#25

APR 28 2011

Chandler + Arizona
Where Values Make The Difference

MEMO TO: Mayor and City Council

FROM: Mary Wade, City Attorney MW

SUBJECT: Renewal and Ratification of Contract for Legal Services with the Law Firm of Gust Rosenfeld

DATE: April 20, 2011

RECOMMENDATION: Staff recommends that the Chandler City Council renew and ratify the Contract for Legal Services between the City of Chandler and the law firm of Gust Rosenfeld to provide legal services related to bond issues, litigation and advice on related issues for the period of August 1, 2010 through August 1, 2012.

BACKGROUND/DISCUSSION: The City of Chandler has used this law firm over the past several years to represent the City in issues related to bond issues, litigation and various other issues and wishes to continue having the option to employ this law firm should the need arise.

FINANCIAL IMPLICATIONS: Payment will come from funds budgeted or allotted for the associated issues/projects that arise.

PROPOSED MOTION: Move to renew and ratify the Contract for Legal Services between the City of Chandler and the law firm of Gust Rosenfeld to provide legal services related to bond issues, litigation and advice on related issues for the period of August 1, 2010 through August 1, 2012.

MW/rl

Attachment: Contract for Legal Services

CONTRACT FOR LEGAL SERVICES
BETWEEN
THE CITY OF CHANDLER
AND
GUST ROSENFELD PLC

THIS Contract, hereinafter CONTRACT, is made and entered into on August 1, 2010, by and between the City of Chandler, hereinafter called "CITY", acting by and through the City Attorney and Gust Rosenfeld PLC, hereinafter referred to as "COUNSEL."

WHEREAS, City Attorney has determined that it is in the best interests of the CITY to employ COUNSEL to furnish legal services to the City of Chandler as specifically set forth below;

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein, the parties agree as follows:

1. SCOPE

COUNSEL shall, upon referral by the City Attorney, perform the following services:

1.1 Scope of Services. The Scope of Services COUNSEL is expected to perform is as follows:

1.1.1 Preparation of forms of proceedings for adoption by the City Council in calling for, preparing the ballot language and bond information brochure of, conducting, and canvassing the results of each election authorizing the issue of bonds, and the advertising and selling of the bonds.

1.1.2 Preparation of the submission of the bond election procedures to the United States Justice Department.

1.1.3 Preparation of forms of general certificates, signature identification certificates, treasurer's receipts, and other miscellaneous documents, certificates or letters necessary, proper, or appropriate in order for Bond Counsel to render an opinion approving the bonds.

1.1.4 Preparation and review of those portions of the official statements (prospectus) issued in connection with a bond offering, as requested by the City or the City's financial advisor with the approval of the

City.

1.1.5 Examination of pertinent documents in original or certified form and rendering a final market opinion approving the bonds and expressing an opinion of Bond Counsel as to the exemption of interest thereon from Federal and Arizona Income taxation.

1.1.6 Review and advise the City of all federal and state laws that are relevant to the issuance of the bonds and use of bond proceeds.

1.1.7 Review and perform legal analysis of the financing structure and assist in determining the method of sale and formulate time schedules.

1.1.8 Consultation with City's staff, including telephone discussions and conferences, in matters pertaining to or appropriate to consideration of the City's bonds generally or specifically, and attendance at pre-closings, closings, conferences and information meetings.

1.1.9 Preparation of draft legislation, ordinances or resolutions, and legal documents necessary, appropriate or useful in connection with the issuance, sale and delivery of bonds.

1.1.10 Attendance at all meetings of the Mayor and Council of the City as necessary or as may be requested.

1.1.11 At the specific direction of the City, assistance in any specific items of litigation which might be brought involving the bonds concerning the issuance of which COUNSEL acted as Bond Counsel.

1.1.12 Performance of such other and different legal services as may be directed by the City.

1.2 Types of Issues. The types of bond issues covered under this CONTRACT shall include the following:

1.2.1 Short-term variable rate general obligation, street and highway user revenue, and utility revenue bonds.

1.2.2 Third-party lease-purchase financings, including excise tax revenues bonds and certificates of participation issued by the City and/or nonprofit corporations created and acting to further the interests of the City in financing operations.

1.2.3 Front-end special assessment (improvement district) bonds, including development of City or State legislation or ordinances to be prepared when financing is needed.

1.2.4 Taxable general obligation, street and highway user revenue bonds, and taxable utility revenue bonds.

1.3 The provisions of this Agreement do not provide that the City shall be obligated to use the services of COUNSEL exclusively for the types of issues described here and above. In the event that COUNSEL advises the City that it will not be able to render the appropriate approving opinions or other services required hereunder, the City maintains the ability to consult with and retain other firms in the capacity of Bond Counsel for such proceedings.

1.4 The parties recognize and agree that the professional services performed by COUNSEL herein as Bond Counsel shall involve the total independent discretion and professional judgment of Counsel, and shall not be determined by the City Attorney or any other official, Council, or entity of the City. COUNSEL, in its capacity as Bond Counsel owes its primary duty in the performance of this Agreement to the ultimate purchasers and holders of bonds issued by the City, and while the best interest of the City are most frequently served by service in the best interest of the bond holders, it is the interest of the bond holders which are paramount herein.

2. REFERRAL OF WORK TO COUNSEL

Referral of legal matters to COUNSEL under this AGREEMENT will only be through the Chandler City Attorney or his designee.

Work performed by COUNSEL on matters that are not referred to COUNSEL as set forth in this CONTRACT will be considered unauthorized and not compensable. COUNSEL is to provide legal services to CITY only through the Chandler City Attorney's Office, and not independently of the Chandler City Attorney's Office. COUNSEL shall report to the Chandler City Attorney any effort made to engage the services of COUNSEL independently of the City Attorney's Office.

Referral of legal matters to COUNSEL will be through a Letter of Engagement signed by the Chandler City Attorney or his designee. The Letter of Engagement will contain: (1) the name and a description of the matter for which legal services are sought, (2) an explanation of the scope of work, and (3) the compensation CITY will pay COUNSEL for the

services sought. The Letter of Engagement is not effective unless the Chandler City Attorney signs it.

3. CLIENT CONTACT

All decisions requiring the consent of the client shall be brought by COUNSEL to the attention of CITY through the Chandler City Attorney.

4. STAFFING

The parties agree that at the time of the execution of this CONTRACT, it is the intent of the parties that the services to be performed by COUNSEL'S firm shall be performed by Scott W. Ruby, Fred Rosenfeld and Keith C. Hoskins. It is further understood that Mr. Ruby, Mr. Hoskins and Mr. Hoskins may use the services of suitably trained and skilled professional personnel to perform legal services in connection with this CONTRACT under their direction and control. Prior to changing any key personnel, especially those key personnel who the CITY relied upon in making this CONTRACT, COUNSEL shall obtain the approval of the City Attorney and any replacement personnel shall have capabilities at least equal to those of personnel they replaced for performance of the Services. All staffing decisions shall be discussed and agreed upon with CITY in advance. The names of professionals specifically assigned to the matter must appear on each monthly billing statement. Any subsequent changes to staff must be approved beforehand by the City Attorney and reflected on the billing invoice.

CITY expects COUNSEL to volunteer its candid assessment of whether the potential representation lies within COUNSEL's areas of expertise and whether it can be handled economically and efficiently. It is expected that this assessment will be made without charge to CITY.

CITY also expects that COUNSEL will investigate whether it would be more efficient for CITY personnel (employees, temporary employees, or contractors) to perform certain tasks such as collecting and reviewing information in files, interviewing witnesses, managing documents, preparing summaries, etc. COUNSEL shall give consideration to whether some of the work can be performed efficiently by lawyers, paralegals or clerks employed by CITY and whether there are other ways in which the time required of COUNSEL can be minimized without compromising the quality of representation. In matters requiring large amounts of paralegal time, consideration shall be given to hiring temporary contract paralegals that can be retained at rates significantly less than those charged by

COUNSEL. CITY expects COUNSEL to explore cost saving opportunities such as communicating with the CITY through e-mail and electronically transmitting documents.

5. MATERIALS AND INVESTIGATIVE SERVICES

CITY will furnish COUNSEL all investigative and other materials it has relative to the legal services to be provided by COUNSEL and to any claim asserted in litigation and will, subject to CITY'S approval, conduct such additional investigation as COUNSEL shall request.

6. COMPENSATION

CITY agrees to pay COUNSEL for services under this CONTRACT as set forth in Exhibit A, attached hereto and entitled "Fees and Expenses". COUNSEL'S compensation shall include salary and overhead expenses, profits and employee costs including, but not limited to, clerical and word processing expenses. The rate, amount, or type of compensation to be paid to COUNSEL shall be reflected in the Letter of Engagement approved by COUNSEL and the CITY.

7. ACCOUNTING AND AUDITING

COUNSEL agrees that CITY or its duly authorized representatives shall have access to and the right to examine any books, documents, papers, records and other evidence reflecting all time charges, compensation and costs billed under this CONTRACT. The materials described herein shall be made available at the office of COUNSEL at any reasonable time for inspection, audit or reproduction until the expiration of three (3) years from the date of final payment under this CONTRACT. CITY will give COUNSEL sufficient notice of CITY's intent to audit. This notice will be in writing and will describe the matters or files to be audited. The audit will not be restricted only to open files, it may also include files that are closed or archived. CITY (or its designated consultant) shall have complete access to the entire matter, files, and all supporting documents and information. If CITY elects to use a third-party consultant to perform the audit then CITY will provide COUNSEL with a written waiver of the attorney-client privilege. CITY will not view work performed by COUNSEL for other clients in those situations where the attorney-client privilege would apply. CITY agrees that no person conducting an audit will be paid on a contingency fee basis.

COUNSEL is prohibited from transmitting, or assisting in the transmission

of, any billing information generated by COUNSEL under this CONTRACT to any person or organization other than the CITY without the express written consent of the City Attorney.

8. BILLING

COUNSEL shall prepare billings for services rendered and expenses incurred during the prior month on each matter handled. All billing must be in accordance with ABA Opinion No. 93-379. These monthly billings shall be submitted to CITY on or before the last day of each month following the date the services were provided or the expenses incurred during the term of this CONTRACT. The monthly billings should be addressed to:

Mary Wade
City Attorney
City of Chandler
Mail Stop 602
PO Box 4008
Chandler, Arizona 85244-4008
Mary.wade@chandleraz.gov

CITY tracks fees and expenditures by matter. Therefore, each bill should be for a single identifiable matter. Moreover, billing for unidentified, "miscellaneous", or "general" matters is not acceptable. Block billing is not allowed.

While staffing changes may be necessary from time to time, CITY shall not be charged for the "downtime" or learning time that may result from such a staffing change. CITY shall not be charged for time spent training or educating lawyers or paralegals. CITY shall not be charged for summer associates without CITY's prior consent.

Only one professional shall attend meetings, depositions, and arguments unless the attendance of more is required to accomplish the purpose of the meeting and such attendance is discussed with and approved by the Contact Attorney in advance for each instance where multiple attendance is requested.

COUNSEL shall obtain prior approval if CITY is to be billed for more than ten hours of any professional's time in any one day. Prior approval shall be obtained from the City Attorney for any research project that will take in excess of ten hours. Internal conferences are billable only by one of the

participants.

a. HOURLY RATE

If COUNSEL is to be compensated based on an hourly rate, then COUNSEL shall submit monthly billings covering services and reimbursable expenditures made during the previous month. Each matter should be covered in a separate bill in an easily understandable format, it should be addressed to the City Attorney and it should contain the following information: (1) the bill and/or invoice date; (2) the Matter Identification Number assigned to the matter; (3) the date and time (to one decimal place) of each activity billed; (4) the initials of the individual performing the activity; (5) for each activity, a specific description of the work done sufficient to ascertain the work involved; (6) a separate itemization of reimbursable disbursements and expenditures along with the supporting documentation; and (7) a summary reflecting billing rates and cumulative time for each attorney, paralegal or consultant working the matter during the billing period, as well as since the inception of the matter.

Billing rates shall apply for the term of this CONTRACT and will not be renegotiated during the term of this CONTRACT.

Professionals shall bill in increments of 6 minutes (.1 hour) or less. Time reports shall be prepared only on the basis of time sheets completed on the day of the related time the service was provided to CITY and time sheets shall be completed throughout the day rather than at the end of the day. COUNSEL shall prepare or review each invoice personally. Only productive time that advances the interest of CITY shall be billed to CITY. Without limiting the generality of foregoing, time charges for scheduling or ministerial tasks, preparing or discussing expense reports, budget, time sheets, bills, audits or investigations shall not be billed and time charges for conflict of interest checks or, except with the City Attorney's prior approval, defending a motion to disqualify COUNSEL for a

conflict of interest shall not be billed.

COUNSEL shall not bill for more than two hours of travel time without the City Attorney's prior approval. Without limiting the generality of the foregoing, time charges during travel shall not be billed to CITY unless, and only to the extent, such time is actually used in performing services for CITY.

In addition, all invoices must be submitted with an itemization (including the date incurred and at whose request such disbursements were incurred) of reimbursable disbursements and expenditures along with the documentation supporting the expense.

b. FLAT FEE

If COUNSEL is to be compensated based on a flat fee, then COUNSEL shall submit an initial billing in the total amount of the flat fee. All billings should be addressed to the City Attorney and should contain a separate itemization of expenses as set forth in (a)(9) above.

c. CONTINGENCY FEE

If COUNSEL is to be compensated based on a contingency fee or a modified contingency fee basis, COUNSEL shall submit monthly billings containing a separate itemization of expenses. All billings should be addressed to the City Attorney and should contain an itemization of expenses as set forth in (a)(9) above.

9. DISBURSEMENTS & EXPENDITURES

All expenses must be itemized and the documentation supporting the expenditure or disbursement must be attached to COUNSEL'S invoice. CITY will not reimburse expenditures and disbursements unsupported by the necessary documentation. CITY shall not be billed for "miscellaneous" or "other" expenses, or for expenses lacking the supporting documentation. Unless otherwise specifically addressed in this CONTRACT, any expense or expenditure that CITY is requested to reimburse shall be billed at COUNSEL's actual out-of-pocket cost. Reimbursement is limited to actual

charges billed to COUNSEL without any additional profit or overhead charge by COUNSEL beyond the normal unit cost or hourly rate charged to COUNSEL. Travel expenditures of COUNSEL within Maricopa County are included in the compensation. Approval for travel outside Maricopa County or the State of Arizona shall be obtained from the City Attorney prior to departure from the County or State.

Separately billed long-distance telephone and facsimile charges may be passed through, without mark-up. Airfare will be reimbursed at coach fare rates. Hotel accommodations will be reimbursed at commercial rates for non-resort facilities.

Actual and necessary expenses incurred by COUNSEL for depositions, experts, outside document copying, exhibits, long distance telecommunications and other appropriate related miscellaneous expenses will be reimbursed to COUNSEL at actual cost. Any reimbursable expense in an amount greater than ONE THOUSAND DOLLARS_($1,000.00) must be pre-approved by CITY.

Specifically, no charges shall be billed to CITY for any of the following services and items: secretarial, word processing, proofreading, filing, office machine attendants (photocopy or telecopier (fax) "tending"), librarian or other clerical services (normal, temporary, or overtime); in-house photocopy expenses at more than 20 cents per page; computer time; air conditioning, lighting, conference rooms, office supplies, or other costs associated with the maintenance of COUNSEL; parking; local telephone expenses; local meals (other than expenses incurred while on travel approved by CITY); local travel in excess of two hours; audit letters (time charges are acceptable, disbursement charges are not); COUNSEL's messengers greater than COUNSEL would pay an unaffiliated third party vendor; scanning and electronically transmitting documents in an electronic format; and any other expense properly chargeable to overhead or as a capital expense. COUNSEL shall consider need, economy and good sense when determining the mode of delivery.

COUNSEL is responsible for ensuring that all third-party services (including outside consultants, investigators, court reporters, etc.) also comply with Paragraph 9. COUNSEL is expected to pay for third-party services as a straight "pass through" cost, limited to actual charges billed to COUNSEL without any additional profit or overhead charge by COUNSEL, and to then submit the bill to CITY as part of the monthly billing package for that matter. Until CITY advises otherwise, copies of all invoices or internal data compilations for disbursements shall be provided

to CITY along with and attached to the monthly bill. COUNSEL shall submit bills for reimbursement for expenses to CITY through its Law Department. CITY will not reimburse expenditures unsupported by the necessary documentation.

10. FISCAL YEAR

CITY'S fiscal year begins July 1 and ends June 30 of each calendar year. CITY may only make payment for services rendered or costs encumbered during a fiscal year and for a period of 60 days immediately following the close of the fiscal year. Billings for services performed or costs incurred prior to the close of a fiscal year must be submitted within ample time to allow payment within this 60 day period.

11. CONFLICT OF INTEREST

CITY retains COUNSEL only for the purposes and to the extent set forth in this CONTRACT. COUNSEL shall be free to dispose of such portion of COUNSEL'S entire time, energy, and skill as are not required to be devoted to the CITY in such a manner as COUNSEL sees fit and to such persons, firms or corporations as COUNSEL deems advisable, but shall not engage in any representation of any nature, including legislative or administrative lobbying, which could be adverse to CITY at the same time COUNSEL is representing the CITY pursuant to this CONTRACT. If such representation presents an ethical conflict of interest, and if a waiver is permitted, a waiver of such conflict must first be obtained from the City prior to undertaking such representation. COUNSEL agrees to have established policies and procedures to avoid conflicts of interest and to protect the attorney-client privilege. COUNSEL will immediately bring all situations involving adverse representation, and all conflicts and potential conflicts to the attention of the City Attorney. These would include situations that may be subject to the Rules of Professional Conduct as well as those situations where COUNSEL would otherwise be expected to identify CITY as a party, a potential party, or as a non-party at fault. COUNSEL hereby represents and affirms that there is no known conflict of interest existing between a client or potential client of COUNSEL and the City of Chandler as a result of this AGREEMENT. Before COUNSEL may undertake to represent parties in matters that may arise after execution of this CONTRACT that may present issues adverse to CITY, COUNSEL will present the facts and circumstances of the matter to the City Attorney and request a waiver of any ethical conflict of interest from the City through the City Attorney. It is further understood that any conflict of interest which may arise as a result of

COUNSEL'S representation of parties adverse to the CITY is not waivable unless expressly so stated in writing by the City Attorney after full disclosure of the nature and extent of the conflict.

12. COPIES OF DOCUMENTS

Throughout the course of the representation COUNSEL shall seasonally furnish the City Attorney copies of all significant pleadings, discovery material, investigative, expert witness, transactional documents and other reports and correspondence (other than routine transmittal letters). All significant depositions and answers to interrogatories shall be summarized promptly and furnished to the City Attorney. COUNSEL may also be asked to furnish such copies to the involved City Department(s) and insurance carrier(s). At the conclusion of COUNSEL's representation on any matter, COUNSEL shall return the complete file to CITY as set forth in paragraph 24, but may retain copies at COUNSEL's expense.

13. STATUS REPORTS AND ASSESSMENT OF EXPOSURE

COUNSEL shall keep CITY fully and currently informed about the status of all matters and the import of that status. As soon as practical after receipt of any referral, and in civil cases governed by Rule 26.1, Arizona Rules of Civil Procedure, as soon as disclosure statements are exchanged, COUNSEL shall furnish CITY an evaluation of the merits of the disputed matter and COUNSEL'S assessment of the monetary exposure or potential recovery, if any, to CITY, along with a settlement recommendation, where appropriate. Thereafter, COUNSEL shall furnish status reports on a monthly basis coincident with the bill submittal to CITY. Status reports should be addressed to the City Attorney and should briefly outline the status of the case or matter, emphasizing significant developments, depositions and discovery, and settlement proposals. COUNSEL shall promptly notify CITY when events occur that significantly affect the exposure or potential recovery to CITY.

COUNSEL is strongly encouraged to e-mail status reports to the City Attorney. COUNSEL is encouraged to format all native documents in Microsoft Word© and to scan significant third-party documents into a *.pdf Adobe Acrobat© format and e-mail them to the City Attorney as an attachment to a status report. A status report should precede any scheduled meeting where a comprehensive analysis of the case or matter may be expected.

Any significant document that is not routine, or that is to be provided to

third parties, including the court or administrative agencies, shall be sent to CITY with enough time so that CITY may have a meaningful review of it prior to distribution. All final copies of documents and memorandum for which CITY is charged shall be sent to CITY.

COUNSEL must consider the possibility of resolving disputes through both traditional and nontraditional methods of alternative dispute resolution.

14. OFFERS OF COMPROMISE

All offers of compromise shall be promptly transmitted to CITY through the City Attorney together with COUNSEL'S recommendations. CITY will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter offer. COUNSEL may be required to attend meetings to adequately explain the status of a matter before a regulatory body or in litigation.

15. NOTICE

Any notice, consent, or other communication ("Notice") required or permitted under this CONTRACT will be in writing and either delivered in person, sent by e-mail or facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

City of Chandler Law Department
Attn: Mary Wade
City Attorney
Mail Stop 602
PO Box 4008
Chandler, Arizona 85244-4008
Telephone: (480) 782-4640
Fax No.: (480) 782-4652
Email: mary.wade@chandleraz.gov

Notice will be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission or e-mail, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received. Either party may change its mailing address, e-mail address, FAX number or the person to receive notice by

notifying the other party as provided in this Section.

Notices sent by facsimile transmission or e-mail will also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission or e-mail.

16. WITHDRAWAL OF COUNSEL

COUNSEL may request to withdraw from representation of CITY or any department, officer, agent or employee thereof, when it would be ethically improper to continue the representation. In the event COUNSEL requests to withdraw, the request must be in writing to the City Attorney setting forth in detail the reasons COUNSEL must withdraw.

17. SPECIAL COUNSEL DESIGNATION

It is expressly understood and agreed that COUNSEL is appointed as SPECIAL COUNSEL to the City Attorney for the purposes of carrying out the provisions of this CONTRACT. However, COUNSEL agrees to act as co-counsel with the City Attorney in those lawsuits where the City Attorney determines that it is advisable to do so.

18. EXPERTS AND CONSULTANTS

Experts or consultants will be retained on behalf of CITY only after consultation with, and the approval of the City Attorney. All experts and consultants will be required to submit a bill similar to the format for outside counsel prior to payment by CITY, including the need to itemize disbursements and attach the supporting bills, charges, invoices or other documentation. It is COUNSEL's responsibility to familiarize the expert or consultant with CITY's billing expectations and to secure a bill from them in the proper format. No contract or subcontract shall be made by COUNSEL with any other person to furnish any work or services under this CONTRACT without advance approval of the City Attorney.

19. APPEALS

No appeals or special actions will be filed without prior written approval of CITY acting through the City Attorney.

20. CONFIDENTIALITY

COUNSEL shall establish and maintain procedures and controls that are acceptable to the City Attorney for the purpose of assuring that no information contained in its records or obtained from CITY or from others in carrying out its work under this CONTRACT shall be used by or disclosed by COUNSEL, except as required to officially perform COUNSEL'S work under this CONTRACT.

All material subject to the attorney-client and work product privileges will be kept confidential and will not be disclosed to any other party or person without the prior written consent of the City Attorney. No information, not appearing as a matter of public record, will be provided to the public media, including press conferences, fact sheets, or statements without the prior written consent of the City Attorney.

21. RESEARCH DATABASE

All documents, including all research, pleadings, motions, and appeals, generated by COUNSEL under this CONTRACT shall be the non-exclusive property of CITY, to be collected, organized, shared, and distributed at the CITY's sole discretion. COUNSEL agrees to provide CITY with electronic copies of such documents at CITY's request.

22. BUDGETING

COUNSEL may be asked by CITY to submit a strategic plan. The plan should include a description of the available options for handling the matter, the major steps likely to be involved, the timing and sequence of the major steps, the projected costs (within a narrow range) associated with each step and the likelihood of prevailing in percentages.

A sample litigation plan and budget form are attached as Exhibit B and Exhibit C.

23. MEDIA RELATIONS

COUNSEL is not authorized by CITY to comment publicly on CITY matters. All media inquiries should be directed to the City Attorney.

24. RECORDS RETENTION/RETURN

At the conclusion of the matter, COUNSEL will notify the Contact

Attorney that the matter is closed and prepare the file for shipment as set forth in Exhibit D.

25. OTHER CONTRACTS

CITY shall have the right to let other contracts in connection with work under this CONTRACT and COUNSEL shall cooperate with any other contractor.

26. COMPLIANCE WITH LAWS AND REGULATIONS

COUNSEL shall comply with all applicable federal and State statutes, City ordinances, executive orders, and regulations. In particular COUNSEL agrees to comply with all legal requirements relating to civil rights and non-discrimination in employment.

COUNSEL understands and acknowledges the applicability to COUNSEL of the Immigration Reform and Control Act of 1986 (IRCA). COUNSEL agrees to comply with the IRCA in performing under this CONTRACT and to permit CITY inspection of personnel records to verify such compliance.

27. AFFIRMATIVE ACTION CLAUSE

COUNSEL in performing under this CONTRACT shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. COUNSEL will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. COUNSEL further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this CONTRACT.

COUNSEL further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this CONTRACT entered into by COUNSEL.

28. WAIVER

The failure of CITY at any time to require performance of any provision of this CONTRACT shall in no way affect the right of CITY thereafter to enforce such provision. Nor shall the waiver of any succeeding breach of such provision act as a waiver of the provision itself.

29. TERMINATION

CITY shall have the right to terminate this CONTRACT in whole or in part at any time and without penalty or further obligation. COUNSEL shall be paid at a rate equal to the agreed compensation for requested legal services rendered and reimbursed for authorized expenses actually incurred in rendering such services, as of the date of such termination and after approval of payment is obtained from the City Council. Such payment for services already completed shall be the total compensation due to COUNSEL for termination. COUNSEL shall deliver to the City Attorney a complete set of all materials, information and data required or prepared by COUNSEL as of the date of termination. All such materials, information, and data shall be the property of CITY and shall be delivered to the City Attorney at the termination or completion of services.

30. SPECIFIC PERFORMANCE

COUNSEL agrees in the event of a breach by COUNSEL of any material provision of this CONTRACT, CITY shall, in addition to any other remedy provided by law and upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this CONTRACT. In the event CITY shall elect to treat any such breach on the part of COUNSEL as a discharge of the CONTRACT, CITY may nevertheless maintain an action to recover damages arising out of such breach.

31. INSURANCE REQUIREMENTS

COUNSEL shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by COUNSEL, his agents, representatives, or employees.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this

Contract. The CITY in no way warrants that the minimum limits contained herein are sufficient to protect COUNSEL from liabilities that might arise out of the performance of the work under this contract by the COUNSEL, his agents, representatives, or employees and COUNSEL is free to purchase additional insurance as may be determined necessary.

a. MINIMUM SCOPE AND LIMITS OF INSURANCE: COUNSEL shall provide coverage with limits of liability not less than those stated below.

1. Worker's Compensation and Employers' Liability
   Workers' Compensation Statutory
   Employers' Liability
   Each Accident $100,000
   Disease – Each Employee $100,000
   Disease – Policy Limit $500,000

1a. Policy shall contain a waiver of subrogation against the City of Chandler.

2. Professional Liability (Errors and Omissions Liability)
   Each Claim $1,000,000
   Annual Aggregate $2,000,000

2a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, COUNSEL warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

b. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Chandler is named as an additional insured, the City of Chandler shall be an additional insured to the full limits of liability purchased by

COUNSEL even if those limits of liability are in excess of those required by this Contract.

2 COUNSEL'S insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

3. Coverage provided by COUNSEL shall not be limited to the liability assumed under the indemnification provisions of this Contract.

c. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the CITY. Such notice shall be sent by certified mail, return receipt requested.

d. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The CITY in no way warrants that the above-required minimum insurer rating is sufficient to protect COUNSEL from potential insurer insolvency.

e. VERIFICATION OF COVERAGE: COUNSEL shall furnish the CITY with certificates of insurance (ACORD form or equivalent approved by the CITY) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the CITY before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to

provide evidence of renewal is a material breach of contract.

CITY reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

f. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the City Attorney, whose decision shall be final.

32. ADVERTISING AND PROMOTION

COUNSEL shall not use the name of the City of Chandler in any advertising or other promotional context by COUNSEL without prior written approval of the City Attorney.

33. ASSIGNMENT

COUNSEL shall not assign the rights, nor delegate the duties, or otherwise dispose of any right, title or interest in all or any part of this CONTRACT, or assign any monies due or to become due to COUNSEL without the prior written consent of the CITY. Any such approved assignment or delegation shall be for the benefit of and shall be binding on COUNSEL, the assignee and all future successors; and shall not relieve COUNSEL, assignee or future successors of any duties or obligations. If the CITY approves any assignment of monies due or to become due to COUNSEL hereunder, such assignment shall not become effective until at least thirty days after the CITY'S approval.

34. ENTIRE AGREEMENT

It is expressly agreed that this written CONTRADT embodies the entire agreement of the parties in relation to the subject matter, and that no understanding or agreements, verbal or otherwise, in relation thereto, exist between the parties, except as herein expressly set forth. To the extent there is any conflict between the terms of this CONTRACT and any letter of engagement entered into between COUNSEL and the CITY, the letter of engagement shall be controlling.

35. GOVERNING LAWS

It is the expressed intention of the parties thereto that this CONTRACT and all terms hereof shall be in conformity with and governed by the laws of the City of Chandler and the State of Arizona, both as to interpretation and performance. Any action to enforce or interpret this CONTRACT shall be brought only in a court located in Maricopa County, Arizona.

36. INDEPENDENT CONTRACTOR

It is mutually agreed that COUNSEL shall be an independent contractor in the performance of this CONTRACT and shall not be considered an employee or agent of CITY by virtue of such CONTRACT. All employees furnished by COUNSEL shall be considered employees of COUNSEL and COUNSEL shall be responsible for payments of all Worker's Compensation claims, Unemployment Disability claims or claims under similar laws.

37. CANCELLATION

This CONTRACT is subject to cancellation by CITY pursuant to Arizona Revised Statutes Annotated § 38-511.

38 ELECTRONIC COMMUNICATION

CITY expects COUNSEL to provide a specific electronic mail address, accessible from or through the Internet that will allow direct communication between CITY and the attorney assigned to provide legal services for a particular matter.

39. THIRD-PARTY BENEFICIARIES

This CONTRACT and all services provided by COUNSEL are intended to benefit the corporate and municipal interests of CITY alone, and no other person shall claim any implied right, benefit or interest in such services.

40. TERM

This CONTRACT is effective beginning the date first above written and expires two years from such date unless mutually extended by COUNSEL and the City Attorney, in writing. In the event of such an extension, COUNSEL will be permitted to renegotiate the terms of this CONTRACT.

Upon expiration of this CONTRACT, COUNSEL will cease all work under

this CONTRACT in a fashion consistent with COUNSEL's ethical obligations to protect CITY's interests; COUNSEL will submit a final bill and status report on each matter then being handled by COUNSEL; and, COUNSEL , will return the matter and all related files to CITY.

IN WITNESS WHEREOF, the parties or their authorized representatives have made and executed this CONTRACT the day and year first above written.

CITY OF CHANDLER, a municipal corporation

MARY WADE, City Attorney

_____

COUNSEL
GUST ROSENFELD P.L.C.

By Scott W. Riley, pres SW Riley P.C.
Its Capital Member

ATTEST:

_____
City Clerk

EXHIBIT A

"AREAS OF PRACTICE AND RATE SCHEDULE"

Exhibit A

Fees And Expenses

Fees

A. For bond counsel services rendered in connection with the issuance of debt, Gust Rosenfeld shall be paid according to the following schedule:

1. General Obligation Bonds	$0.25 per $1,000 bonds issued ($20,000 minimum).
2. Voter Authorized Water, Sewer or Utility Revenue Bonds	$0.30 per $1,000 bonds issued ($25,000 minimum).
3. MPC or Non-Voter Authorized Pledged Revenue Obligation Bonds (including subordinate water and sewer obligations)	$0.40 per $1,000 bonds issued ($30,000 minimum).
4. Refunding Bonds (except MPC or Non-Voter Authorized Pledged Revenue Obligation Bonds)	$0.50 per $1,000 bonds issued ($32,500 minimum).
5. Refunding MPC or Non-Voter Authorized Pledged Revenue Obligation Bonds	$0.55 per $1,000 bonds issued ($35,000 minimum).
6. Improvement District Bonds	1% of engineer's estimated costs and expenses of ID work ($40,000 minimum). For ID services requested by the City that do not result in a bond sale, the City and Gust Rosenfeld will negotiate an agreed-upon hourly rate and/or fixed fee prior to services being rendered.
7. Community Facility District Bonds	$0.25 per $1,000 GO bonds issued ($30,000 minimum); or 1% of engineer's estimated costs and expenses of the CFD work for assessment bonds ($50,000 minimum). For CFD formation services or CFD services that do not result in a bond sale that are requested by the City, the City and Gust Rosenfeld will negotiate an agreed-upon hourly rate and/or fixed fee prior to services being

8. Industrial Development Authority Counsel	Standard hourly rates for general services. For services rendered as issuer's counsel in connection with an IDA bond financing: bond issues in the principal amounts of $0 - $10,000,000 -- $15,000; $10,000,000 - $20,000,000 -- $20,000; $20,000,000 - $40,000,000 -- $40,000; greater than $40,000,000 -- $40,000 plus $0.50 per $1,000 bonds in excess of $40,000,000.

These bond counsel fees are all based on the present state of both Arizona and federal law, and are subject to change should there be material changes in the law. If any of the foregoing types of bonds or obligations are issued in a manner to qualify for special treatment under any other new federal law, a $5,000 additional charge would be added to the quoted fee.

B. The firm would charge its standard hourly rates, as adjusted annually, less 10% for: 1) any general legal services, including services rendered in connection with a bond financing, in negotiating contracts, development agreements, intergovernmental agreements or litigation; 2) services provided in connection with special districts or any other matters not intended to result in the issuance of bonds; and 3) services rendered in connection with reviewing the application for formation of a CFD and for services rendered in connection with the formation of any community facilities district. The firm's current standard hourly rates are shown on the attached schedule. The rates shown on the attached schedule shall be good through December 31, 2011, thereafter the firm's current standard hourly rates are subject to annual adjustment.

C. Fees for services rendered in connection with the collection and foreclosure of assessment liens would be (per delinquent assessment):

1. For all legal services rendered through the preparation and mailing of demand letters a flat fee of $275.00; and

2. For all legal services rendered from the beginning of the process through the end of the process a flat fee of $650.00.

Costs and Expenses

In addition to our fees, the City will also be responsible for reimbursement of our costs and out-of-pocket expenses that are not paid directly by the City, including those shown on the following list of expense charges. The firm's standard Expense Charges will be subject to adjustment annually when the contract between the City and the firm is renewed, to conform to the firm's then current standard Expense Charges schedule.

GUST ROSENFELD P.L.C.
EXPENSE CHARGES
(as of April 1, 2011)

CATEGORY	CHARGE
In-House Document Reproduction	$.20 per black and white copy $.60 per color copy
Outside Document Reproduction	Actual cost
Long Distance Telephone	Actual cost of calls over 5 minutes
Facsimile (receiving and sending)	$1.00 for 1st page, plus $.10 for each additional page; telephone charges as per Long Distance above
Courier	Actual charges
Air Freight	Actual charges
Computer Legal Research	$4.00 per minute
Postage (includes certified mail, express mail, and registered mail)	All costs > $.44
Word Processing	No charge
Secretarial Overtime	1.5 x hourly rate if required by client
Miscellaneous Supplies	Actual cost
Court Costs and Witness Fees	Actual charges
Fees and Costs for Court Reporters, Experts and Other Outside Support Services	Actual charges
Travel	Actual costs of transportation, lodging and meals; apply IRS standard mileage allowance for automobile travel
Electronic Imaging	$.60 per color image; $.35 per black and white image
CD Production	$15.00 per CD
Bond Transcript(s) Production	$750.00

EXHIBIT B -- LITIGATION PLAN

1. CASE MANAGEMENT PLAN

A. COUNSEL and CITY recognize that litigation costs can be controlled if an effective Case Management Plan is developed at the initial stages of a lawsuit or claim, and if its implementation is monitored on a regular basis. The goal of the Case Management Plan is to enable CITY to achieve its litigation objective in the most cost-effective manner possible. CITY may require COUNSEL to submit a Case Management Plan along the lines discussed below. Once the Case Management Plan is developed, it should be followed unless circumstances change in a material way.

B. The Case Management Plan should include the following:

1. Pleading Summary. A summarization of the pleadings, complaint and answer.

2. Theory of the Case. COUNSEL's theory of CITY's case should provide a sense of direction and a framework for distinguishing case preparation activities that are worth pursuing from those which are not. It should anticipate the plaintiff's most likely arguments, and outline the case that trial counsel would like to present to a jury on CITY's behalf. Where appropriate, information obtained from pleadings, disclosure statements and discovery should be identified as such.

3. Preliminary Strategy. COUNSEL shall prepare a preliminary strategy based on the nature of the case, the litigation objective, and the facts which are known or reasonably anticipated at the time. It should include the theory of the case, anticipated legal research, investigation and pretrial discovery, dispositive motions, witnesses and expert witnesses, staffing expectations and timing considerations. Moreover, it should include an assessment of CITY's exposure and possible settlement and ADR strategies.

4. Legal Research. COUNSEL should identify the specific legal research projects that are likely to support or supplement CITY's theory of the case. COUNSEL should provide CITY with relevant legal authorities or research memoranda as may be needed to explain COUNSEL's theory of the case.

5. Investigation. COUNSEL should identify investigation activities

that need to be performed and consider whether each activity will be best performed COUNSEL, by employees of CITY, or by an independent investigator.

6. Pretrial Discovery. COUNSEL should identify the interrogatory sets COUNSEL will use as well as the ones to which CITY and COUNSEL probably will be responding. Proposed depositions should be listed along with the deponents' name and category (i.e, eye witness, driver, investigator, etc.). If the deponents' name is unavailable then COUNSEL will list the deponent by category (e.g., treating physicians), estimating the number of witnesses in that particular category.

7. Dispositive Motions. COUNSEL should describe potentially dispositive motions to dismiss or motions for summary judgment that might be expected to disposing of the case or narrow the issues.

8. Witnesses, Including Experts. COUNSEL should list the witnesses, lay and expert, whose testimony may support CITY's theory of the case as well as the plaintiff's. The witnesses should be listed by name and category. Consulting experts and independent medical examiners should also be identified, by category and field of expertise.

9. Staffing. COUNSEL should address the way that COUNSEL will staff the case. This should include the lead attorney(s) along with all subordinate staff -- associates and paralegals. COUNSEL should provide the justification for all assigned personnel.

10. Timing. COUNSEL should provide an estimated sequence and timing of various case preparation activities.

C. BUDGETING.

1. Preliminary Litigation Budget. The preliminary litigation budget should reflect COUNSEL's best estimate of the cost to prepare and try the case to verdict or judgment. COUNSEL's estimate should include the anticipated conduct of the adverse party.