

# CITY COUNCIL REPORT



Meeting Date: 1/27/2014  
General Plan Element: *Provide for the orderly government and administration of the affairs of the City*  
General Plan Goal: *FISCAL MANAGEMENT*

## ACTION

**ADOPT RESOLUTION NO. 9614** authorizing execution of Professional Services Agreement No. 2014-007-COS with Gust Rosenfeld PLC for Bond Counsel services associated with the City's issuance of bonds and other capital financing.

## BACKGROUND

The current Professional Services Agreement for Bond Counsel with Gust Rosenfeld expired in 2013; therefore, staff from the offices of the City Treasurer and City Attorney initiated a Request for Qualifications (RFQ) in order to canvas the legal community for renewal of this 5-year agreement. Responses to the RFQ were due on November 25, 2013.

Services to be provided by the selected firm include legal advice and compliance and transactional documentation related to: General Obligation (GO) Bonds, Water and Sewer Revenue (W & S) Bonds, Highway User Revenue Fund (HURF) Bonds, Municipal Property Corporation (MPC) Bonds, Scottsdale Preserve Authority (SPA) Bonds, Improvement Districts (IDs), and Community Facility District (CFD) Bonds and capital financings.

## ANALYSIS & ASSESSMENT

Proposals were received from the following firms:

- Ballard Spahr
- Greenberg Traurig
- Gust Rosenfeld
- Kutak Rock
- Squire Sanders

The recommended firm was selected on the basis of staff review of five primary evaluation criteria that included:

- qualifications of the team,
- institutional (City) knowledge,
- qualifications of the firm,
- responsiveness,
- cost.

All proposals were reviewed by the Evaluation Committee, which consisted of members of the City Treasurer's Office and the City Attorney's Office. All five proposals met the City's requirements, and all five firms demonstrated that they are highly qualified. After careful review, the evaluation team selected Gust Rosenfeld.

## **RESOURCE IMPACTS**

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Awarding of the Professional Services Agreement for Bond Counsel will provide the necessary legal services for future bond issues and other financings.

There are no annual retainer costs involved in this Agreement. The professional fees and expenses are generally paid as part of the cost of issuance at the time of sale of a specific bond issue.

For other legal services provided outside the requested Scope of Services, an agreed-upon hourly rate and/or fixed fee will be negotiated prior to services being rendered.

## **OPTIONS & STAFF RECOMMENDATION**

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Not approving Professional Services Agreement No. 2014-007-COS would require the City to separately hire a Bond Counsel for every bond issuance or seek qualified expertise from an in-house attorney.

### **Recommended Approach**

Adopt Resolution No. 9614 authorizing execution of Professional Services Agreement No. 2014-007-COS with Gust Rosenfeld PLC for Bond Counsel services for the City's issuance of bonds and other capital financing.

## **RESPONSIBLE DEPARTMENT(S)**

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City Treasurer's Office and City Attorney's Office

## **STAFF CONTACTS (S)**

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Lee Guillory, Finance Director, (480) 312-7084, [lguillory@ScottsdaleAZ.gov](mailto:lguillory@ScottsdaleAZ.gov)

## **APPROVED BY**

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Jeffery Nichols, City Treasurer  
(480) 312-2364, [jenichols@ScottsdaleAZ.gov](mailto:jenichols@ScottsdaleAZ.gov)

11/10/14  
Date

  
Bruce Washburn, City Attorney  
(480) 312-2659, [bwashburn@ScottsdaleAZ.gov](mailto:bwashburn@ScottsdaleAZ.gov)

11/15/14  
Date

## **ATTACHMENTS**

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1. Resolution No. 9614
2. Professional Services Agreement No. 2014-007-COS

RESOLUTION NO. 9614.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE PROFESSIONAL SERVICES CONTRACT NO. 2014-007-COS, WITH GUST ROSENFELD, PLC, FOR THE PURPOSES OF PROVIDING BOND COUNSEL SERVICES ASSOCIATED WITH THE CITY'S ISSUANCE OF BONDS AND OTHER CAPITAL FINANCING.

WHEREAS, the City of Scottsdale requires the services of qualified persons to perform legal services associated with the City's issuance of bonds and other capital financing; and

WHEREAS, Gust Rosenfeld, PLC, is qualified and able to provide such services;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Professional Services Contract No. 2014-007-COS, an agreement between the City of Scottsdale and Gust Rosenfeld, PLC, to perform legal services associated with the City's issuance of bonds and other capital financing.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: William K. Hylen, Assistant City Attorney



**CITY OF SCOTTSDALE  
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, made and entered into this 27th day of January, 2014, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona hereinafter referred to as "City", and Gust Rosenfeld, PLC, a professional corporation of the State of Arizona, hereinafter referred to as "Contractor".

**WITNESSETH**

The Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services;

The City desires to contract for the legal services of BOND COUNSEL;

Contractor is duly qualified to perform the requested services;

In consideration of the mutual promises and obligations set forth herein, the parties agree as follows:

**1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION**

Contractor shall act under the authority and approval of the Contract Administrator for the City, as named below, to provide the professional legal services required by this Contract.

**1.1 SERVICE DESCRIPTION**

The Contractor shall provide the City with the Bond Counsel services as set forth in the City's Request for Qualifications on all items of financing necessary to the City's operations including, but not limited to general obligation, street and highway, water and sewer revenue, Municipal Property Corporation, community facilities district, and improvement district bonds and other related financial services.

Contractor shall provide bond counsel services including, but not limited to:

**A. For Each Debt Issue.**

1. Draft the bond election propositions, the authorizing documents, bond proceedings, bond legal opinions, and closing documents.
2. Work with the financial advisor in the drafting of the bond ballot propositions and related legal documents.

3. Provide advice as may be required to the Mayor and Council, staff, citizen committees, and others.
4. Prepare all bond closing documents and coordinate bond closings.
5. Provide advice to the City on matters relating to the bonds and financings during intervals between bond sales.
6. Work with the financial advisor on creation and discussion of structuring alternatives within the confines of the market, acceptable risk and legal constraints.
7. Work with the financial advisor on recommendation of the trust, registrar, and paying agent.
8. Work with the financial advisor on preparation of the Official Statement.
9. Coordinate those necessary activities of a legal nature with the financial advisor.
10. Deliver the firm's legal opinion for:
  - a. The valid issuance of the evidence of indebtedness;
  - b. The federal and state tax status of the interest income earned by holders of the instrument; and
  - c. The validity and enforceability of underlying documentation.
11. Advise the City as to the proper procedure for compliance with state open meeting laws and federal public hearing criteria.
12. Attendance at all meetings of the Mayor and City Council, and staff meetings as necessary, including those meetings concerning the sale of Bonds and authorizing awarding Bonds.

**B. General Services**

1. Provide services of a general legal nature pertaining to all facets of City bond issues.
2. Provide legal advice relative to financing options that do not include the sale of debt obligations.
3. Work with the financial advisor on creation of a detailed schedule of events necessary to sell bonds.
4. Provide other legal advice, as necessary, on financial issues not related to a specific debt issue.
5. Coordinate with the financial advisor any necessary activities of a legal nature.

**C. For Improvement Districts, Community Facility Districts, and other Special Districts**

1. Prepare and review all legal proceedings as the District Counsel.
2. Review and ensure compliance with all legal procedures for all actions taken by City staff and the City Council with respect to the following:
  - (1) initiation of the improvement district;
  - (2) protests and objections;
  - (3) adopting the Resolution Ordering the Work and calling for construction bids;
  - (4) awarding the construction contract;
  - (5) rulings on objections to the award of contract;
  - (6) calling for bids on the bonds and awarding the contract for the purchase of bonds;
  - (7) processing the assessment, the warrant, the return and the certified list; and
  - (8) preparation of all legal documents in connection with the Final Assessment Hearing.
3. Draft the notice inviting proposals for purchase of the bonds in conjunction with the City's financial advisor;
4. Assist the financial advisor in preparing official statements, if deemed necessary.
5. Assist the Council and staff in evaluating objections to the assessment, preparing necessary responses to objections and determining if modifications of the assessment are advisable, including appearing at the hearing on the assessment if objections have been filed.
6. Bond Counsel shall arrange to be "on call" with respect to any questions which come up during the pendency of the improvement district proceedings or during the collection period (i.e., the full term of the bonds) to answer questions on such issues as modifications of assessments, notices of delinquencies, timing with respect to mailing notices of assessment installments, notices of delinquencies, publishing notices of delinquencies and holding Superintendent of Streets' sales.
7. In addition, Bond Counsel will defend suits regarding the "spread" of assessments, if requested to do so by the Council; however, if the Bond Counsel undertakes such representation, the City and Bond Counsel will negotiate an agreed-upon hourly rate and/or fixed fee prior to services being rendered because such work is not within the scope of work.

## **1.2 ACCEPTANCE AND DOCUMENTATION**

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- B. The City shall provide all necessary information to the Contractor for timely completion of the tasks specified in Section 1.1.
- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Contractor.

## **2.0 BILLING RECORDS, AUDIT, FEES**

### **2.1 BILLING RECORDS, AUDIT**

The time spent for each task shall be itemized and submitted to the Contract Administrator. Contractor shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available at all reasonable times during the Contract period for audit by the City pursuant to Section 4.7 of this Contract.

### **2.2 FEE SCHEDULE**

Contractor shall be paid according to the following schedule:

#### **A. For the following bond counsel services rendered in connection with the issuance of debt:**

- |   |   |
|---|---|
| 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.  |
| 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; \$0.25 per \$1,000 of principal amount of bonds issued in excess of \$70,000,000. |
| 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; \$0.25 per \$1,000 of principal amount of debt issued in excess of \$70,000,000.         |
| 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; \$0.25 per \$1,000 of principal amount of debt issued in excess of \$70,000,000.

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; \$0.35 per \$1,000 of principal amount of debt issued in excess of \$70,000,000.

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%).

Each range for each type of bond referenced in paragraphs (A) (1) – (5), inclusive is capped at \$5,000. For example, where the range is "\$.35 per \$1,000 of principal amount of debt issued between \$20,000,000 to 70,000,000", the application of \$0.35 to \$50,000,000 of bonds issued in this range could produce an additional fee amount of \$17,500, but the cap reduces that amount to \$5,000. Consequently, the maximum fees for the following categories would be: for the bonds described in paragraph 1 - \$45,000; for the bonds described in paragraph 2- \$60,000; for the bonds described in paragraph 3- \$65,000; for the bonds described in paragraph 4 - \$75,000; for the bonds described in paragraph 5 - \$80,000.

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 is added to the fee. The Contractor will notify the City of such fee at the beginning of the transaction.

B. All services in connection with the ordering of any bond election are provided for a flat fee of \$9,500, plus costs and will be billed after the canvass of the election. Such services will include assistance with the voter informational pamphlet and review of other election materials and information.

C. The hourly rates set forth in Exhibit A 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 rates shown in Exhibit A are set through December 31, 2014; thereafter, the firm's current standard hourly rates are subject to annual adjustment with at least 30 days advance notice to the City.

D. For the following bond counsel services rendered in connection with the issuance of debt related to a Community Facilities District ("CFD"):

- |   |   |
|---|---|
| 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. |

The 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 will be added to the quoted fee, of which the Contractor will notify the City at the beginning of the transaction. All fee schedules set forth in this subparagraph (D) relating to CFD's shall also apply to any other special districts utilized by the City.

E. The Contractor will charge the hourly rates set forth in Exhibit A for the following services related to a CFD: 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 rates shown in Exhibit A are set through December 31, 2014; thereafter, the firm's current standard hourly rates are subject to annual adjustment with at least 30 days prior notice to

the City. All hourly charges set forth in this subparagraph (E) relating to CFD's shall also apply to any other special districts utilized by the City.

F. Fees for services rendered in connection with the collection and foreclosure of assessment liens are (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.

G. The City will reimburse Contractor for the Contractor's 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 with advance notice to the City. Costs and out-of-pocket expenses for bond transactions will be the lower of actual expenses or \$1,250.

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 1 <sup>st</sup> 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 > \$.46
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

H. Contractor may submit work in progress billings for services rendered together with applicable documentation as directed by the Contract Administrator.

- I. Amounts indicated in this Section 2.2 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

### **2.3 PAYMENT APPROVAL**

All charges must be approved by the Contract Administrator prior to payment.

#### **2.3.1 PAYMENT TERMS**

The City of Scottsdale's payment terms are payment within thirty (30) days after approval by Contract Administrator. In no event will payment be made prior to receipt of an original invoice containing invoice and proper reference numbers. The City is not liable for delays in payment caused by failure of the vendor or contractor to send invoice to the address specified below:

City of Scottsdale  
Attn: Lee Guillory, Finance Director  
7447 E. Indian School Road, Suite 210  
Scottsdale, Arizona 85251-4468

### **3.0 TERM, EXTENSION, TERMINATION**

#### **3.1 TERM AND EXTENSION**

The term of this contract shall begin on January 27, 2014 and expire on January 27, 2019. In the event that any services remain incomplete after the expiration date, the time to complete the remaining services shall be subject to written approval by the Contract Administrator.

#### **3.2 TERMINATION**

Termination for Convenience: City reserves the right to terminate this contract or any part of this Contract for its sole convenience with 30 days written notice. In the event of any termination, Contractor must immediately stop all work, and must immediately cause any of its suppliers and Subcontractors to cease all work. As compensation in full for services performed to the date of termination, the Contractor will receive a fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by the Contractor and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the Contractor's

compensation will be based upon this determination. The City will make this final payment within 60 days after the Contractor has delivered the last of the partially completed items. Contractor will not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or Subcontractors, which Contractor could reasonably have avoided.

Cancellation for Cause: City may also cancel this contract or any part of this Contract with 7 days notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator and failure to provide City, upon request, with adequate assurances of future performance will all be causes allowing City to cancel this contract for cause. In the event of cancellation for cause, City will not be liable to Contractor for any amount, and Contractor will be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Contractor.

If the City cancels this Contract or any part of the Contract services, the City will notify the Contractor in writing, and upon receiving notice, the Contractor must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Contractor must deliver to the City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility.

The Contractor must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, the Contractor will be entitled to be paid for Work performed and accepted by the City before the default.

If the Contractor fails to fulfill in a timely and proper manner its obligations, or if the Contractor violates any of the terms of this Contract, the City may withhold any payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause, the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

### **3.3 FUNDS APPROPRIATION**

If the City Council does not appropriate funds to continue this Contract and pay for charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to the Contractor at least 30 days before the end of its current fiscal period and will pay to the Contractor all approved charges incurred through the end of this period.

#### **4.0 GENERAL TERMS**

##### **4.1 ENTIRE AGREEMENT**

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the specified services. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

##### **4.2 ARIZONA LAW**

This Contract is governed and interpreted according to the laws of the State of Arizona.

##### **4.3 MODIFICATIONS**

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.

##### **4.4 ASSIGNMENT**

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

##### **4.5 SUCCESSORS AND ASSIGNS**

This Contract extends to and is binding upon Contractor, its successors and assigns, including any individual, company, partnership or other entity with or into which Contractor merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Contractor sells its assets.

##### **4.6 CONTRACT ADMINISTRATOR**

The Contract Administrator for the City will be Lee Guillory or designee. The Contract Administrator will oversee the execution of this Contract, assist the Contractor in accessing the organization, audit billings, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Contractor must channel reports and special requests through the Contract Administrator.

##### **4.7 RECORDS AND AUDIT RIGHTS**

The City may audit all of the Contractor's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place.

Contractor's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract must be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Contractor or any of his payees in accordance with

the execution of the contract. The City's authorized representative must be afforded access, at reasonable times and places, to all of the Contractor's records and personnel in accordance with the provisions of this section throughout the term of this contract and for a period of 3 years after last or final payment.

Contractor must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written contract agreement between Contractor and payee. These requirements will also apply to any and all Subcontractors.

If an audit in accordance with this section, discloses overcharges, of any nature, by the Contractor to the City in excess of 1% of the total contract billings, the actual cost of the City's audit must be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records must be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

#### **4.8 ATTORNEY'S FEES**

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.

#### **4.9 INELIGIBLE BIDDER**

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

#### **4.10 INDEPENDENT CONTRACTOR**

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

#### **4.11 CONFLICT OF INTEREST**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Contractor any fee, commission,

percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City will have the right to cancel this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation will be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §38-511).

#### **4.12 NOTICES**

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this section.

In the case of Contractor:

Scott W. Ruby, Esq.  
Gust Rosenfeld, PLC  
One E. Washington St., Suite 1600  
Phoenix, AZ 85004-2553  
602-257-7432

In the case of City:

Lee Guillory, Finance Director  
7447 E. Indian School Rd., OCC210  
Scottsdale, AZ 85251  
480-312-7084

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail. Notice by facsimile or electronic mail is not adequate notice.

#### **4.13 FORCE MAJEURE**

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

#### **4.14 TAXES**

Contractor is solely responsible for any and all tax obligations which may result out of the Contractor's performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by the Contractor.

**4.15 ADVERTISING**

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Contract Administrator.

**4.16 COUNTERPARTS**

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract will be considered to possess the full force and effect of the original.

**4.17 CAPTIONS**

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

**4.18 SUBCONTRACTORS**

During the performance of the Contract, the Contractor may engage any additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors requires that the Contractor first obtain the approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Contractor.

The Contractor will pay its Subcontractors within 7 calendar days of receipt of each progress payment from the City. The Contractor will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention, if any, by the City will result in a *corresponding reduction to Subcontractors who have performed satisfactory work*. The Contractor will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Contractor. No Contract between the Contractor and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Contractor fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions and the Contractor agrees that the City may take these actions:

- A. To hold the Contractor in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;



- C. Reject all future offers to perform work for the City from the Contractor for a period not to exceed 1 year from the completion date of this project; or
- D. Cancel this Contract.

#### **4.19 CHANGES IN THE WORK**

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If any changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment will be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

#### **4.20 CO-OP USE OF CONTRACT**

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

#### **4.21 COMPLIANCE WITH FEDERAL AND STATE LAWS**

The Contractor understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, the Contractor understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

#### **4.22 IMMIGRATION LAW COMPLIANCE**

Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

#### **4.23    *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS***

A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that verifies that they are lawfully present in the United States.

A PERSON is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations Limited Partnerships or General Partnerships)*

By submitting your quote, bid, proposal and/or indicating your desire to enter in a contract with the City you are agreeing that if you are selected as the awardee and meet the criteria of a PERSON you will abide by this law and sign and submit an AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES and attach the appropriate copy of your documentation to verify of that statement. Types of acceptable documentation copies are an Arizona Driver's License issued after 1996, Arizona nonoperating identification license, U.S. birth certificate, U.S. Passport, I-94 Form with photograph and several others that are all listed on the Affidavit form that the City will send to you for your completion before to issuing any contract.

If you have previously done business with the City and have already filed the above Affidavit with copies of an acceptable documentation please indicate when you filed the affidavit. If your approved Affidavit is already on file with the City, you have complied with this requirement.

If you fail to provide a completed Affidavit and accompanying copy of your acceptable documentation, or if you do not advise the City of your previous filing within 10 calendar days after receiving the City's request you may be considered non responsive and disqualified from that award consideration. You can obtain the complete Affidavit form from the City's Purchasing Department at (480) 312-5700 or the City's website at <http://www.scottsdaleaz.gov/Purchasing> on the Vendor Resources page at the bottom right under Forms.

#### **4.24    *NO PREFERENTIAL TREATMENT OR DISCRIMINATION***

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

#### **4.25    *INDEMNIFICATION***

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

Insurance provisions stated in this Contract are separate and independent from the indemnity provisions of this section and must not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section must not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

#### **4.26 OWNERSHIP OF PROJECT DOCUMENTS**

All documents, including but not limited to notes, records, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the City and must be delivered to the Contract Administrator before final payment is made to the Contractor.

When the work detail covers only the preparation of preliminary reports or documents, there will be no limitations upon the City concerning use of the ideas or recommendations in the reports or documents. The City will release the Contractor from any liability for the preparation and use of preliminary reports or documents.

Any use of the project documents for purposes other than intended under this Contract will be at the sole risk of the City, and the Contractor will not be liable for any losses or injuries arising out of that use.

#### **4.27 COMPLETENESS AND ACCURACY**

The Contractor will be responsible for the completeness and accuracy of work prepared by the Contractor and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Contractor. Additional work or construction added to the project will not be the responsibility of the Contractor unless the need for additional work or construction was created by any error, omission, or negligent act of the Contractor. The City's acceptance of the Contractor's work will not relieve the Contractor of any of its responsibilities. The professional standard to which the Contractor is held will be that of a similar Contractor as practiced in the State of Arizona.

#### **4.28 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES**

The total Scope of the Consulting Services to be performed is stated in this Contract. Any services requested outside the scope of work are additional services. The Contractor will not perform these additional services without a written Change Order approved by the City. If the Contractor performs additional services without a Change Order, the Contractor will not receive any additional compensation.

#### **4.29 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the Bidder will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

#### **4.30 THIRD PARTY BENEFICIARY**

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the Contractor, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the Contractor and not for the benefit of any other party.

#### **4.31 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS**

For any non-construction City supplier whose service contract(s) (either singular or in aggregate) results in the contractor working 500 or more hours on site at a City of Scottsdale location(s) in any one calendar quarter, the following documentation must be provided by the contractor to the Contract Administrator (CA):

- the contractor's most recent OSHA 300A (if applicable);
- all accident reports for injuries that occurred in the city under the contract during the most recent review period;
- the contractor's current worker's compensation experience modifier;
- the above information is to be provided to the CA initially and every February thereafter as long as the contract is in force;
- the CA will provide this information to Risk Management when requested.

#### **5.0 INSURANCE**

A current standard Acord Certificate is acceptable.

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

**Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.**

#### **5.1 Insurance Representations and Requirements**

**5.1.1 General:** Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Contractor, Contractor must purchase and maintain, at its own expense, the 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 of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

- 5.1.2 No Representation of Coverage Adequacy:** By requiring insurance, City of Scottsdale does not represent that coverage and limits will be adequate to protect Contractor. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements stated in this contract or failure to identify any insurance deficiency will not relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.
- 5.1.3 Coverage Term:** All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.
- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required for the 3 year period.
- 5.1.5 Policy Deductibles and or Self-Insured Retentions:** The policy requirements may provide coverage which contain deductibles or self-insured retention amounts. These deductibles or self-insured retention must not be applicable with respect to the policy limits provided to City of Scottsdale. Contractor is solely responsible for any deductible or self-insured retention amount. City of Scottsdale, at its option, may require Contractor to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this Contract is subcontracted in any way, Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as stated in this Contract protecting City of Scottsdale and Contractor. Contractor is responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before starting any work or services under this Contract, Contractor must furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Contract and provide the required coverage, conditions, and limits of coverage and that this coverage and the provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale 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 above cited policies expire during the life of this

Contract, it is Contractor's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
  - c) Excess Liability - Follow Form to underlying insurance as required.
2. Contractor's insurance must be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Contract.
4. If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

## **5.2 Required Coverage**

**5.2.1 Commercial General Liability:** Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

**5.2.2 Professional Liability:** If the Contract is the subject of any professional services or work, or if Contractor engages in any professional services or work adjunct or residual to performing the work under this Contract, Contractor must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose acts, mistakes, errors and omissions Contractor is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.

**5.2.3 Vehicle Liability:** Contractor must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Contract. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying.

- 5.2.4 Workers Compensation Insurance:** Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Contract and must 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.

**6.0 SEVERABILITY AND AUTHORITY**

**6.1 SEVERABILITY**

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

**6.2 AUTHORITY**

Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

**7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM**

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at [www.IRS.gov](http://www.IRS.gov) under their forms section.

**8.0 SOFTWARE LICENSES**

If The Contractor provides to the City any software licenses, the following provisions apply:

**8.1 SOURCE CODE AVAILABILITY**

- A. The Contractor must furnish the City, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
1. The Contractor becomes insolvent; or
  2. The Contractor ceases to conduct business; or
  3. The Contractor makes a general assignment for the benefit of creditors; or
  4. A petition is filed in Bankruptcy by or against the Contractor.
- B. Use of the Source Code must be subject to the same restrictions as the Software itself.
- C. The City must have the right to modify the Source Code in any manner the City believes is appropriate, provided that the Source Code as modified must remain subject to the restrictions of Section 8.1(B).

**8.2 PROPRIETARY PROTECTION**

- A. The City agrees that if the Contractor informs the City that the Software is confidential information or is a trade secret property of the Contractor, the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Contractor must not use or disclose any knowledge, data or proprietary information relating to the City obtained in any manner.
- C. As permitted by Arizona Law, the parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of 7 years after termination of this Contract and of all licenses granted by this Contract, to hold each others' confidential information in confidence. The parties agree, unless required by government regulations or order of court, not to make each others' confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Contractor's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Contractor must reimburse the City for the full cost of the City's refusal to release the information, including the costs of litigation, the City's attorney fees, fines, penalties or assessments of the opposing party's attorney fees. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

**D. NON-INFRINGEMENT**

The Contractor warrants that the Software provided to the City does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the City asserting or involving such an allegation, the Contractor will defend, at the Contractor's expense, and will indemnify and hold harmless the City against any loss, cost, expense (including attorney fees) or liability arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Contractor's opinion the Software is likely to become the subject of a claim of infringement, the Contractor will, at its option and its expense:

- 1. Procure for the City the right to continue using the Software; or
- 2. Replace or modify the software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or
- 3. If neither 1 nor 2 is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5 year period, commencing on the date of acceptance.

**8.3 THIRD PARTY LICENSE**

The Contractor must sublicense to the City any and all third party Software required in this Contract. The City reserves the right to accept or reject third party license terms. If the City rejects the terms of a third party license, it will be the Contractor's responsibility to negotiate acceptable terms or to supply Software from another source with terms



acceptable to the City. The City's acceptance of the third party license terms will not be unreasonably withheld.

#### **8.4 DATA CONFIDENTIALITY**

- A. As used in this Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Contractor in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor in connection with the Contractor's performance of this Contract is confidential and proprietary information belonging to the City.
- C. The Contractor will not divulge data to any third party without first obtaining the written consent of the City. The Contractor will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the Contractor has first given the required notice to the City:
  - 1. Data, which was known to the Contractor before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
  - 2. Data which was acquired by the Contractor in its performance under this Contract and which was disclosed to the Contractor by a third party, who to the best of the Contractor's knowledge and belief, had the legal right to make disclosures and the Contractor is not otherwise required to hold the data in confidence; or
  - 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the Contractor is subject.
- D. In the event the Contractor is required or requested to disclose data to a third party, or any other information to which the Contractor became privy as a result of any other contract with the City, the Contractor will first notify the City as required in this Article of the request or demand for the data. The Contractor will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.
- E. Unless prohibited by law, within 10 days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. The Contractor assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Article are violated by the Contractor, its employees, agents or Subcontractors.

Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

ATTEST:

CONTRACTOR:  
Gust Rosenfeld, PLC

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: Scott Ruby  
Scott Ruby

CITY CONTRACT ADMINISTRATOR

CITY OF SCOTTSDALE:

Jim Flanagan  
Purchasing Director

By: Lee Guillory  
Lee Guillory  
Finance Director

Katherine Callaway  
Katherine Callaway  
Risk Management Director

APPROVED AS TO FORM:

Bruce Washburn  
Bruce Washburn, City Attorney  
By: William K. Hylen  
Assistant City Attorney

Attachment 2

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## Exhibit A

**GUST ROSENFELD, P.L.C.  
BILLING RATES  
EFFECTIVE THROUGH 12/31/2014**

<b><u>2014 Fee Schedule</u></b>	<b><u>Title</u></b>	<b><u>Hourly Rate</u></b>
Abad, Raul	Member	229.50
Bate, Michael	Member	365.50
Bate, Kyle	Associate	165.75
Blanco, Laura	Member	327.25
Cammack, Kent	Member	310.25
Chauncey, Tom	Member	365.50
Collins, Mark	Member	310.25
Collins, Peter	Member	310.25
Corrales, Jody	Associate	221.00
Frazier, Roger	Member	255.00
Giel, Jim	Member	310.25
Halter, Thomas	Member	335.75
Harris, Nicholle	Associate	178.50
Haws, Rob	Member	310.25
Hay, John	Member	327.25
Hood, Richard	Member	327.25
Jacobs, Gerald L.	Member	365.50
Jones, Martin T.	Member	335.75
Jones II, Martin	Associate	165.75
Kang, Mingyi	Member	195.50
Kaucher, James	Member	280.50
Lile, Shelby	Associate	178.50
Loveland, Landon	Associate	212.50
MacLennan, Jennifer	Member	297.50
Malm, Scott	Member	310.25
Marburger, James	Member	327.25
McCarthy, Craig	Member	310.25
McGlothlin, Eric	Associate	195.50
McGuire, Andrew	Member	301.75
McIntier, Kimberly	Associate	178.50
McNichol, Christopher	Member	328.50
Murphy, Thomas	Member	280.50
Nasr, John	Associate	187.00
Noyes, Christina	Member	280.50
O'Brien, Sean	Member	391.50

<b><u>2014 Fee Schedule</u></b>	<b><u>Title</u></b>	<b><u>Hourly Rate</u></b>
O'Meara, Gerald	Member	297.50
Pashkowski, Barbara	Member	337.50
Pennartz, David	Member	310.25
Platten, Calvin	Associate	195.50
Rendell, Steven	Member	378.00
Robertson, Dean	Member	310.25
Robertson, John	Member	310.25
Rosenfeld, Fred	Member	378.00
Ruby, Scott	Member	378.00
Savage, Robert	Associate	246.50
Schmaltz, Christopher	Member	272.00
Schmidt, Shiela	Member	337.50
Scorza, Justin	Associate	178.50
Segal, Richard	Member	378.00
Segal, Susan	Member	306.00
Smith, Sarah	Member	204.00
Speer, James	Member	310.25
Stratton, Timothy	Member	328.50
Tomkins, Frank	Member	337.50
Wanslee, Madeleine	Member	346.50
Watson, Timothy	Member	255.00
Weigand, Wendy	Member	280.50
Whitney, Richard	Member	378.00
Wirken, Charles	Member	369.00
Woodlock, Michael	Member	272.00
Bailey, Marlyss	Paralegal	144.50
Cornell, Kathleen	Paralegal	144.00
England, Catherine	Paralegal	144.50
Gall, Anna	Paralegal	144.50
Hubbert, Joan	Paralegal	157.25
Kendell, Theresa	Paralegal	153.00
McIntyre, Sandra	Paralegal	144.50
Pequeno, Stephanie	Paralegal	144.50
Phillips, Judy	Paralegal	144.50
Pischner, Mary	Paralegal	144.50
Rapps, Monica	Paralegal	144.50
Wheeler, Amey	Paralegal	153.00