CITY CLERK
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C-10284
07/01/2015

CONTRACT FOR LEGAL SERVICES

This CONTRACT FOR LEGAL SERVICES (the "Contract") is entered into and is effective as of the 1st day of July, 2015, by and between the CITY OF GLENDALE, an Arizona municipal corporation (the "City"), and the law firm of ENGELMAN BERGER, P.C. ("Counsel").

RECITALS

A. The Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale, pursuant to an Intergovernmental Agreement Relating To Joint Legal Representation In The Gila River General Stream Adjudication effective August 1, 2006 (the "IGA"), have entered into that certain Contract for Legal Services with Counsel, effective August 1, 2006 (the "Contract for Legal Services").

B. The current renewal of the Contract for Legal Services expires on June 30, 2015 and is extended by this Contact effective July 1, 2015. Each City, respectively, and Counsel now wish to extend the term by which such legal services are provided by entering into this form of Contract.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Counsel hereby agree as follows:

1. **Scope of Services.** Counsel agrees to represent City in the action known as The Gila River General Stream Adjudication and related matters and litigation (the "Adjudication") in accordance with the terms of this Contract and direction provided by the City to serve as its chief legal counsel in the Adjudication.

1.1 Counsel agrees to perform legal services specified in this Contract and as identified in any litigation plan adopted by the cities who are parties to the IGA. The City Attorney for the City ("City Attorney") agrees to collectively direct and manage Counsel's activities with other city attorneys employed or retained by the cities who are parties to the IGA (each, an "IGA City", or collectively, the "IGA Cities"). City Attorney will further ensure that Counsel's activities are under and in accordance with the terms of this Contract; provided, that Counsel shall not be required to perform additional legal services under this Contract if the combined amount of legal services and costs has reached the maximum limit as provided in paragraph 3 of this Contract.

1.2 Counsel agrees to represent City in any hearings relating to interlocutory issues identified by the Arizona Supreme Court as the subject of interlocutory appeals in the Adjudication ("interlocutory issues"). This representation shall include preparation of any and all briefs or other

pleadings, presentation of an expert witness, cross-examination of other witnesses, and oral argument as specified by City.

1.3 Counsel agrees to represent City regarding issues which are appealed to the Arizona Supreme Court or the United States Supreme Court from the Little Colorado River Adjudication and the Gila River Adjudication. This representation shall include activities as directed by the City Attorney.

1.4 Counsel agrees to review City's status as to the Statements of Claimant, and as to the Adjudication, in order to determine issues of common concern with other IGA Cities, e.g., prior decrees, abandonment and forfeitures, federally reserved rights to groundwater, appurtenancy, agency, and other parties' water rights, for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.

1.5 Counsel agrees to review relevant portions of the Adjudication records, such as prior pleadings, court orders, transcripts and steering committee reports, which are relevant for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.

1.6 Counsel may assist City on any matters before the trial court and special master in the Little Colorado River Adjudication and Gila River Adjudication.

1.7 Counsel may assist City on any matters before any court addressing the issue of the application of the public trust doctrine on Arizona streams including, but not limited to, Center for Biological Diversity v. Smith, (Maricopa County Superior Court Case No. CV 2002-000171).

1.8 Counsel agrees to assist City in developing a position on normal flow accounting issues and on severance, transfer, abandonment, and forfeiture issues. It is understood that these tasks will be undertaken in addition to work on the interlocutory issues pursuant to direction given by City.

1.9 During the term of this Contract, Counsel agrees to prepare any and all notices of appearance, statements of position and briefs, and to present oral argument which may be scheduled by the Arizona Supreme Court or the United States Supreme Court as to the interlocutory issues.

1.10 Should Counsel, City Attorney and all other city attorneys employed or retained by IGA Cities determine that technical consultants are required to assist Counsel in his performance of this Contract, such technical consultants may be employed only with the express consent of City Attorney, under such terms and conditions as the City Attorney may specify.

1.11 Subject to the activities contemplated in paragraph 11 of this Contract, Counsel shall meet with appropriate representatives of City as necessary to

discuss and evaluate the water interests of City and to discuss and evaluate the status of City's water claims in this Adjudication.

1.12 City shall provide Counsel a summary of its claim filed in the Adjudication, a description of its water supply and demand, the amount of each component of its water supply (i.e., Kent Decree rights, CAP rights, groundwater pumping, effluent use, etc.), projections of future water supply and demand for City, and other information necessary to assist Counsel in its representation of City in the Adjudication.

1.13 When reasonably feasible, at least 10 calendar days prior to their due date, Counsel shall furnish City with draft copies of all motions or briefs to be filed on behalf of City that may be dispositive of a particular issue. If Counsel is unable to meet this 10 day deadline, Counsel shall promptly endeavor to make other arrangements satisfactory to City to address the strategy and major positions in the motion or brief to be filed on behalf of City.

1.14 The Counsel will perform services describe in subparagraphs 1.6, 1.7, and 1.10 only upon the direction of the unanimous consensus of city attorneys who are employed or retained by the IGA Cities.

2. **Term of Contract.** Unless terminated as provided below, the term of this Contract shall expire on June 30, 2016; provided, this Contract may be renewed for one (1) additional one (1) year period upon the approval of the City Attorney.

3. **Authorized Expenditures for Legal Services and Expenses.** City agrees to pay Counsel for services rendered hereunder according to the hourly rates and expenses set forth in Exhibit A, with City paying 21.25% of the total cost for all attorneys' fees rendered under this Contract and 20% of the total cost for all expert fees. The total annual cost to City for all attorneys' fees rendered under this Contract, including all expenses of any description for services rendered, shall not exceed $25,500.00, and except as set forth below, City shall not be liable under this Contract for any amount in excess of $25,500.00 per year, for services rendered under this Contract. The case budget for legal services and expenses will not include the costs of experts authorized pursuant to paragraph 6.

3.1. The hourly rates for Counsel will include word processing services, clerical overtime and all other overhead expenses of Counsel which will not be billed to City; provided, that the expenses identified in Exhibit A will be separately itemized and billed to City.

3.2. Only one attorney for Counsel may bill for performing the same major task, such as attending the same deposition, meeting, or hearing, unless Counsel has received the prior approval of the City Attorney; provided, that, without the prior approval of City Attorney, more than one attorney may bill for and assist in work related to research and preparation of pleadings and other documents prepared by Counsel. City and other IGA

Cities will appoint a contract manager, who may be the City Attorney and authorize such person to perform duties specified in this Contract.

4. **Payment for Service Billing Format**. Counsel shall prepare and distribute to City a monthly billing for services rendered under this Contract.

   4.1 The monthly billing shall consist of one aggregate billing of all services furnished to City and other IGA Cities under this Contract, with expert services that are authorized pursuant to paragraph 6 identified separately from the other furnished services.

   4.2 Counsel shall indicate clearly on each bill the allocated portion to be paid separately by City.

   4.3 Counsel agrees to assess expert fees equally amongst all IGA Cities. The amount of expert fees for City shall not exceed $4,000.

   4.4 Within thirty (30) days of receipt of each monthly bill, City shall remit to Counsel its allocated portion of the aggregate monthly billing.

5. **Lead Attorney**. William H. Anger shall serve as Lead Attorney to City. Counsel shall not substitute another Lead Attorney to City and other IGA Cities without the prior written consent of City and other IGA 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 notice and consent of the City Attorney. Technical experts shall not be retained by Counsel at the expense of City without the prior written consent of the City Attorney. This Contract specifically contemplates that experts may be hired during the Contract term upon the unanimous written consent of all City Attorneys employed or retained by other IGA Cities for purposes related to whether federal reserved rights exist for state trust lands, the resolution of Tribal or Indian Community claims, and any other issues in the Adjudication as needed. The total cost to City for such expert services shall not exceed $4,000.00.

7. **Insurance**. Counsel shall secure and maintain during the life of this Contract a Certificate of Insurance evidencing that Counsel carries Errors and Omission Professional Liability with limits no less than $1,000,000. Insurance evidenced by this certificate shall not expire, be canceled, or be materially changed without 15 days prior written notice to City.

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, City 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 City's departments or creating the Contract on behalf of

City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee or 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 this Contract. The cancellation shall be effective when written notice from City is received by all other parties to the Contract, unless the notice specifies a later time.

10. **Common Interests and Conflicts of Interest.** City acknowledges that Counsel is jointly representing City and other IGA Cities on matters stated in paragraph 1 of this Contract. To achieve economies of scale and to maximize the effectiveness of City in the Adjudication, City authorizes Counsel to seek strategies and positions in the Adjudication that advance the common interests of all IGA Cities. However, City also recognize that from time to time issues may arise in the Adjudication concerning which City and other IGA Cities may have diverse, incompatible or conflicting interests.

10.1 Counsel will fully and timely inform and explain to City the factual and legal basis for each conflict of interest among IGA Cities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in Adjudication; and

10.2 City will disclose to Counsel perceived or known conflicts of interest among the IGA Cities respecting issues raised in the Adjudication.

10.3 In the event the IGA 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 Conduct; provided, however, this Contract shall be construed to confer upon 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 IGA Cities in situations where the rules would require Counsel to cease representing City.

10.4 For convenience or cause other than a conflict of interest among the IGA Cities, City may withdraw from future obligations under this Contract upon written notice to Counsel. In such case, City will promptly pay Counsel for its proportional share of all legal services and expenses incurred up to the date of withdrawal. Upon request of City, Counsel shall provide City, within 30 days after receiving the written withdrawal notice from City, a copy of Counsel's files provided that City has paid Counsel for the photocopy charges incurred in copying said file. In the event City's withdrawal raises issues regarding use by Counsel for the other IGA Cities of confidential or privileged information, such conflict will be dealt with in accordance with the Supreme Court's Rules of Professional Conduct; provided, City will negotiate in good faith with Counsel and the other IGA Cities in order to allow Counsel to continue to represent the other IGA Cities in situations where such Rules would require Counsel to cease representing one or more IGA Cities.

10.5 Counsel will notify City if one of the IGA Cities has withdrawn from the joint representation contemplated in paragraph 10.

10.6 Given the large number of diverse and interested parties in the Adjudication, 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 Conduct.

11. **Separate Representation.** This Contract does not prohibit IGA City or Cities from retaining the Counsel to perform legal services related to the Adjudication that are different in kind to those services performed under this Contract as long as: (i) Counsel is retained by a separate contract; (ii) the IGA City or Cities are billed separately for the services; and (iii) the services are not in furtherance of an issue in which the separately contracting IGA City or Cities have directly conflicting interests with City.

12. **Immigration Law Compliance.**

12.1 Counsel, on its own behalf and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

12.2 Any breach of warranty under subparagraph 12.1 above is considered a material breach of this Contract and is subject to penalties up to and including termination of this Contract.

12.3 City retains the legal right to inspect the papers of Counsel or a subcontractor employee who performs work under this Contract to ensure that Counsel or any subcontractor is compliant with the warranty under subparagraph 12.1 above.

12.4 City may conduct random inspections, and, upon request of City, Counsel will provide copies of papers and records of Counsel demonstrating continued compliance with the warranty under subparagraph 12.1 above. Counsel agrees to keep papers and records available for inspection by City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this paragraph.

12.5 Counsel agrees to incorporate into any subcontracts under this Contract the same obligations imposed upon Counsel and expressly accrue those obligations directly to the benefit of City. Counsel also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Contract the same obligations above and expressly accrue those obligations to the benefit of City.

12.6 Counsel's warranty and obligations under this section to City are continuing throughout the term of this Contract or until such time as City determines, in its sole discretion, that Arizona law has been modified and that compliance with this paragraph is no longer a requirement.

12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

ENGELMAN BERGER, P.C.

By: _____

Title: Shareholder/Partner

CITY OF GLENDALE, an
Arizona Municipal Corporation

_____
Michael Bailey, City Attorney

ATTEST:

_____
City Clerk

EXHIBIT A

During the term of the Contract, Counsel will bill the Cities at the hourly rate of $350.00 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.