



CITY OF FERNLEY

CITY COUNCIL AGENDA REPORT

Meeting Date: June 16, 2021

REPORT TO: Mayor and City Council
REPORT FROM: Daphne Hooper, City Manager
REVIEWED BY: Brandi Jensen, City Attorney
REVIEWED BY: Denise Lewis, City Treasurer

FINANCIAL IMPACT:

Yes: No:

CURRENTLY BUDGETED:

Yes: No:

FUND/ACCOUNT:

510-810-689

ACTION REQUESTED: Consent Ordinance Resolution Motion Receive/File

AGENDA ITEM: Staff Report (For Possible Action): Approval of contract for legal services related to water resources to Taggart & Taggart, Ltd. in an amount not to exceed \$160,000 for FY 2021-2022.

Agenda Item Brief: The proposed contract for Taggart & Taggart, Ltd. provides for legal services related to water resources and the completion of the Water Right priorities established by City Council.

Recommended Motion:

"I move to approve the contract for legal services related to water resources to Taggart & Taggart in an amount not to exceed \$160,000.00 for FY 2021-2022."

Business Impact (per NRS Chapter 237):

- A Business Impact Statement is Attached.
- A Business Impact Statement is not required because this is not a rule (term excludes vehicles by which legislative powers are exercised under NRS Chapters 271, 278, 278A, or 278B).

See attached report for background, analysis, alternatives.

ALTERNATIVES:

Council may ask for more information or not approve the contract.

BACKGROUND:

To utilize all sources of water available most efficiently to its municipal supply, Fernley is in the process of incorporating its surface water into the municipal system. Taggart & Taggart will provide legal support to the following ongoing projects in FY 2021-22:

- Expansion of City of Fernley Surface Water Program
- Agricultural Lease Options with Non-Fernley Lessees
- Canal Diversion
- Mid/long-term Agreements
- Dedication Matters
- Surface Water Applications

In all cases, a catalogue of existing commitments on City surface water rights is required to understand the timing and obligations of the City's surface water bank.

- Truckee Canal Advocacy Program
- Negotiations with the Bureau of Reclamation and other parties
- Litigation Regarding Canal Operations
- Water Workshop
- Stakeholder Organization

Strategic Negotiations Plan

Negotiations and partnering on the Truckee River system and the Newlands Reclamation Project should be continued to strategically position the City to obtain its mission of developing a long-term reliable community water supply, and to concurrently limit the City's long-term litigation costs. Strategic negotiations and partnering may lead to resolution or mitigation of disputes involving deed restrictions, water exchanges, and the Water Rights Acquisition Program, among others. In addition, strategic negotiations may result in future funding or cost sharing for development of required capital improvements such as the aforementioned takeout structure and pipeline needed to convey surface water from the canal to Fernley's municipal water system.

- TCID Administrative Matters and Negotiations
- TROA Administration Cost Sharing
- TROA Scheduling and Coordination

Water Right Dedications

This task is ongoing and involves two main parts, the water rights incentivization program, and the administrative requirements of the dedication process itself.

- Administrative Matters Involving Proposed Dedications
- Administrative Matters Involving the Maintenance of Fernley's Water Rights Bank
- Litigation over Banked Water

Administrative Matters Pertaining to Existing Groundwater Rights

From time to time, administrative matters arise which relate to existing City groundwater rights. Proofs of beneficial use, proofs of completion of works, and extensions for filing those documents must be filed with the State Engineer. Additionally, applications to change the points of diversion of rights may be required to optimize resources. This item involves filing the required documents with the Nevada Division of Water Resources and supporting them through the administrative process and any subsequent litigation.

Municipal Code Review and Revision

From time to time, Fernley Municipal Code, particularly that part related to water issues, must be updated to

accurately reflect new or changed City policies, or to comply with Nevada statutes. This task involves assistance in drafting City Resolutions and Ordinances, along with the documents that must be presented with them for the review of City Council, as well as attending meetings with the Council to clarify the updated code sections.

Upstream Storage Contract

In FY 2016-17 the City finalized a contract with the Bureau that allows the City to store water in upstream reservoirs in accordance with the provisions of TROA. During FY 2020-21 the City utilized the contract to establish credit water in Lake Tahoe. Taggart & Taggart will provide ongoing assistance to the City with contract implementation and compliance issues and with strategic decision making regarding the quantity of water that needs to be retained in storage to support surface water will-serve commitments.

Long-Term Water Resource Planning

Fernley has a diverse mix of surface and groundwater resources and has acquired upstream storage capabilities. In addition, there are several potential groundwater importation projects that could provide additional future resources. In FY 2019-20 Fernley approved a comprehensive long-term water resources plan. This plan will assist the City in making strategic decisions related to capital expenditures and the conjunctive management of the City's water resources. During 2021-22 Taggart & Taggart will assist the City with continued implementation and updating of the water resources plan.

State Legislative and Regulatory Proposals

Taggart & Taggart regularly assists the City, and the City's registered lobbyists, with reviewing proposed regulations and legislation that would impact municipal water operations. The Nevada Division of Water Resources, in response to direction from the 2019 Nevada Legislature, is currently drafting new regulations related to the administrative hearing process and requests for extensions of time to file proofs of completion and proofs of beneficial use. Taggart & Taggart has, and will continue, to represent the City during the administrative review and adoption of these regulations. There will be no regular legislative session during the 2021-22 fiscal year.

LEGAL IMPLICATIONS:

NRS 6332.115, NRS 325.050, NRS 625.530

FINANCIAL IMPLICATIONS:

Funding for outside legal services relating to water is funded in the Water Enterprise Fund for FY2021/22 for \$160,000.

PRIOR COUNCIL ACTION/REVIEW:

Annual contract renewal – June 2020
Annual contract renewal – June 2019
Annual contract renewal – June 2018
Annual contract renewal – June 2017
Annual contract renewal – June 2016

ATTACHMENTS:

Contract

Attachment A – Scope of Work

Attachment B – Fee Schedule