

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services ("Contract") is made to be effective the 17th day of March, 2008 (the "Effective Date"), by, between and among the Cities of Avondale, Chandler, Glendale, and Scottsdale, municipal corporations, hereafter collectively referred to as the "Cities," and the law firm of Engelman Berger, P.C., hereinafter referred to as Counsel.

NOW, THEREFORE, for and in consideration of the financial accommodations and other terms and conditions of this Contract, the parties hereto agree as follows:

1. Scope of Services. Counsel agrees to represent the Cities in settlement activities ("Settlement Activities") relating to the water rights claims of the White Mountain Apache Tribe and the settlement of the such possible claims. This representation shall be in accordance with the terms and conditions of this Contract and direction provided by attorneys employed by the Cities ("City Attorneys").

- 1.1. Counsel agrees to perform services specified in this Contract. Counsel shall not be required to perform additional services under this Contract and may terminate this Contract if the amount of services and costs have reached the maximum limit as provided in Section 3 of this Contract and no mutually satisfactory arrangements have been made to increase that limit.
- 1.2. Counsel agrees to represent the Cities in Settlement Activities. For purposes of this Contract, "Settlement Activities" shall mean any of the following:
 - 1.2.1. A settlement conference conducted by the court, special master, mediator, arbitrator, or other designated persons.
 - 1.2.2. A meeting in which some or all of the parties to the Gila River Adjudication are invited to discuss settlement of the White Mountain Apache Tribe Claims.
 - 1.2.3. A document distributed to some or all of the parties to the Gila River Adjudication that sets out principles or specific provisions addressing settlement of any litigation related to or settlement of the Gila River Indian Community Claims.
 - 1.2.4. Any proceedings or activities that relate to the process for court approval or enactment of federal or state legislation relating to the settlement of the White Mountain Apache Tribe water rights claims or allocation of CAP water to the Tribe by the Secretary of Interior.
 - 1.2.5. Any activity required that is a condition for the one or more of the Cities to receive water that is provided to such Cities under a Settlement Agreement relating to the White Mountain Apache Tribe water rights claims.
 - 1.2.6. Any other activity that relates to possible settlement of the White Mountain

Apache Tribe claims if Counsel obtains prior approval to participate in such activity from each designated City Representative.

- 1.3. Counsel shall meet with appropriate representatives of the Cities, collectively and individually, as necessary to discuss and evaluate Settlement Activities.
- 1.4. Each City shall provide Counsel information necessary to assist Counsel in its representation of the Cities in Settlement Activities.
- 1.5. Each City shall designate one Representative for Counsel to keep informed of Settlement Activities. No major decision regarding the resolution of Settlement Activities shall be made without the prior approval of each designated City Representative. All offers of compromise made by any party shall be promptly transmitted to each designated City Representative. Each City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to enter a counter-offer.

2. Term of Contract. Unless terminated or extended as provided herein, the term of this Contract shall expire upon the latest of the dates at which: 1) a settlement agreement as to the quantification of the water rights of the White Mountain Apache Tribe and the Cities of Avondale, Chandler, Glendale and Scottsdale ("Settlement Agreement") becomes enforceable; and 2) the effective date of any other agreements that are exhibits to that Settlement Agreement, and to which any or all of the Cities of Avondale, Chandler, Glendale or Scottsdale are parties. Should any appeals(s) be filed challenging the adjudication court's or courts' orders(s), decree or decrees approving the Settlement, this Contract shall be extended until the final determination of any and all such appeals.

3. Case Budget; Authorized Expenditures. The Cities agree to pay Counsel for Settlement Activity services rendered pursuant to Subsection 1.2 of this Contract according to the hourly rates and expenses set forth in Exhibit A, with each City paying its allocation pursuant to the percentage divisions identified in Section 4 of this Contract. The total collective costs to the Cities for all attorneys' fees rendered under this Section, including all expenses of any description, shall not exceed \$120,000.00

- 3.1. The hourly rates for Counsel shall be inclusive of word processing services, clerical overtime and all other overhead expenses of Counsel which shall not be separately itemized and billed to the City; provided, that the expenses identified in Exhibit "A" shall be separately itemized and billed to the City.
- 3.2. Photocopying charges shall not exceed 15 cents per page.
- 3.3. Any expense to the Cities not expressly authorized in the text or by an exhibit to this Contract may be included in a billing of Counsel only if the expense was reasonably incurred in the performance of services under this Contract, and is billed on an actual out-of-pocket cost basis to Counsel.

4. Payment for Services; Billing Format. Counsel shall prepare and distribute to the Cities a

monthly billing for services rendered under this Contract.

- 4.1. The monthly billing shall consist of one, aggregate billing for all services furnished to the Cities under this Contract.
- 4.2. Counsel shall indicate clearly on each bill the allocated portion to be paid separately by each City.
- 4.3. City allocations shall represent a one-fourth percentage division of the total bill. In order to limit total collective costs to no more than \$120,000.00 and also to divide equally the costs among the Cities, each City's percentage of costs was rounded to 25 percent. Percentage allocations are as follows:

		%		\$
Avondale	=	25%	=	\$30,000.00
Chandler	=	25%	=	\$30,000.00
Glendale	=	25%	=	\$30,000.00
Scottsdale	=	25%	=	\$30,000.00
	=	100%	=	\$120,000.00

- 4.4. Within thirty (30) days of receipt of each monthly bill, each city shall remit to Counsel its allocated portion of the aggregate monthly billing.
 - 4.5. Monthly billings shall clearly indicate time spent on tasks in increments of tenths of hours and the name or initials of the person(s) performing each task. Words in billing statements such as "analysis," "conference," "research" or "case preparation" shall only be used if supplemented by descriptions of specific topics or issues germane to the Scope of Services.
 - 4.6. All billings of Counsel shall be subject to audit by the Cities. Counsel shall maintain during the term of this Contract, and for two (2) years thereafter, all books, documents, papers, accounting records and other evidence pertaining to time billed and costs incurred on behalf of the Cities in the CAP litigation and shall make such materials available to the Cities upon request at Counsel's offices during normal business hours. The Cities shall give Counsel reasonable notice for Counsel to assemble such billing records.
5. Lead Attorney. William H. Anger shall serve as Lead Attorney to the Cities. Counsel shall not substitute another Lead Attorney to the Cities without the prior written consent of the Cities.
6. Subcontracting, Assignment, Experts. Services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written consent of the City Attorneys. Technical experts shall not be retained by Counsel at the expense of the Cities without prior written consent of the City Attorneys.
7. Insurance, Indemnification. Counsel shall secure and maintain during the life of this Contract a Certificate of Insurance evidencing that Counsel carries Errors and Omissions

Professional Liability Insurance with limits no less than \$1,000,000.00. Insurance evidenced by this certificate shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to the Cities.

8. Independent Contractor. The services provided by Counsel under this Contract are those of an independent contractor, not an employee.

9. Termination Under A.R.S. § 38-511. In accordance with A.R.S. § 38-511, the Cities may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Cities' departments or creating the contract on behalf of the Cities' departments agencies is, at any time while the contract or any extension of contract is in effect, an employee of any other party of the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Cities is received by all other parties to the contract, unless the notice specifies a later time.

10. Common Interests and Conflicts of Interest. The Cities have decided upon joint representation with other cities in order to achieve economies of scale and to maximize the effectiveness of all the Cities represented by Counsel in Settlement Activities relating to White Mountain Apache Tribe's water rights claims. Counsel is directed to seek strategies and positions in Settlement Activities relating to White Mountain Apache Tribe's water rights claims that advance the common interests of the Cities. However, the Cities also recognize that from time to time issues may arise in Settlement Activities relating to the White Mountain Apache Tribe's water rights claims which the Cities may have diverse, incompatible or conflicting interests. Accordingly, the Cities agree:

- 10.1. That Counsel shall fully and timely inform and explain to all Cities the factual and legal basis for each conflict of interest among the Cities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in Settlement Activities or litigation relating to the settlement of the White Mountain Apache Tribe's water rights claims; and
- 10.2. That the Cities shall disclose to Counsel perceived or known conflicts of interest among the Cities respecting issues raised in Settlement Activities or litigation relating to the White Mountain Apache Tribe's water rights.
- 10.3. In the event the Cities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in accordance with the Supreme Court's Rules of Professional Responsibility; provided, however, this Contract shall be construed to confer upon each City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining Cities in situations where the rules would require Counsel to cease representing one or more of the Cities.
- 10.4. Each City is entitled to actively participate on issues in Settlement Activities or litigation relating to the White Mountain Apache Tribe's water rights claims and consistent with the Supreme Court's Rules of Professional Responsibility.

10.5. For convenience or cause other than a conflict of interest among the Cities, the Cities may withdraw from future obligations under their Contract with Counsel upon written notice to Counsel; provided, however, Counsel's Contract will remain in full force and effect as to the remaining Cities. Additionally, the percentage division and allocation of the total bill for the remaining cities as outlined in Paragraph 4.3 shall be increased to make up for the loss of the withdrawing City. The withdrawing Cities shall pay Counsel for their proportionate share of all legal services and expenses incurred up to the date of withdrawal. If requested by the withdrawing city, Counsel shall provide the withdrawing city, within thirty (30) days a copy of Counsel's file provided that the withdrawing city shall pay Counsel for the photocopy charges incurred in copying said file. In the event the withdrawal of one or more Cities raises issues regarding use by Counsel for the remaining Cities of confidential or privileged information, such conflict shall be dealt with in accordance with the Supreme Court's Rules of Professional Responsibility; provided however this contract shall be construed to confer upon such City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining Cities in situations where the rules would require Counsel to cease representing one or more of the Cities.

10.6. That given the large number of diverse interested parties in Settlement Activities relating to the CAP litigation and the settlement of the Gila River Indian Community claims, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in any matter consistent with the Supreme Court's Rules of Professional Responsibility.

ATTEST:

CITY OF AVONDALE

City Clerk

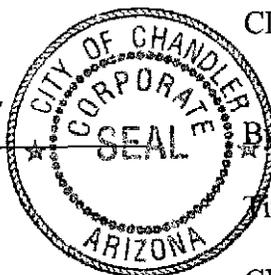
By: _____

Title: _____

ATTEST:

CITY OF CHANDLER

Marla Paddel
City Clerk



By: *Glenn A. Puckett*

Title: *City Attorney*

ATTEST:

CITY OF GLENDALE

Donna D...
City Clerk

By: *Ed Bear*

Title: *City Manager*

ATTEST:

CITY OF SCOTTSDALE

City Clerk
ENGELMAN BERGER, P.C.

By _____

By: 
Title: Partner

DETERMINATION OF LEGAL COUNSEL

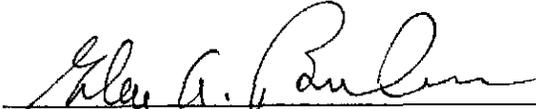
The foregoing Agreement has been reviewed by the undersigned attorneys who have determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the respective public entities they represent.

Date

5/27/08

Date

Avondale City Attorney



Chandler City Attorney

Date

Glendale City Attorney



Date

Scottsdale City Attorney

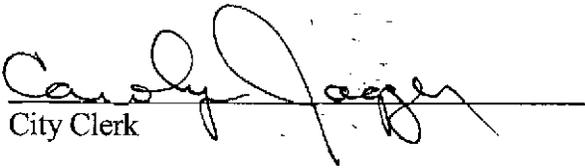
EXHIBIT "A"

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$260.00 for the time of William H. Anger and other shareholders in the firm, counsel's hourly rate may increase by \$10.00 per hour each year on the anniversary of the Effective Date. All other attorneys in the firm or attorneys contracted by the firm to perform services under this Agreement will be billed at the rate not to exceed \$220.00 per hour. Paralegals will be billed at the rate of \$135.00 per hour.

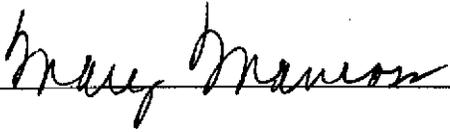
Counsel will bill for the reasonable expenses incurred in performing its legal services. These expenses will include long-distance telephone charges, fax charges, electronic research charges, delivery charges, mail expense associated with any filing in the case, printing and copying, and payments to third parties for filing fees, transcripts, travel expenses, including, without limitation, meals and lodging, for settlement negotiations and meetings outside of the Phoenix metropolitan area, and other items for the Cities' benefit under this contract.

ATTEST:

CITY OF SCOTTSDALE



City Clerk

By 

ENGELMAN BERGER, P.C.

By: 

Title: Partner

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorneys who have 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 they represent.

Date

Avondale City Attorney

Date

Chandler City Attorney

Date

Glendale City Attorney

4/21/08

Date



Scottsdale City Attorney

- 10.5. For convenience or cause other than a conflict of interest among the Cities, the Cities may withdraw from future obligations under their Contract with Counsel upon written notice to Counsel; provided, however, Counsel's Contract will remain in full force and effect as to the remaining Cities. Additionally, the percentage division and allocation of the total bill for the remaining cities as outlined in Paragraph 4.3 shall be increased to make up for the loss of the withdrawing City. The withdrawing Cities shall pay Counsel for their proportionate share of all legal services and expenses incurred up to the date of withdrawal. If requested by the withdrawing city, Counsel shall provide the withdrawing city, within thirty (30) days a copy of Counsel's file provided that the withdrawing city shall pay Counsel for the photocopy charges incurred in copying said file. In the event the withdrawal of one or more Cities raises issues regarding use by Counsel for the remaining Cities of confidential or privileged information, such conflict shall be dealt with in accordance with the Supreme Court's Rules of Professional Responsibility; provided however this contract shall be construed to confer upon such City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining Cities in situations where the rules would require Counsel to cease representing one or more of the Cities.
- 10.6. That given the large number of diverse interested parties in Settlement Activities relating to the CAP litigation and the settlement of the Gila River Indian Community claims, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in any matter consistent with the Supreme Court's Rules of Professional Responsibility.

ATTEST:

Carmen Martinez for
City Clerk

CITY OF AVONDALE

By: [Signature]
Title: City Manager

ATTEST:

City Clerk

CITY OF CHANDLER

By: _____
Title: _____

ATTEST:

City Clerk

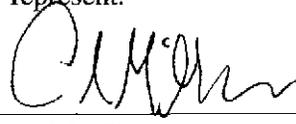
CITY OF GLENDALE

By: _____
Title: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorneys who have 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 they represent.

Date



Avondale City Attorney

Date

Chandler City Attorney

Date

Glendale City Attorney

Date

Scottsdale City Attorney

EXHIBIT "A"

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$260.00 for the time of William H. Anger and other shareholders in the firm, counsel's hourly rate may increase by \$10.00 per hour each year on the anniversary of the Effective Date. All other attorneys in the firm or attorneys contracted by the firm to perform services under this Agreement will be billed at the rate not to exceed \$220.00 per hour. Paralegals will be billed at the rate of \$135.00 per hour.

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