

**CITY CLERK
ORIGINAL**

~~2003-109A-COS~~ Clerk # 2003-109A
2003-109-COS-A1 CA # 2005-002

C-3257-4
02/22/2005

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services ("Contract") is made to be effective this 22 day of February, 2005 (the "effective date"), by, between and among the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria 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 action known as *Central Arizona Water Conservation District v. United States of America, et al.*, Case No. CV 95-625 TUC-WDB (EHC) ("CAP litigation") and the settlement of the Gila River Indian Community's water rights 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 CAP Litigation are invited to discuss settlement of the litigation or settlement of the Gila River Indian Community Claims.
 - 1.2.3. A document distributed to some or all of the parties to the CAP Litigation that sets out principles or specific provisions addressing settlement of the litigation or settlement of the Gila River Indian Community Claims.
 - 1.2.4. Any proceedings or activities that relate to the process of reallocating CAP water by the Secretary of Interior.
 - 1.2.5. Any other activity that relates to possible settlement of the CAP Litigation or settlement of the Gila River Indian Community claims if Counsel obtains prior approval to participate in such activity from each designated City Attorney.

- 1.3. Counsel shall meet with appropriate representatives of the Cities, collectively and individually, as necessary to discuss and evaluate Settlement Activities. Counsel shall act according to the conditions and directives set forth in Exhibit B.
 - 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 attorney for Counsel to keep informed of all litigation matters in the CAP litigation. No major decision regarding the resolution of Settlement Activities shall be made without the prior approval of each designated City Attorney. All offers of compromise made by any party shall be promptly transmitted to each designated City Attorney. 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 within, the term of this Contract shall expire at the conclusion of the CAP litigation or the Enforceability Date of the settlement of the Gila River Indian Community Claims whichever event occurs last.
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 attorney's fees rendered under this Section, including all expenses of any description, shall not exceed \$100,000.
- 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-sixth percentage division of the total bill. In order to limit total collective costs to no more than \$100,000.00 and also to divide equally the costs among the Cities, each City's percentage of costs was rounded to 16.666 percent. Percentage allocations are as follows:

		%		\$
Chandler	=	16.666%	=	\$16,666.00
Glendale	=	16.666%	=	\$16,666.00
Goodyear	=	16.666%	=	\$16,666.00
Mesa	=	16.666%	=	\$16,666.00
Peoria	=	16.666%	=	\$16,666.00
Scottsdale	=	16.666%	=	\$16,666.00
	=	99.996%	=	\$99,996.00

4.4. Within thirty 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 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 the CAP litigation. Counsel is directed to seek strategies and positions in Settlement Activities relating to the CAP litigation 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 CAP litigation 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 CAP litigation or the settlement of the Gila River Indian Community claims concerning 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 relating to the CAP litigation or the settlement of the Gila River Indian Community 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 relating to the CAP litigation or the settlement of the Gila River Indian Community claims.
- 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 relating to the CAP litigation as it deems appropriate 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.

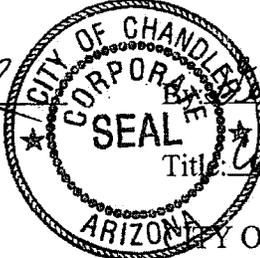
10.6. That given the large number of diverse interested parties in Settlement Activities relating to the CAP litigation and the settlement of the Gila River Indian Community claims, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in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

ATTEST:

CITY OF CHANDLER

Marla Paduch
City Clerk

Thomas M. O'Neill
Title: City Attorney



ATTEST:

CITY OF GLENDALE

City Clerk

By: _____

Title: _____

ATTEST:

CITY OF GOODYEAR

City Clerk

By: _____

Title: _____

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ATTEST:

CITY OF CHANDLER

City Clerk

By: _____

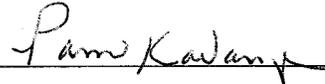
Title: _____

ATTEST:

CITY OF GLENDALE



City Clerk

By:  _____

Title:  _____

ATTEST:

CITY OF GOODYEAR

City Clerk

By: _____

Title: _____

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ATTEST:

CITY OF CHANDLER

City Clerk

By: _____

Title: _____

ATTEST:

CITY OF GLENDALE

City Clerk

By: _____

Title: _____

ATTEST:

CITY OF GOODYEAR

Dee Calhoun

City Clerk



James M. Lawrence
By: _____

Title: *Mayor*

ATTEST:

CITY OF MESA

City Clerk

By: _____

Title: _____

ATTEST:

CITY OF PEORIA

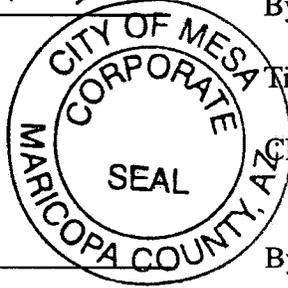
ATTEST:

CITY OF MESA

Bertha Jones
City Clerk

By: [Signature]

Title: City Manager



ATTEST:

CITY OF PEORIA

City Clerk

By: _____
Title: _____

ATTEST:

CITY OF SCOTTSDALE

City Clerk

By: _____
Title: _____

ATTEST:

ENGELMAN BERGER, P.C.

City Clerk

By: _____
Title: _____

ATTEST:

CITY OF MESA

City Clerk

By: _____

Title: _____

ATTEST:

CITY OF PEORIA

Mary Jo Kief

Mary Jo Kief
City Clerk



By: *SLM*

Stephen M. Kemp

Title: City Attorney

ATTEST:

CITY OF SCOTTSDALE

City Clerk

By: _____

Title: _____

ATTEST:

ENGELMAN BERGER, P.C.

City Clerk

By: _____

Title: _____

A CON 05995 I

ATTEST:

City Clerk

ATTEST:

City Clerk

ATTEST:

Candy Jager

City Clerk

ATTEST:

City Clerk

CITY OF MESA

By: _____

Title: _____

CITY OF PEORIA

By: _____

Title: _____

CITY OF SCOTTSDALE

By: *Mary Manross*

Title: *Mayor*

ENGELMAN BERGER, P.C.

By: *[Signature]*

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.

3-1-05
Date

Dennis M. O'Neill
Chandler City Attorney

Date

Glendale City Attorney

Date

Goodyear City Attorney

Date

Mesa City Attorney

Date

Peoria City Attorney

Date

Scottsdale City Attorney

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

2-25-05

Date

Date

Date

Date

Date

Chandler City Attorney



Glendale City Attorney

Goodyear City Attorney

Mesa City Attorney

Peoria City Attorney

Scottsdale City Attorney

DETERMINATION OF LEGAL COUNSEL

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Date

2-25-05

Date

Date

Date

Date

Date

Chandler City Attorney



Glendale City Attorney

Goodyear City Attorney

Mesa City Attorney

Peoria City Attorney

Scottsdale City Attorney

DETERMINATION OF LEGAL COUNSEL

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Date

Chandler City Attorney

Date

Glendale City Attorney

Date

2/25/05

Date

Goodyear City Attorney

Charles L. Caly

Mesa City Attorney

Date

Peoria City Attorney

Date

Scottsdale City Attorney

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Date

Chandler City Attorney

Date

Glendale City Attorney

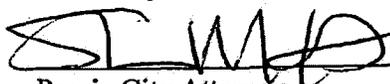
Date

Goodyear City Attorney

Date

Mesa City Attorney

Date



Peoria City Attorney

Date

Scottsdale City Attorney

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Date

Chandler City Attorney

Date

Glendale City Attorney

Date

Goodyear City Attorney

Date

Mesa City Attorney

Date

Peoria City Attorney

Date
2/7/05

[Signature]
Scottsdale City Attorney

EXHIBIT "A"

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$220.00 for the time of William H. Anger and other shareholders in the firm . 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 \$190.00 per hour. Paralegals will be billed at the rate of \$100.00 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.

EXHIBIT "B"

PROCEDURE GUIDELINES

REPRESENTATION OF THE CITIES OF MESA, CHANDLER, PEORIA, GOODYEAR, SCOTTSDALE AND GLENDALE

1. Counsel will provide each City on a six-month basis a status report which shall include:
 - A. Projection of budget for costs of representation for the next six months.
 - B. Projection and recommendation for legal services to be provided during the next six-month period.
 - C. Description of services provided during the past six months and the benefits to each City.
 - D. Projection of specialized legal services including:
 1. Litigation
 2. Discovery
 3. Settlement
 4. Post Settlement Implementation

The Cities shall respond to Counsel with any comments regarding the above. Failure to comment within thirty days shall be deemed an acceptance of the item as prepared by Counsel. If any City comments are inconsistent or in conflict, Counsel shall advise the Cities accordingly and the Cities shall meet in good faith to attempt to resolve such conflicts.

2. Within thirty (30) days after the start of a new intergovernmental agreement, Counsel will provide each City a budget for legal services and costs for the term of the Agreement and a projection of specialized legal services for the term of the Agreement.
3. Cities agree Counsel may communicate by e-mail and fax with each City on routine matters requiring information and communication with individual Cities.
 - A. Each City on January 1 of each year shall designate and provide to Counsel the names of one lawyer and one non-lawyer that are the principal contacts for Counsel.
 - B. Counsel will establish a reasonable deadline for Cities to respond on routine matters. Failure to respond will be deemed assent to Counsel's proposed course of action.
 - C. Status meeting. The Cities agree to meet every six months to have a status meeting with Counsel to review progress on the matter and discuss major decisions regarding the Intergovernmental Agreement that require client consent.

4. Counsel shall identify on an annual or as needed basis major strategic decisions that require the communications and consent of the City clients in advance of such decisions being made.
5. Counsel understands and acknowledges that this is a fixed price agreement with total cap of \$100,000 during the term of this agreement. It is Counsel's responsibility to manage the fixed price budget and if necessary advise clients of services that will need to be minimized or reduced to meet the total price cap.
 - A. Counsel shall not exceed the fixed price cap in the agreement without the express written consent of all six Cities.
 - B. Recognizing that this fixed price agreement is for a specific term, Counsel shall monitor costs on an on-going basis to ensure sufficient funding remains available during the term for those legal services that Counsel has indicated to the Cities are of a high priority.
 - C. In all billings, Counsel shall identify the time spent calculated as an hourly rate for each specific service in any day, rather than an hourly rate per day for all services. In the event of a need for additional information, any City will notify Counsel of its need for additional Information.