



Chandler · Arizona  
Where Values Make The Difference

**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

1. Agenda Item Number:

25

2. Council Meeting Date:

September 24, 2015

**TO: MAYOR & COUNCIL**

**THROUGH: CITY MANAGER**

3. Date Prepared: September 3, 2015

4. Requesting Department:  
Management Services

5. **SUBJECT:** Agreement with Gust Rosenfeld, P.L.C., for Bond Counsel Services.

6. **RECOMMENDATION:** Staff recommends City Council approve Agreement No. MS5-961-3507, with Gust Rosenfeld, P.L.C., for bond counsel services for three years, with the option of up to two, two-year extensions.

7. **BACKGROUND/DISCUSSION:** Gust Rosenfeld, P.L.C. has a proven record of providing excellent professional bond counsel services to the City for over 25 years. Bond counsel services are necessary when issuing bonds (i.e. General Obligation Bonds, Street and Highway User Revenue Bonds, Water and Sewer Revenue Bonds, Municipal Property Corporation and Improvement District Bonds, Excise Tax Revenue Obligations and Refunding Bonds), holding a bond election, and keeping the City informed of numerous State and Federal regulatory requirements.

Over the last 5 years, the regulation of the municipal securities industry has increased dramatically on both the State and Federal levels. State law is increasingly sensitive to debt, use of public funds and the election process; this sensitivity is manifested in annual changes to the statutes and new court rulings which make bond counsel services vitally important to protect the City.

On the Federal level in the last 5 years, new laws and regulations have permeated the municipal market. New tax-exempt products are continually entering the market. The IRS has stepped up enforcement efforts to insure issuers and their bond counsel were complying with all the requirements of the tax code through, among other things, post-issuance compliance procedures. The Securities and Exchange Commission (SEC) has also ramped-up their enforcement of the municipal industry, which adds a significant amount of additional time and effort by all members of the City's finance team.

Staff believes the Gust Rosenfeld, P.L.C.'s fees reflect fair compensation methodology for the technical expertise, effective advice, efficient service and high quality product that is demanded by the industry and that will continue to be provided to the City.

8. **EVALUATION:** Staff recommends the direct selection of Gust Rosenfeld, P.L.C. due to the quality and reliability of the services provided and historical experience with the City's bond program, including bond elections. This agreement includes the City's and the Industrial Development Authority's (IDAs) bond counsel services.

The term of this agreement is three years (October 1, 2015 through September 30, 2018), with the option of up to two, two-year extensions.

9. **FINANCIAL IMPLICATIONS:**

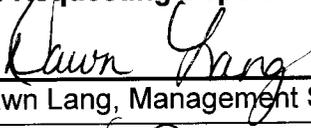
Bond counsel fees associated with the issuance of debt and incidental expenses related to each bond issue will be paid from individual bond proceeds and are priced based on the type of issue. Counsel fees for bond elections are billed at a flat rate. Special projects such as audits, investigations or litigations are charged at a competitive hourly fee based on the team member providing the services and will be paid from the appropriate related Fund.

10. **PROPOSED MOTION:** Move City Council approve Agreement No. MS5-961-3507, with Gust Rosenfeld, P.L.C., for bond counsel services for three years, with the option of up to two, two-year extensions.

**ATTACHMENT:** Agreement

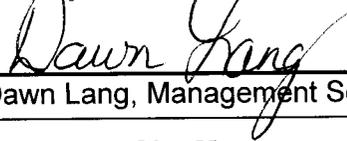
**APPROVALS**

**11. Requesting Department**



Dawn Lang, Management Services Director

**13. Department Head**



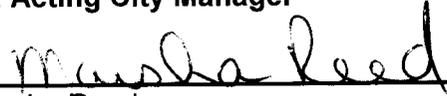
Dawn Lang, Management Services Director

**12. Procurement Officer**



Christina Pryor, Purchasing Manager

**14. Acting City Manager**



Marsha Reed

**AGREEMENT FOR LEGAL SERVICES  
BOND COUNSEL  
AGREEMENT NO.: MS5-961-3507**

THIS Agreement is made and entered into by and between the City of Chandler, a municipal corporation ("City"), and GUST ROSENFELD, P.L.C. ("Counsel").

City having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with bond counsel matters as more specifically provided in Exhibit A and B.

City having satisfied itself as to the qualifications of Counsel as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Scope of Service and Representation.
  - A. Counsel agrees to perform all necessary legal services, including investigation, legal research, preparation of appropriate documentation more specifically provided in Exhibit A and B, attached hereto and incorporated herein by this reference, in representing the City as set forth in this Agreement and in separate Matter Notice Letters describing the specific legal matters (herein collectively referred to as "Legal Services"). Each Matter Notice Letter shall become part of this Agreement and incorporated herein. Such Legal Services shall be carried out in cooperation with the Management Services Director's Office, which Counsel shall at all times inform about the status of all matters related to the representation. No major decisions regarding major strategies or the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the Management Services Director. All offers of compromise made by the opposing party or his/her representative shall be promptly transmitted to the City Attorney and Management Services Director, 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. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney and Management Services Director.
  - B. The City reserves the right to designate in writing a specific attorney(s) in Counsel's firm to work on specific matters. Counsel shall employ suitably trained and skilled professional personnel to perform the legal services. Prior to changing any key personnel, especially those key personnel who the City relied upon in making this Agreement, Counsel shall obtain the approval of the Management Services Director 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 Management Services Director in advance.
2. Advice and Status Reporting. Counsel shall provide City with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as Counsel consider appropriate. Counsel shall provide copies of all documents prepared by Counsel, including research memoranda prepared by Counsel.
3. Compensation. City agrees to pay Counsel for services as set forth in the attached Exhibit B, Fees and Rates Schedule.
4. Term. The term of the Agreement is three years, commencing on October 1, 2015 and terminating on September 30, 2018 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to two additional terms of two years each.
5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified in the attached Exhibit B, Fees and Rates Schedule, shall be billed at actual cost, if any. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) are deemed to be part of the overhead costs included in the hourly fee set forth in Exhibit B and shall not be billed separately.

All consultants, experts and others engaged to provide services to Counsel in the performance of Counsel's Legal Services, and the use and extent of those non Legal Services, shall be approved by the Management Services Director prior to them providing the services.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Agreement, Counsel shall follow these billing procedures:
  - A. Counsel shall bill only for actual time spent on a task, and the time for each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3)).
  - B. Secretarial or word processing for preparation of documents which are electronically forms or templates shall not be billed. Counsel shall only bill for the actual time spent by the attorney reviewing, revising or drafting such documents.
  - C. Counsel's attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to City. Work on the City's matters billed by Counsel's attorneys not approved by the Management Services Director in accordance with this Agreement must be approved by the Management Services Director in advance.
  - D. Counsel will submit monthly billings for services rendered and expenses incurred to the Management Services Director. Each bill shall also contain, in addition to information required elsewhere in this Agreement: (1) fees and costs incurred in the preceding month; (2) the cumulative total of fees and costs to date; and (3) the City contract number. Counsel will use its best efforts to inform the Management Services Director eight weeks prior to Counsel billing the final fees and costs authorized under this contract. City will pay no fees incurred over and above the contract amount without prior authorization from City.
7. Maintenance of Records. In compliance with City's standard procedure, all work performed in connection with this Agreement shall be subject to audit. Counsel shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular matter, and to make such materials available at their offices at all reasonable times during the Agreement period and for at least three (3) years from the date of final payment for inspection by City or any authorized representatives of City, and copies thereof shall be furnished, if requested, at City's expense.
8. Conflict of Interest. Counsel warrants and covenants that Counsel presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Counsel shall promptly notify City of the existence of such conflict of interest, so that City may determine whether to terminate this Agreement. The City Attorney is authorized to grant customary conflicts waivers to Counsel on behalf of the City, as are not adverse to the City's legal interests in his/her professional judgment. Otherwise, Counsel shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to City in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.
9. Reporting Requirements. Within thirty (30) days of receipt of a case, or at such time as requested by Management Services Director in the Matter Notice Letter, whichever is less, Counsel shall provide City with an initial written evaluation containing the following:
  - A. An estimate of the cost of Legal Services to perform the Scope of Work through to finality;
  - B. The name of the attorney who will be primarily responsible for handling the matter, and the names of others who will assist that person as approved by Management Services Director
10. Termination. City may terminate this Agreement upon giving ten (10) days written notice for convenience or cause. Any default by Counsel, if Counsel fails to comply with any of the conditions of this Agreement, or services which provide unsatisfactory performance as judged by the Management

Services Director, or failure to provide Management Services Director, upon request, reasonable assurance of future satisfactory performance of the Legal Services, shall be causes allowing City to terminate this Agreement. In the event of termination for cause, City shall not be liable to Counsel for any amount, and Counsel shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular legal services to which it applies, and any other legal services for other matters not particularly specified shall continue to be handled by Counsel and, as to those, this Agreement will continue in effect; provided, however, the right is retained by City to terminate services on any matter by notifying Counsel in writing.

11. Notices. All notices or demands required to be given pursuant to the terms of this Agreement shall, unless specified otherwise, be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Agreement Administrator: Dawn L. Lang,  
Management Services  
Director  
Contact: Purchasing Division  
Mailing Address: Mail Stop 901  
P.O. Box 4008  
Chandler, AZ. 85244  
Physical Address: 175 S. Arizona Ave.,  
3<sup>rd</sup> Floor,  
City, State, Zip: Chandler, AZ. 85225  
Phone: 480.782.2400  
FAX: 480.782.2410

In the case of the CONTRACTOR

Firm Name: Gust Rosenfeld PLC  
Contact: Kimberly M. McIntier  
Mailing Address: One E. Washington St  
#1600  
Physical Address: One E. Washington St  
#1600  
City, State, Zip: Phoenix, AZ. 85004-  
2553  
Phone: 602.257.7422  
FAX: 602.254.4878

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

12. General: Counsel agrees to comply with all applicable City, state, and federal laws and regulations.
13. Indemnification. To the fullest extent permitted by law, Counsel, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed herein, or permissions granted under it, or related to, arising from or out of, or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Counsel, or anyone directly or indirectly employed by Counsel or anyone for whose acts Counsel may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including but not limited to, any injury or damages claimed by any of Counsel's employees.
14. Insurance Representations and Requirements. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

A. General.

1. Without limiting any obligations or liabilities of Counsel, Counsel shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non- admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Agreement at City's option.
2. *No Representation of Coverage Adequacy:* By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Counsel. City reserves the right to review any and all of the insurance policies and/or endorsements required by this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Counsel from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. *Coverage Term:* All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
4. *Claims Made:* In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
5. *Evidence of Insurance:* Prior to commencing any work or services under this Agreement, Counsel shall furnish City with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Counsel's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Chandler shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the cited policies expire during the life of this Agreement, it shall be Counsel's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:
  - a. City, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: (a) Commercial General Liability, (b) Auto Liability and (c) Excess Liability-Follow Form to underlying insurance as required.
  - b. Counsel's insurance shall be primary insurance as respects performance of subject contract.
  - c. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Counsel under this contract.
  - d. Certificate shall require 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

B. Required Coverage

1. Commercial General Liability: Counsel must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
2. Professional Liability: If the Agreement is the subject of any professional services or work, or if Counsel engages in any professional services or work adjunct or residual to performing the work under this Agreement, Counsel shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Counsel, or anyone employed by Counsel, or anyone for whose acts, mistakes, errors and omissions Counsel is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.
3. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability: Counsel must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Counsel owned, hired, and non-owned vehicles assigned to or used in the performance of the Counsel's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
4. Workers' Compensation Insurance: Counsel shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Counsel's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

C. Additional Policy Provisions Required.

1. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
2. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:
  - a. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Counsel including the City's general supervision of the Counsel; Products and Completed operations of the Counsel; and automobiles owned, leased, hired, or borrowed by the Counsel.
  - b. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Counsel even if those limits of liability are in excess of those required by this Agreement.
  - c. The Counsel's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Counsel and must not contribute to it.

- d. The Counsel's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage provided by the Counsel must not be limited to the liability assumed under the indemnification provisions of this Agreement.
- f. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Counsel for the City.
- g. The Counsel, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Counsel must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
- h. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the Counsel must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.
- i. By signing this Agreement, the Counsel certifies it is fully aware of Insurance Requirements contained in the Agreement and assures the City of Chandler that it is able to produce the Insurance coverage required.

15. Conflict of Interest

- A. No Conflict of Interest is Undisclosed. Counsel warrants, that no person has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the Chandler City Council or any employee of Chandler has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. § 38-501.
- B. Cancellation for Conflict of Interest. City may cancel any contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. § 38-511).

16. Independent Contractor Status. The services Counsel provides under the terms of this Agreement to City are that of an independent contractor, not an employee. City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments.

17. Severability. Should any part of this Agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be reasonably interpreted to give effect to the intentions of the parties.

18. Immigration Warranty

- A. In accordance with the provisions of A.R.S. §41-4401, Counsel warrants its, and that of its subcontractors', compliance with all federal immigration laws and regulations that relate to its

employees, and that of its subcontractors' employees, and its, and that of its subcontractors', compliance with requirements of A.R.S. §23-214(A). Such warranty shall herein be referred to as "Immigration Warranty".

- B. A breach of the Immigration Warranty by the Counsel, or its subcontractor, shall be deemed a material breach of this Agreement and such breach shall be subject to penalties up to, and including, termination of it.
  - C. The City retains the legal right to inspect the papers of any of the Counsel's employees, or that of any employee of the subcontractor, who provides Legal Services to ensure that Counsel, or its subcontractor, is complying with the Immigration Warranty. Counsel, on its own behalf and on behalf of its subcontractor, agrees to cooperate and assist the City in its performance of such inspections.
  - D. The City may, at its sole discretion, conduct random verification of the employment records of Counsel and any of its subcontractors to ensure compliance with the Immigration Warranty. Counsel agrees to assist the City in its performance of such random verifications.
  - E. Neither Counsel nor any of subcontractors shall be deemed to have materially breached the Immigration Warranty if Counsel or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).
  - F. The provisions of this Section must be included in any contract the Counsel enters into with any and all of its subcontractors who provide labor, time, or effort under this Agreement or any subcontract.
19. Scrutinized Business Operations. In accordance with A.R.S. §§ 35-391.06 and 35-393.06, Counsel certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §§ 35-391(15) and 35-393(12).
20. Indemnifications, Warranties, and Representations Survive. All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any Party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects during the term of this Agreement. In the event that any representation or warranty by a party is untrue, the other Party shall have all rights and remedies available at law, in equity, or as provided in this Agreement. The provisions of this Agreement wherein a Party has explicitly indemnified, made warranty or representations to the other Party shall survive the expiration or earlier termination of this Agreement.
21. Construction and Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If this Agreement uses the term "day," it shall mean calendar day unless otherwise specified or modified. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday as declared by the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any Amendment provision cites a particular Section or Subsection number of this Agreement, it shall be a reference to the referred Section or Subsection and its subparts.
22. Negotiated Agreement. The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party based on such Party's draftsmanship of this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and shall be bound by it.

23. Choice of Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
24. Entire Agreement. This Agreement and all exhibits thereto constitute the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.
25. Amendments. Any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after prior approval in writing of both parties.
26. Non-Assignment. Services covered by this Agreement shall not be assigned or subcontracted in whole or in part without the prior written consent of the Management Services Director.
27. Cancellation. Both parties may cancel, without cause, this Agreement with thirty (30) day notice.
28. Waiver. A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such previous forbearance or notice.
29. Attorney Fees. In the event it becomes necessary for a Party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the non-prevailing Party will pay the other Party's reasonable expenses, including, but not limited to, expert witness fees, court costs, litigation and appeal expenses, and reasonable attorney fees incurred because of the breach.
30. Authority. Each Party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and shall be bound by it.
31. Counsel acknowledges that this Agreement is not exclusive and the City may hire other attorneys to perform its Legal Services. Counsel additionally acknowledges that it will receive separate Matter Notice Letters for separate scopes of Legal Services to be performed in accordance with this Agreement.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement on the date first above written.

FOR THE CITY OF CHANDLER

FOR THE COUNSEL

\_\_\_\_\_  
Mayor

By:   
Signature

Approved as to form:

ATTEST: If Corporation

\_\_\_\_\_  
City Attorney (kb)

\_\_\_\_\_  
Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

SEAL

**EXHIBIT A**  
**TO CITY OF CHANDLER SERVICES AGREEMENT NO. MS5-961-3507**  
**SCOPE OF WORK**

1. The Counsel shall provide bond counsel services upon request from the City in connection with the issuance of debt including:
  - 1.1 Short term variable rate general obligation, street and highway user revenue and utility revenue bonds
  - 1.2 Third-party lease-purchase financings, including excise tax revenue bonds and certificates of participation issued by the City and/or non-profit organizations created for and acting to further the interests of the City in financing operations
  - 1.3 Front-end special assessment or improvement district bonds, including development resolutions or ordinances to be prepared when financing is needed
  - 1.4 Taxable general obligation, street and highway user revenue and utility revenue bonds
  - 1.5 Other bonds as requested
2. Separate matters and project shall be initiated by use of a Matter Notice Letter agreed upon by the City and Counsel as detailing a scope of services for that matter prior to the commencement of any work by Counsel under this Agreement.
3. Services to be provided by the Counsel may include:
  - 3.1 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.
  - 3.2 Preparation and submission of the bond election procedures to the United States Justice Department.
  - 3.3 Preparation of forms of general certificates, signature identification certificates, treasurer's receipts and other miscellaneous documents, certificates or letters necessary in order to render an opinion approving the bonds.
  - 3.4 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 relating to sections describing the bonds and other legal matters.
  - 3.5 Examination of documents rendering a final market opinion approving the bonds and expressing an opinion as to the exemption of interest from Federal and Arizona income taxation.
  - 3.6 Advise the City of all federal and state laws relevant to the issuance of bonds and use of proceeds.
  - 3.7 Perform legal analysis of the financing structure and assist in determining the method of sale and formulate time schedules.
  - 3.8 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.
  - 3.9 Attendance at City Council meetings upon request.
  - 3.10 Preparation of draft legislation, ordinances or resolutions and other legal documents necessary in connection with the issuance, sale and delivery of bonds.
  - 3.11 Other closely related services as requested.
4. The staff identified below will be primarily responsible for the provision of all services to the City under this Agreement as appropriate to their individual experience. Other Counsel staff and subcontractors may be engaged as necessary with prior approval of the City.

Kimberly M. McIntier  
Scott W. Ruby

Timothy A. Stratton  
Fred H. Rosenfeld

Zachary D. Sakas

**EXHIBIT B**  
**TO CITY OF CHANDLER SERVICES AGREEMENT NO. MS5-961-3507**  
**FEES AND RATES SCHEDULE**

**Bond Counsel Fees:**

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

1. General Obligation Bonds  
Thirty-five thousand dollars (\$35,000) plus \$0.25 per \$1,000 of principal amount of bonds issued for the first \$20,000,000, thereafter, \$0.15 per \$1,000 of principal amount of bonds issued, but in no event shall fees charged for any range of fees referenced above exceed \$9,500.
2. Voter Authorized Water, Sewer or Other Enterprise Revenue Bonds  
Forty-five thousand dollars (\$45,000) plus \$0.45 per \$1,000 of principal amount of bonds issued for the first \$20,000,000; \$0.35 per \$1,000 of principal amount of bonds issued between \$20,000,000 to \$70,000,000; thereafter, \$0.25 per \$1,000 of principal amount of bonds issued in excess of \$70,000,000, but in no event shall fees charged for any range of fees referenced above exceed \$9,500.
3. MPC, SPA, or Non-Voter Authorized Pledged Revenue Obligation Bonds (including subordinate water and sewer obligations)  
Fifty thousand dollars (\$50,000) plus \$0.45 per \$1,000 of principal amount of debt issued for the first \$20,000,000; \$0.35 per \$1,000 of principal amount of debt issued between \$20,000,000 to \$70,000,000; thereafter, \$0.25 per \$1,000 of principal amount of debt issued in excess of \$70,000,000, but in no event shall fees charged for any range of fees referenced above exceed \$9,500.
4. Refunding Bonds (except MPC or Non-Voter Authorized Pledged Revenue Obligation Bonds)  
Sixty thousand dollars (\$60,000) plus \$0.45 per \$1,000 of principal amount of debt issued for the first \$20,000,000; \$0.35 per \$1,000 of principal amount of debt issued between \$20,000,000 to \$70,000,000; thereafter, \$0.25 per \$1,000 of principal amount of debt issued in excess of \$70,000,000, but in no event shall fees charged for any range of fees referenced above exceed \$9,500.
5. Refunding MPC or Non-Voter Authorized Pledged Revenue Obligation Bonds  
Sixty-five thousand dollars (\$65,000) plus \$0.50 per \$1,000 of principal amount of debt issued for the first \$20,000,000; \$0.45 per \$1,000 of principal amount of debt issued between \$20,000,000 to

\$70,000,000; thereafter, \$0.35 per \$1,000 of principal amount of debt issued in excess of \$70,000,000, but in no event shall fees charged for any range of fees referenced above exceed \$9,500.

6. Improvement District Bonds

The greater of: (i) Seventy-five thousand dollars (\$75,000) plus \$0.50 per \$1,000 of principal amount of bonds issued, or (ii) 1% of engineer's total estimated costs and expenses of the construction or acquisition of the work plus the estimated incidental and financing costs. Services requested by the City related to an improvement district that do not result in the issuance of bonds will be billed at the standard hourly rates less fifteen percent (15%).

NOTE: 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 or program, a \$5,000 additional charge would be added to the quoted fee. Counsel shall inform the City in writing of the possibility of the \$5,000 additional charge prior to rendering services on bonds or obligations that would be so subject.

- B. All services rendered to the City in connection with the ordering of any bond election would be provided for a flat fee of \$9,500, plus costs and billed after the canvass of the election. Such services would also include assistance with the voter informational pamphlet and review of other election materials and information.
- C. The firm would charge its standard hourly rates, as adjusted annually, less 15% for: 1) any general legal services, including services rendered in connection with a bond financing, in negotiating, preparing or reviewing contracts, development agreements, intergovernmental agreements or litigation; 2) services provided in connection with special City or any other matters not intended to result in the issuance of bonds; and 3) services related to continuing disclosure obligations or IRS exams. The firm's current standard hourly rates are shown below on the schedule of hourly rates. The rates shown hereafter shall be good through October 1, 2016 hereafter the firm's current standard hourly rates are subject to annual adjustment.
- D. Services related to the bonds issued are included in the bond issuance fee, but exclude any services rendered in connection with an audit, investigation or litigations, which would be billed hourly.

**Community Facilities District (CFD) Fees:**

- A. For bond counsel services rendered in connection with the issuance of debt, Gust Rosenfeld offers to be paid according to the following schedule:
  - 1. CFD General Obligation Bonds      Thirty-five thousand dollars (\$35,000) plus \$0.35 per \$1,000 of principal amount of bonds issued for the first \$20,000,000, thereafter \$0.25 per \$1,000 of principal amount of bonds issued.

- 2. CFD General Obligation Refunding Bonds      Forty-five thousand dollars (\$45,000) plus \$0.45 per \$1,000 of principal amount of bonds issued for the first \$20,000,000, thereafter \$0.35 per \$1,000 of principal amount of bonds issued.
  
- 3. CFD Assessment Bonds      The greater of: (i) Seventy-five thousand dollars (\$75,000) plus \$0.50 per \$1,000 of principal amount of bonds issued, or (ii) 1% of engineer's total estimated costs and expenses of the construction or acquisition of the work plus the estimated incidental and financing costs.

NOTE: These CFD 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 or program, a \$5,000 additional charge would be added to the quoted fee. Counsel shall inform the City in writing of the possibility of the \$5,000 additional charge prior to rendering services on bonds or obligations that would be so subject.

- B. The firm would charge its standard hourly rates, as adjusted annually, less 15% 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; 3) services related to continuing disclosure obligations or IRS exams; 4) services rendered in connection with reviewing the application for formation of a CFD and for services rendered in connection with the formation of any CFD; and 5) services rendered in connection with calling and conducting any CFD bond and operation and maintenance tax election. The firm's current standard hourly rates are shown below on the schedule of hourly rates. The rates shown on the attached schedule shall be good through December 31, 2014; 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 evaluation of defaults, preparation and mailing of assessment demand letters a flat fee of \$500; and
  - 2. For all additional legal services rendered after the mailing of the demand letter, including ordering and evaluating title reports, confirming addresses and identities of owners, preparing sale documents and conducting the foreclosure sale: \$1,000.

**Gust Rosenfeld Expense Charges:**

In addition to our fees, the City will be responsible for reimbursement of our costs and out-of-pocket expenses not paid directly by the City, including those shown on the following list of expense charges. The firm's standard Expense Charges may be subject to adjustment annually.

CATEGORY	CHARGE
In-House Document Reproduction	\$ .20 per black and white copy \$ .60 per color copy
Outside Document Reproduction	Actual cost

Long Distance Telephone	Cost of calls over 5 minutes
Conference Calls	Actual charges
Facsimile (receiving and sending)	\$1.00 for 1st page, plus \$.10 for each additional page; telephone charges as per Long Distance above
Courier / Air Freight	Actual charges
Computer Legal Research	No Charge
Postage (includes certified mail, express mail, and registered mail)	All costs > \$.49
Word Processing	No charge
Miscellaneous Supplies	Actual cost
Court Costs, Witness Fees, Court Reporters, Experts and Other Outside Support Services	Actual charges
Travel	No Charge
Electronic Imaging	\$.60 per color image; \$.20 per black and white image
CD Production	\$15.00 per CD
Bond Transcript Production	\$750.00

**Standard Hourly Rates October 1, 2015 – October 1, 2016**

<b>NAME</b>	<b>HOURLY RATE</b>
Kimberly M. McIntier	\$225.00
Zachary D. Sakas	\$260.00
Timothy A. Stratton	\$400.00
Scott W. Ruby	\$445.00
Fred H. Rosenfeld	\$445.00

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|---|---|
|   | thereafter \$0.25 per \$1,000 of principal amount of bonds issued.  |
| 2. CFD General Obligation Refunding Bonds | Forty-five thousand dollars (\$45,000) plus \$0.45 per \$1,000 of principal amount of bonds issued for the first \$20,000,000, thereafter \$0.35 per \$1,000 of principal amount of bonds issued.   |
| 3. CFD Assessment Bonds                   | The greater of: (i) Seventy-five thousand dollars (\$75,000) plus \$0.50 per \$1,000 of principal amount of bonds issued, or (ii) 1% of engineer's total estimated costs and expenses of the construction or acquisition of the work plus the estimated incidental and financing costs. |

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Conference Calls	Actual charges
Facsimile (receiving and sending)	\$1.00 for 1st page, plus \$.10 for each additional page; telephone charges as per Long Distance above
Courier / Air Freight	Actual charges
Computer Legal Research	No Charge
Postage (includes certified mail, express mail, and registered mail)	All costs > \$.49
Word Processing	No charge
Miscellaneous Supplies	Actual cost
Court Costs, Witness Fees, Court Reporters, Experts and Other Outside Support Services	Actual charges
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