

# CITY CLERK ORIGINAL

C-7938  
02/21/2012

## CONSULTING AGREEMENT

This Consulting Agreement (Agreement), effective February 21, 2012, is between Kuehl Enterprises, LLC (KELLC), an Arizona limited liability company authorized to do business in Arizona, and the City of Glendale, an Arizona municipal corporation (CLIENT).

### RECITALS

CLIENT desires to retain KELLC to render consulting and advisory services for CLIENT on the terms and conditions set forth in this Agreement and KELLC desires to be retained by CLIENT on such terms and conditions.

NOW, THEREFORE, CLIENT and KELLC agree as follows:

### AGREEMENT

- Retention of Consultant; Services to be Performed.** CLIENT hereby retains KELLC for the term of this Agreement to perform the consulting services set forth in the attached Schedule A for CLIENT (Services).
- Independent Contractor.** It is expressly agreed and understood by and between the parties that KELLC is an independent contractor, and as such KELLC will not become a CLIENT employee, and is not entitled to payment or compensation from CLIENT or to any fringe benefits to which CLIENT's employees are entitled. As an independent contractor, KELLC further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity as a result of this Agreement. As an independent contractor, KELLC further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of CLIENT, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of CLIENT.
- Compensation for Consulting Services.** During the term for Services specified in the Agreement, CLIENT will pay to KELLC an amount not to exceed \$2,500.00, based on an hourly rate of \$125.
- Billing.** KELLC will invoice CLIENT upon completion of the services set forth in the attached Schedule A. Payment on invoices will be due within thirty (30) days of the invoice date.
- Notices.** Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following addresses:

CLIENT:

Gilbert Lopez  
Community Revitalization Administrator  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

KELLC:

Martina Kuehl  
Kuehl Enterprises, LLC  
P.O. Box 642  
Humboldt, Arizona 86329

WITH A COPY TO:

City of Glendale  
City Attorney  
5850 West Glendale Avenue  
Glendale, Arizona 85301

6. **Confidential Information.** Subject to the provisions of A.R.S. § 39-121 *et seq.*, all information of any nature that either party acquires regarding any aspect of the other party's business will be treated in strict confidence. Information so obtained will not be divulged, furnished or made accessible to third parties without the written permission of the other party to this Agreement. Both parties retain the right to do business with third parties in matters that may be competitive with the interests of the other party to this Agreement. However, the confidentiality constraints above will be binding and have precedence over these business matters.
7. **Ownership of Intellectual Property.** All original documents and other work products of KELLC for the CLIENT are instruments of service for CLIENT only and will remain the property of CLIENT. KELLC will not be responsible for damages resulting from unapproved modification of such work products by CLIENT, its agents, or its partner organizations, or from their use for any purpose other than that for which they were intended and furnished. Intellectual property rights of each party will further be governed by the following:
  - 7.1 CLIENT will be responsible for verifying any property rights of other parties prior to use of any work product provided under this Agreement.
  - 7.2 CLIENT acknowledges that the use of any design, advice, drawing or other service provided by KELLC, its employees and agents does not relieve CLIENT's responsibility to execute sufficient testing and judgment to ensure that any resulting product is suitable for usage.
8. **Term and Termination.**
  - 8.1 Unless terminated at an earlier date in accordance with paragraph 8.2, this Agreement will commence as of the date first written above and will continue until February 29, 2012.
  - 8.2 This Agreement may be terminated when either party gives at least thirty (30) days written notice to the other party of the intent to terminate this Agreement. In the event of termination by CLIENT, KELLC will be entitled to receive from CLIENT payment of fees of \$125/hour plus expenses incurred up to the date of termination in accordance with the billing procedures set forth in Section 4.
9. **Indemnification.** The parties agree to indemnify, defend and hold harmless each other against any and all loss, liability, expenses and costs (including reasonable attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by the parties in connection with any threatened, pending, completed or future action suit or proceeding to which the parties are, or are threatened to be, made a party arising from or related to Services that have been provided under the Agreement. The terms of this paragraph are non-revocable and will survive the termination of this Agreement.
10. **Insurance.**
  - 10.1 Without limiting any of its obligations or liabilities, KELLC, at its own expense, will purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona Department of Insurance and acceptable to the CLIENT, and with forms satisfactory to the CLIENT.
  - 10.2 KELLC will provide Commercial General Liability Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 General Aggregate Limit. The policy will include coverage for bodily injury, property damage, personal injury, products and blanket contractual covering, but not limited to the liability assumed under the indemnification provisions of this Agreement.
  - 10.3 The Commercial General Liability Insurance coverage required by this Agreement will name the City of Glendale as Additional Insured, and will specify that insurance afforded by KELLC will be primary insurance and that any insurance coverage carried by KELLC or its

employees will be excess coverage and not contributory coverage to that provided by KELLC. KELLC will include all subcontractors as insured under this policy or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to all of the requirements stated herein for KELLC.

- 10.4 Prior to commencing activities and services under this Agreement, except as noted above, KELLC will furnish CLIENT with Certificates of Insurance, or formal endorsements as required by the Agreement issued by KELLC's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. Such certificates will identify this Project and will provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or Material Alteration and thirty (30) days for non-payment. Such certificates will be sent directly to:

City of Glendale  
Attention: Risk Manager  
5850 West Glendale Avenue  
Glendale, Arizona 85301

- 10.5 CLIENT's Risk Manager may modify the insurance requirements identified above.

11. **Workers' Compensation.** No workers' compensation insurance has been or will be obtained by CLIENT for KELLC.
12. **Disputes.** Any action based on this Agreement, including disagreement, disputes regarding the terms and conditions, alleged breaches of contract, and remedies under contract, will be governed by the laws of the State of Arizona and will be subject to binding mediation.
13. **Immigration Law.** KELLC has registered with and will continue to participate in the E-Verify program established by the United States Department of Homeland Security and Social Security Administration or any successor program; that it warrants compliance with all federal immigration laws and understands that any breach of this warranty subjects KELLC to penalties, including termination of this Agreement; and finally, understands that CLIENT has the right to inspect the papers of KELLC or any of its employees participating in this Agreement to ensure compliance with this paragraph.
14. **Prohibitions.** KELLC certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
15. **Miscellaneous.**
- 15.1 Entire Agreement. This Agreement (including the exhibits, schedules and other documents referred therein) constitutes the entire agreement between the parties with respect to the subject matter of the Agreement. This Agreement supersedes any and all prior agreements, oral or written, between the parties with respect to the subject matter of the Agreement.
- 15.2 Severability. If any provision of this Agreement is for any reason declared to be invalid or unenforceable, the validity and enforceability of the remaining provisions will not be affected thereby. Such invalid or unenforceable provision will be deemed modified to the extent necessary to render it valid and enforceable, and if no modification will render it valid and enforceable, this Agreement will be construed as if not containing such provision and the rights and obligations of the parties will be construed and enforced accordingly.
- 15.3 Amendment, Waiver, Modification or Termination. No amendment, waiver or termination or modification of this Agreement will be binding unless it is in writing and signed by both KELLC and CLIENT and dated subsequent to the date identified above. Performance of

work by KELLC and/or acceptance of payment by KELLC for work performed and/or work to be performed for CLIENT beyond the scope of this Agreement does not constitute acceptance by KELLC of amendments or modifications to this Agreement nor will they be binding.

- 15.4 Assignment. This Agreement and the rights and obligations of the parties will not be assignable by either party without prior written consent of the other party.
- 15.5 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives and, to the extent permitted by subsection (d), successors and assigns of the parties.

IN WITNESS WHEREOF, CLIENT and KELLC have executed this Agreement as of the date set forth in the first paragraph.

CITY OF GLENDALE, an Arizona  
municipal corporation

  
\_\_\_\_\_  
Ed Beasley, City Manager

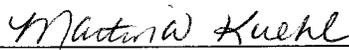
ATTEST:

  
\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Craig Tindall, City Attorney

KUEHL ENTERPRISES, LLC, an Arizona limited  
liability company

  
\_\_\_\_\_

By: Martina Kuehl

Its: manager

## Schedule A

### Scope of Services

Kuehl Enterprises, LLC

1. KELLC will perform a basic risk analysis and prepare a letter detailing risks and mitigating factors for a multi-family housing projects funded with Neighborhood Stabilization Program (NSP) resources assigned to CLIENT:
  - 1.1 Market Risk. KELLC will conduct a review of the developer's market assessment and any factors that may need further clarification, such as rent up risk, viability over a specified time frame, and likelihood that the project will maintain value;
  - 1.2 Project Risk.
    - a. Completion risk factors including site control, local approvals, and commitment of resources;
    - b. Feasibility risk including operating revenue projections; and
    - c. Viability risk including management expertise, and the adequacy of capitalized or other reserves.
  - 1.3 Developer Risk. KELLC will review:
    - a. Financial statements with consideration to cash invested, and collateral value; and
    - b. Prior related experience of each organization.
  - 1.4 Public Purpose. KELLC will review for key public purposes as specified in NSP and CLIENT's policy; and
  - 1.5 Affordability analysis. KELLC will determine, relative to market information, affordability to the intended beneficiaries.
2. Specific Exclusions. This scope of services does not include construction cost analysis, independent market analysis, legal or construction services or advice, time or costs for materials reproduction, contract or project management, evaluation and reporting, or participation in progress meetings.