

AGENDA ITEM SUMMARY

August 18, 2015

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

Resolution 2015-076 Authorizing One or More Intergovernmental Agreements With Other Colorado Cities for Special Legal Counsel Services.

EXECUTIVE SUMMARY

The purpose of this item is to authorize an updated intergovernmental agreement with the Cities of Loveland and Greeley and the Town of Windsor for special legal services to be used in the event that a conflict of interest or other similar circumstance prevents the City Attorney or members of her office from representing the City in a particular matter. The Resolution also authorizes intergovernmental agreements in a similar form with other municipalities.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The legal interests of the City are generally represented by the City Attorney pursuant to Article VI of the City Charter. Section 3 of said Article VI authorizes the City Council, upon the request of the City Attorney in special cases, to employ special counsel if deemed necessary and advisable under the circumstances.

In 1992, the City Council adopted Resolutions 1992-190, authorizing the Mayor to enter into intergovernmental agreements with other Colorado municipalities for the exchange of special legal counsel services, and the City has previously entered into agreements for this purpose with the Cities of Loveland, Greeley and Boulder. The City utilizes special legal services under the current agreements several times each year, and also on occasion provides assistance to other cities. This arrangement has worked well and simplifies and makes more cost effective the use of special counsel, particularly for small or routine matters.

In 2014, the City Council adopted Ordinance No. 046, 2014, which codified in City Code Section 2-583 a process for the selection and retention of outside legal counsel. Section 2-583 specifically references the retention of special legal counsel from the law offices of other municipalities pursuant to intergovernmental agreements as an option for arranging legal counsel when necessary in light of a conflict of interest or other appropriate circumstances.

During the past year, the attorneys for the City, and for Loveland, Greeley and the Town of Windsor have reviewed and updated the agreement form that had been used previously. Each of these entities is in the process of finalizing approval of the updated agreement attached to the Resolution as Exhibit "A."

The Resolution also authorizes the Mayor, at the request of the City Attorney, to execute additional intergovernmental agreements with other Colorado municipalities in substantially the same form as the agreement provided with the Resolution.

RESOLUTION NO. 2015-076
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING ONE OR MORE INTERGOVERNMENTAL AGREEMENTS
WITH OTHER COLORADO CITIES FOR SPECIAL LEGAL COUNSEL SERVICES

WHEREAS, the legal interests of the City are generally represented by the City Attorney pursuant to Article VI of the City Charter; and

WHEREAS, Section 3 of said Article VI authorizes the City Council, upon the request of the City Attorney in special cases, to employ special counsel if deemed necessary and advisable under the circumstances; and

WHEREAS, the City Council has previously adopted Resolution 1992-190, which authorized the Mayor to enter into intergovernmental agreements with other Colorado municipalities for the exchange of special legal counsel services, and required such intergovernmental agreements to contain certain specified provisions; and

WHEREAS, the City Council in 2014 enacted Ordinance No. 046, 2014, which adopted City Code Section 2-583 establishing a process for the selection and retention of outside legal counsel, which includes the retention as special legal counsel of in-house legal counsel of other municipalities pursuant to intergovernmental agreements in that regard; and

WHEREAS, in order to provide cost-effective special legal counsel to temporarily replace the services of the City Attorney in the event of a conflict of interest or other similar circumstances, the City Attorney's Office has in the past cooperatively exchanged special legal counsel services with the in-house legal counsel for other cities in the region; and

WHEREAS, the City previously entered into intergovernmental agreements with the City of Greeley and the City of Loveland regarding the exchange of legal services and has separately contracted with the City of Boulder; and

WHEREAS, the attorneys for the various entities have recommended that it would be in the best interests of each of the participating entities to enter into an updated and unified intergovernmental agreement to authorize the exchange of such legal services under appropriate circumstances and to establish updated terms and conditions upon which such exchange of services should occur; and

WHEREAS, in addition, the Town of Windsor has requested to be included in the intergovernmental agreement, and will provide additional legal staff resources to the group going forward; and

WHEREAS, pursuant to Section 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government, and the City is authorized by Charter to enter into intergovernmental agreements; and

WHEREAS, an updated combined intergovernmental agreement providing for the exchanged of special legal services as described above, is attached hereto as Exhibit "A" and incorporated herein by this reference (the "IGA").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Mayor be and hereby is authorized to execute the IGA in the form attached hereto and incorporated herein as Exhibit "A," together with such modifications and additions as the City Attorney determines are necessary and appropriate to protect the interests of the City or further purposes of this Resolution, as set forth above.

Section 2. That Mayor be and hereby is authorized to execute additional intergovernmental agreements with such other Colorado municipalities for the exchange of special legal counsel services as the City Attorney may, in his or her discretion, determine to be appropriate and request that the Mayor sign, in substantially the form of the IGA that is attached hereto and incorporated herein as Exhibit "A," together with such modifications and additions as the City Attorney determines are necessary and appropriate to protect the interests of the City or further purposes of this Resolution, as set forth above.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 18th day of August, A.D. 2015.

Mayor

ATTEST:

City Clerk

INTERGOVERNMENTAL AGREEMENT FOR THE EXCHANGE OF LEGAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2015, by and between THE CITY OF FORT COLLINS, COLORADO ("Fort Collins"), THE CITY OF GREELEY, COLORADO ("Greeley") THE CITY OF LOVELAND, COLORADO ("Loveland"), collectively referred to as the "Cities"; and the TOWN OF WINDSOR, COLORADO referred to as the "Town" and each also and all collectively referred to as the "Municipality or the Municipalities," respectively.

WITNESSETH:

WHEREAS, pursuant to Section 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the legal interests of the Municipalities are generally represented by the City and Town Attorneys employed thereby; and

WHEREAS, on occasion, the City or Town Attorney of one of the Municipalities is prevented from representing the interests of the such Municipality by reason of personal conflicts of interests or other situations which may impair his or her ability to fully represent the interests of such Municipality in particular cases; and

WHEREAS, the Municipalities are authorized by their respective home rule charters to employ the services of special legal counsel in such situations; and

WHEREAS, in certain such instances, the most efficient and cost effective manner of providing for the legal representation of the Municipalities would be to exchange the services of members of the respective legal staffs of the cities; and

WHEREAS, in 1993 the Cities entered into separate agreements with each other regarding the exchange of legal services; and

WHEREAS, the Councils of the Cities have each determined that it would be in the best interests of each of the Cities to enter into an updated and unified Intergovernmental Agreement to authorize the exchange of such legal services under appropriate circumstances and to establish the terms and conditions upon which such exchange of services should occur; and

WHEREAS, the Town Board of the Town has determined it would be in the best interests of the Town to authorize the exchange of legal services with the Cities under appropriate circumstances, and that entering into a unified Intergovernmental Agreement with the Cities would be appropriate.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby

acknowledged, the parties agree as follows:

1. Exchange of Legal Services. If the City or Town Attorney ("Attorney") of any of the Municipalities determines, in his or her discretion, that a conflict of interest or other situation arises or has occurred which prevents or impairs him/her from fully performing the normal duties of his/her office, said Attorney ("the Requesting Attorney") shall determine whether the subject matter of the representation would be appropriate for an exchange of legal services under this Agreement. In making such determination, the Requesting Attorney shall consider the nature and complexity of the matter at issue; the amount of time which may be required to satisfactorily resolve the matter, either through litigation or otherwise; the level of special expertise, if any, which may be required to competently represent the interests of his or her client(s); and any other factors which the Requesting Attorney may consider to be relevant. Upon a determination that an exchange of legal services would be appropriate under this Agreement, the Requesting Attorney shall so notify the Attorney for the other party to this Agreement ("the Responding Attorney") and request the provision of such legal services.

Upon receipt of any such request, the Responding Attorney shall determine whether such services may be provided by his/her office without unduly interfering with the Responding Attorney's ability to perform the normal duties of his/her own office. The Responding Attorney shall notify the Requesting Attorney within five (5) working days as to whether the request for legal services can be accommodated. If so, the Responding Attorney may assign any one (1) or more attorneys in the Responding Attorney's office to provide such services.

2. Reimbursement of Costs. The party for whom legal services are rendered under this Agreement ("the Requesting Municipality") shall reimburse the other party ("the Responding Municipality") for all out-of-pocket expenses incurred in rendering the requested legal services. Such expenses shall include, without limitation, cost of reproducing documents, mileage, long distance telephone calls, deposition costs and expert witness fees, but shall exclude any reimbursement for compensation paid by the Responding Municipality to its Attorney, its deputy and assistant attorneys, or to its support staff. Payment of such expenses shall be made within thirty (30) days of the date of receipt of any billing therefor.

3. Employment Status. Throughout the delivery of the requested legal services, the Responding Attorney and/or his/her personnel shall represent the interests of the Requesting Municipality but shall continue to be employed solely by the Responding Municipality, and the delivery of such legal services for the Requesting Municipality by the Responding Attorney and/or his/her personnel shall be considered to be within the scope of the performance of the Responding Attorney's duties for and employment by the Responding Municipality.

4. Workers' Compensation Insurance and Other Benefits. If the Responding Attorney or other personnel of the Responding Municipality is injured, disabled or dies while providing services to the Requesting Municipality under this Agreement, said individual shall remain covered by, and eligible for, the workers compensation and other benefits to which said individual would otherwise be entitled if the injury, disability or death had occurred while acting solely as an employee of the Responding Municipality and not providing services to the Requesting Municipality under this Agreement.

5. Governing Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the Municipalities acknowledge that there are legal constraints imposed upon them by the constitutions, statutes, rules and regulations of the State of Colorado and of the United States, and by their respective charters and codes and that, subject to such constraints, the Municipalities intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

6. Indemnification and Governmental Immunity To the extent permitted by law, the Requesting Municipality shall indemnify and hold harmless the Responding Municipality, its officers, employees and agents, including without limitation the Responding Attorney, from and against all liabilities, claims and demands which may arise from the negligent acts or omissions of the Responding Attorney or any of his or her subordinates, agents or other persons acting under his or her authority. In addition, the Requesting Municipality shall indemnify the Responding Municipality, its officers, employees and agents, including without limitation the Responding Attorney for all costs and expenses related to defending such liabilities, claims and demands, including, without limitation, litigation costs and attorneys' fees, whether or not such liabilities, claims or demands are groundless, frivolous, false or fraudulent. However, the parties agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities or limitations to liability that the Requesting Municipality may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) and to any other defenses, immunities or limitations to liability available to the Requesting Municipality under the law.

7. Term. The term of this Agreement shall continue for a period of one (1) year from the date hereof and shall be automatically renewed for successive one (1) year periods unless terminated by any party as to such party. Any party may withdraw from this Agreement at any time by the giving of written notice of termination to the each of the other parties not less than thirty (30) days prior to the date of withdrawal.

IN WITNESS WHEREOF, the Municipalities have executed this Agreement the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Fort Collins City Attorney

THE CITY OF LOVELAND, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Loveland City Attorney

THE CITY OF GREELEY, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Greeley City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

AVAILABILITY OF FUNDS:

By: _____
Director of Finance

THE TOWN OF WINDSOR, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Windsor Town Attorney