the date first above written and shall have an indefinite term. Either Party may terminate this Agreement without cause at any time with not less than thirty (30) days written notice to the other Party. The decision to terminate by the City may be made by the City Attorney. The decision to terminate by the PFA may be made by the PFA Fire Chief.

3. Scope of Legal Services.

The City Attorney will provide legal services as requested by PFA on a matter-by-matter basis provided that:

A. there is not a conflict of interest based on a directly adverse position on the matter between the City and the PFA.

B. the City Attorney determines that the City Attorney's Office has the capacity and resources to handle the particular matter, and

C. the City Attorney and the PFA Fire Chief agree that the subject of the matter is not more appropriately handled by other counsel.

4. Consent to Indirect Conflict of Interest.

The PFA recognizes that the City Attorney and the City Attorney's staff will continue to provide legal services to the City, including its subdivisions, while providing legal services to the PFA under this Agreement. Likewise, the City Attorney will continue to provide legal services to the City on a matter when the City Attorney is unable or unwilling to provide legal services to the PFA on that matter because of a direct conflict of interest between the City and the PFA regarding that matter. However, the Parties desire that the City Attorney provide legal services to the PFA in matters where there is not a direct conflict regarding those matters even though the prior or future provision of legal services to the City may limit the City Attorney's responsibilities to the PFA, or vice versa. With respect to those situations, the Parties hereby provide their informed written consent to the provision of such legal services by the City Attorney to the Parties provided the City Attorney determines that:

A. he or she will be able to provide competent and diligent representation to each Party in connection with the matters on which said Party is represented by the City Attorney or a member of his or her staff;

B. the representation is not prohibited by law; and

C. the representation does not involve the assertion of a claim by one Party against the other Party in the same litigation or other proceeding before a tribunal.

5. Payment.

A. The PFA shall pay to the City the amount of Seventeen Thousand Seven Hundred and Fifty Dollars (\$17,750) for 2015.

B. For calendar years subsequent to 2015, the PFA shall pay to the City an amount equal to ten percent (10%) of the yearly salary of one full-time attorney in the City Attorney's Office, calculated based on the average per hour cost of all attorneys in the office except the prosecutor attorney position.

C. The payment for each calendar year shall be made in January of that year and a prorated refund shall only be required if this Agreement is terminated by the City prior to the end of a calendar year.

6. No Third Party Beneficiaries.

This Agreement is made for the exclusive benefit of the Parties hereto and shall not be construed to be an agreement for the benefit of any third party or parties and no third party shall have a right of action hereunder for any cause whatsoever.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed on the date hereinabove written, in accordance with the approvals of their governing bodies.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

POUDRE FIRE AUTHORITY

By: _____
Chairperson

ATTEST:

Secretary