CITY CLERK
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C-8719
12/10/2013

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services ("Contract") is made to be effective this 10th day of December, 2013 (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 relating to the water rights claims of the White Mountain Apache Tribe and the settlement of such possible claims ("Settlement Activities"). 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 has 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 General Stream 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 General Stream Adjudication that sets out principles or specific provisions addressing settlement of any litigation related to or settlement of the White Mountain Apache Tribe's water rights;

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 Central Arizona Project water to the Tribe by the Secretary of Interior.

1.2.5. Any activity required that is a condition for 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 as 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 on July 1, 2014; provided this Contract may be renewed for additional one (1) year periods upon the approval of the respective City Attorneys.

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 Contract, including all expenses of any description, shall not exceed $80,000.00.

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 $80,000.00 and also to divide equally the costs among the Cities, each City's percentage of costs was rounded to twenty-five (25) percent. Percentage allocations are as follows:

		%		$
Avondale	=	25%	=	$20,000.00
Chandler	=	25%	=	$20,000.00
Glendale	=	25%	=	$20,000.00
Scottsdale	=	25%	=	$20,000.00
Total	=	100%	=	$80,000.00

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 pursuant to this Contract 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 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 and as to 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 White Mountain Apache Tribe's water rights, 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.

11. Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, Counsel hereby warrants to the City that Counsel and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Counsel Immigration Warranty").

11.1. A breach of the Counsel Immigration Warranty (Exhibit B) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the Contract.

11.2. Each City retains the legal right to inspect the papers of any Counsel or Subcontractor employee who works on this Contract to ensure that Counsel or Subcontractor is complying with the Counsel Immigration Warranty. Counsel, at the City's expense, agrees to assist the City in the conduct of any such inspections. The City's inspection rights under this Paragraph 11.2 only extend to such employee records necessary to determine whether Counsel or Counsel's Subcontractor is complying with the Counsel Immigration Warranty and not any other employment or other employee records. In conducting any inspections under this Paragraph 11.2, except as required by law, the City agrees to keep confidential and not disclose Counsel's employee's personal information such as social security numbers and other information of Counsel's employees.

11.3. Each City may, at its sole discretion, conduct random verifications of the employment records of Counsel and any of Counsel's Subcontractors who provide services under this Contract to ensure compliance with the Counsel Immigration Warranty. Counsel, at the City's expense, agrees to assist the City in performing

any such random verifications. The City's random verifications rights under this Paragraph 11.3 only extend to the right to review such employee records necessary to determine whether Counsel or Counsel's Subcontractor is complying with the Counsel Immigration Warranty and not any other employment or other employee records. In conducting any random verifications under this Paragraph 11.3, except as required by law, the City agrees to keep confidential and not disclose Counsel's employee's personal information such as social security numbers and other information of Counsel's employees.

11.4. The provisions of this Article must be included in any contract that Counsel enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

11.5. In accordance with A.R.S. §35-393.06, Counsel hereby certifies that Counsel does not have scrutinized business operations in Iran.

11.6. In accordance with A.R.S. §35-391.06, Counsel hereby certifies that Counsel does not have scrutinized business operations in Sudan.

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

[Signatures on following pages.]

ENGELMAN BERGER, P.C.

By: _____
Title: Partner / Share Holder

CITY OF AVONDALE, an
Arizona Municipal Corporation

_____
Andrew McGuire, City Attorney

CITY OF CHANDLER, an
Arizona Municipal Corporation

_____
Mary Wade, City Attorney

CITY OF GLENDALE, an
Arizona Municipal Corporation

ATTEST:
_____
City Clerk

_____
City Attorney

CITY OF SCOTTSDALE, an
Arizona Municipal Corporation

_____
Bruce Washburn, City Attorney

EXHIBIT "A"

During the term of the Contract, Counsel will bill the Cities at the hourly rate of $320.00 for the time of William H. Anger and other shareholders in the firm; Counsel's hourly rate may increase by $15.00 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 Contract will be billed at the rate not to exceed $280.00 per hour which rate may be increased by $15.00 per hour on the anniversary of the Effective Date. Paralegals will be billed at the rate of $180.00 per hour, which rate may be increased by $10.00 per hour on the anniversary of the Effective Date.

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.

EXHIBIT B

Counsel Immigration Warranty
To Be Completed by Counsel Prior to Execution of Contract

A R.S. § 41-4401 requires as a condition of your contract verification of compliance by Counsel and Subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form, Counsel shall attest that it, and all Subcontractors performing work under the cited Contract, meets all conditions contained herein.

Contract Description: Joint Representation of the Cities of Avondale, Chandler, Glendale and Scottsdale relating to the White Mountain Apache Tribe's Water Rights
Name (as listed in the contract): Engelman Berger, P C.
Street Name and Number 3636 North Central Avenue, Suite 700
City: Phoenix State· Arizona Zip Code 85012

I hereby attest that:

1. Counsel complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R S. § 23-214 related to the immigration status of those employees performing work under this contract,

2 All Subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and

3. Counsel has identified all Counsel and Subcontractor employees who perform work under the Contract on the attached Employee Verification Worksheet and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214

Signature of Counsel (Employer) or Authorized Designee:

_____

Printed Name _____

Title: _____

Date (month/day/year)· _____