

# CITY CLERK ORIGINAL

C-8045  
05/22/2012

## PROFESSIONAL SERVICES AGREEMENT

Development of Impact Fee, Infrastructure Improvement Plan and Associated Documents

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and TischlerBise, Inc., a District of Columbia corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 22<sup>nd</sup> day of May, 2012 ("Effective Date").

### RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

### AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Consultant agree as follows:

#### 1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
  - a. Project Manager.
    - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
    - (2) The City must approve the designated Project Manager.
  - b. Project Team.
    - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
    - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
  - c. Discharge, Reassign, Replacement.
    - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
    - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City

without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
  - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 **Coordination: Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
  - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
  - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
  - (1) City may reuse the Work Product at its sole discretion.
  - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
  - (3) In such case, City will also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$150,000 as specifically detailed in **Exhibit D** ("Compensation").

4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.

- a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
- b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.

4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.

- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
- b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
- c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
  - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
  - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 Requirements. Consultant must obtain and maintain the following insurance ("Required Insurance"):

- a. Consultant and Subconsultants and Subcontractors. Consultant, and each Subconsultant or Subcontractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
  - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.
  - (2) Subconsultants and Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
  - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
  - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Professional Liability. Consultant must maintain a professional errors and omissions liability policy providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Subconsultants and Subcontractors and covering owned, non-owned and hired automobiles.
- e. Workers' Compensation and Employer's Liability. Consultant must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- f. Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
  - (1) Cancellation or termination of Consultant's Policies;

- (2) Reduction of the coverage limits of any of Consultant's Policies; and
- (3) Any other material modification of Consultant's Policies related to this Agreement.

g. Certificates of Insurance.

- (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant's Policies, which will confirm the existence or issuance of Consultant's Policies in accordance with the provisions of this section, and copies of the endorsements of Consultant's Policies in accordance with the provisions of this section.
- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this section.
- (3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.

h. Other Contractors or Vendors.

- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
- (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

i. Policies. Except with respect to workers' compensation and Consultant's professional liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.

- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
- (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subconsultants and Subcontractors.

- a. Consultant must also cause its Subconsultants and Subcontractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Subconsultant or Subcontractor if City is satisfied the amounts required are not commercially available to the Subconsultant or Subcontractor and the insurance the Subconsultant or Subcontractor does have is appropriate for the Subconsultant or Subcontractor's work under this Agreement.
- c. Consultant and Subcontractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including

sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

**9. Immigration Law Compliance.**

- 9.1 Consultant, and on behalf of any Subconsultant or Subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or Subcontractor employee who performs work under this Agreement to ensure that the Consultant, Subconsultant or any Subcontractor is compliant with the warranty under this section.
- 9.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this section. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant or Subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Consultant's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**10. Prohibitions.** Consultant 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.

11. Notices.

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

L. Carson Bise, President  
4701 Sangamore Road, Suite 240  
Bethesda, Maryland 20816

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale  
c/o Stuart Kent  
6210 West Myrtle Avenue  
Glendale, Arizona 85301

With required copy to:

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

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

- c. Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
  - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
  - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

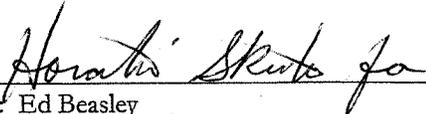
12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.
13. **Entire Agreement; Survival; Counterparts; Signatures.**
- 13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
  - b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
  - c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.
- 13.2 Interpretation.
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
  - b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
  - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
14. **Term.** The term of this Agreement commences upon the effective date and continues for a one year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional one year, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.
15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.
16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

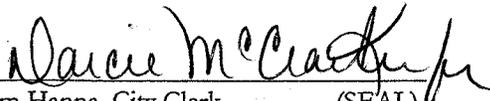
(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,  
an Arizona municipal corporation

  
By: Ed Beasley  
Its: City Manager

ATTEST:

  
Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

  
Craig Tindall, City Attorney

TischlerBise, Inc.,  
a District of Columbia corporation

  
By: L. Carson Bise  
Its: President

## PROJECT DESCRIPTION

The Consultant will advise and assist the City with the development of an infrastructure improvements plan (IIP) and development impact fee report. Because the City plans to use the IIP and development impact fee report as the basis for adopting a new development impact fee schedule, the IIP and development impact fee report developed by the Consultant must meet the applicable requirements for those documents as set forth in Arizona Revised Statutes § 9-463.05.

**EXHIBIT B**  
**Professional Services Agreement**

**SCOPE OF WORK**

(Cover Page)

## SCOPE OF WORK

The Consultant will perform the following tasks:

### Task 1: Recommend Land Use Assumptions

The Consultant will review and, if appropriate, update annual projections of population, employment, housing, commercial, industrial and other nonresidential square footage data for at least five years. This will be based on discussions with City staff and review of published information, including that from the regional planning organization, the Maricopa Association of Governments ([www.azmag.gov](http://www.azmag.gov)). The Consultant will prepare a memorandum discussing the recommended land use projections that will serve as the basis for the IIP and development impact fee schedule. This task will serve to establish forecasts reflecting population, housing, employment, nonresidential building area and other relevant data.

### Task 2: Ascertain Demand Factors and Level of Service for Relevant Public Facilities

- a. ***Ascertain Demand Factors*** – The actual demand factors that generate the need for new capital facilities related to growth, and based on the zoning for the identified areas of the City, will be reviewed.
- b. ***Evaluate Existing Levels of Service*** – Development fees should use existing levels of service for the purpose of calculating the new demand, unless there are extenuating circumstances and/or a financial plan to provide a higher level of service to existing development. The Consultant will determine the existing level of service by conducting onsite interviews, evaluating the appropriate studies and analyzing relevant local data.
- c. ***Determine Geographic Service Area*** – The appropriate geographic service area for purposes of calculating the development fees will be determined. Based on our understanding of the new legislation, we anticipate that there will be multiple zones with differing impact fees, including one or more areas where infill development could occur that result in increased demand for services.

The above subtasks (a through c) will enable the Consultant to ensure that three (3) important development fee requirements are met, collectively referred to as rational nexus requirements: 1) namely demonstration of impact, 2) benefit, and 3) proportionality.

### Task 3: Determine Appropriate Allocation Methodology to Comply with New State Statute Requirements

The Consultant will determine the most appropriate allocation methodology or methodologies for each public facility fee category so the resulting fee is in compliance with new state statute requirements.

### Task 4: Identify Capacity Needs and Costs

This task will culminate in development of an infrastructure improvements plan based on the relevant capital needs and costs due to growth.

- a. ***Long Range Capital Need*** - In this subtask, the Consultant will assist the City in developing an IIP in compliance with the requirements of state statutes. This subtask may include reviewing various studies and other relevant data. The discussions will include establishing reasonable

costs based on the size and scope of identified projects and whether these capital facilities needs are due to normal replacement, catch-up or new demand tied to growth.

- b. **Review Cost Estimates** - In this subtask the Consultant will review, as relevant, the various capital costs. As part of this subtask, the City will ascertain whether the facilities are likely to be financed and, if so, the amortization schedule.

As part of calculating the fee, the Consultant will ensure only eligible capital costs are included per the requirements of state statutes. The Consultant also will ensure that relevant tax revenues are incorporated into the calculation of the impact fee in accordance with State of Arizona Statutes.

#### Task 5: Determine Need for and Calculate "Credits" to be Applied Against Capital Costs

A consideration of "credits" is integral to the development of a legally valid development fee methodology.

There are two (2) types of "credits" each with specific and distinct characteristics, but both of which will be addressed in the development of fees. The first is a credit due to possible double payment situations. This could occur when future contributions are made by the property owner toward the capital costs of the public facility covered by the development fee. The second is a credit toward the payment of a development fee for the required dedication of public sites and improvements provided by the developer and for which the development fee is imposed.

#### Task 6: Discussion of Preliminary Methodologies and Policy Options

The completion of the above tasks will allow the Consultant to prepare draft levels of service tables and supporting documentation for each public facility fee category. This draft information will be shared with the City to ensure understanding and acceptance. Policy alternatives will be discussed as appropriate.

#### Task 7: Prepare Infrastructure Improvement Plan (IIP)

In this task the Consultant will prepare an IIP that reflects the costs of infrastructure, improvements, real property, financing, other capital and associated appurtenances, equipment, vehicles, furnishings, and other eligible items that are associated with meeting future needs necessary for public services as allowed per state statutes. This IIP will meet the new State of Arizona requirements.

#### Task 8: Complete Development Fee Methodology and Calculations

The completion of the above task will enable the development fee methodology and calculations to be finalized. The maximum justifiable fee that can be charged and conform to state statutes will be calculated. City's current impact fees are based on one hundred percent (100%) of the calculated fee.

#### Task 9: Conduct Funding and Cash Flow Analysis

In order to prepare a meaningful infrastructure improvement plan, it is important to evaluate the anticipated funding sources. In this task, the Consultant will prepare a cash flow analysis. This calculation will allow the City to better understand the revenue potential of development fees and the amount needed if the development fees were discounted to less than one hundred percent (100 %) of the maximum justifiable fee. It will also provide a good understanding of the cash flow needed to cover the infrastructure costs for new development.

The initial cash flow analysis will indicate whether additional funds might be needed or whether the IIP might need to be altered. This could also affect the total credits calculated in the previous task. Therefore, it is likely that a number of iterations will be conducted in order to refine the cash flow analysis reflecting the capital improvement needs.

#### Task 10: Preparation of IIP and Development Fee Report

The Consultant will prepare a draft report that summarizes the need for development fees for the appropriate public facility fee category, the relevant methodology employed and document all assumptions and cost factors. The report will include, at a minimum, the following information:

- Executive summary
- A detailed description of the methodologies used in the study
- A detailed description of all level of service standards, cost factors and accompanying rationale
- An IIP spanning a minimum five (5) year planning horizon listing projects, costs, timing, and financing
- A detailed schedule of all proposed fees listed by land use type and activity
- Other information that adequately explains and justifies the resulting recommended fee schedule

The Consultant's report will have flow diagrams clearly indicating the methodology and approach, a series of tables for each activity showing all of the data assumptions and figures, and a narrative explaining all of the data assumptions, sources and the methodologies. The report will be a stand-alone document clearly understood by interested parties.

Following the City's review of the draft report, the Consultant will incorporate mutually agreed upon changes and issue final copies in a time frame agreed upon between the City and the Consultant.

#### Task 11: Presentations/Meetings

The Consultant will attend two (2) to three (3) meetings between the City and the stakeholder community (homebuilders, commercial builders, etc). The purpose of these meetings is to allow interested parties, designated by the City, to understand assumptions and raise any questions about the technical demographic, cost, revenue, credit and other data and supporting documentation that is being used in the calculation of development fees. This will not be a forum to discuss the political and/or philosophical use of fees. Rather, it will be an opportunity for the interested parties to understand the soundness and the reasonableness of the technical development fee methodology. We anticipate two (2) meetings with this group, but the number of meetings may increase to three (3) if needed. The first meeting would be to discuss the initial data assumptions, after "sign-off" by the client. The second meeting would be to discuss the draft report.

Further, the Consultant is required to attend one (1) or two (2) City Council workshop discussions where City staff will present the report and its findings. The Consultant is not required to attend the evening City Council meeting where the governing body takes formal action regarding the proposed fees.

In addition, the Consultant will conduct on-site interviews with relevant staff at the beginning of the process to gather data and obtain a detailed understanding of capital needs.

Finally, it is possible that an advisory committee could be established and if the city chooses that route (rather than the biennial audit), there could be two (2) to three (3) meetings of the committee that the Consultant would be required to attend.

Project Timeline and Task List	
June 2012 – November 2012	Development of an IIP and calculation of impact fees.
November 2012	Submittal of draft to City. Review draft IIP and fees.
December 2012 - January 2013	Completion of report and distribution to stakeholder community.
February 2013	Meetings with stakeholder community.
February 2013 – March 2013	Presentation of report to City Council at workshop with subsequent direction for next steps.
April 2013 – September 2013	Public process for adopting IIP and impact fees.

**EXHIBIT D**  
**Professional Services Agreement**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

The Consultant shall provide a monthly statement of itemized services. Payment will be made upon the review and approval of the statement by the Contract Administrator or designee.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$150,000.

**DETAILED PROJECT COMPENSATION**

See attached Fee Statement.

### Glendale, AZ IIP and Impact Fee Update

Firm:	TischlerBise			Matrix		
Project Team Member:	Bise	Cullinan	Guthrie	Campbell	Total	
Hourly Rate*	\$205	\$185	\$185	\$150	Hours	Cost
TASK						
Task 1: Project Initiation/Policy Discussion	8	8	0	2	18	\$3,420
Task 2: Recommend Land Use Assumptions	8	24	4	40	76	\$12,820
Task 3: Ascertain Demand Factors and LOS	8	40	16	0	64	\$12,000
Task 4: Task 4: Determine Appropriate Allocation Methodology to Comply with New State Statute Requirements	16	36	24	32	108	\$19,180
Task 5: Identify Capacity Needs and Costs	4	42	24	8	78	\$14,230
Task 6: Determine Need For and Calculate Credits	0	8	8	0	16	\$2,960
Task 7: Discussion of Preliminary Methodologies and Policy Options	8	16	0	4	28	\$5,200
Task 8: Prepare Infrastructure Improvement Plan	8	80	32	8	128	\$23,560
Task 9: Complete Development Fee Methodology and Calculations	16	16	8	0	40	\$7,720
Task 10: Conduct Funding and Cash Flow Analysis	4	16	8	0	28	\$5,260
Task 11: Preparation of IIP and Development Impact Fee Report	8	48	32	8	96	\$17,640
<b>Subtotal</b>	<b>88</b>	<b>334</b>	<b>156</b>	<b>102</b>	<b>680</b>	<b>\$123,990</b>
Task 12a: Meetings with Stakeholder Community				Price Per Meeting	16	\$3,200
Task 12b: Presentations and Meetings with City Council				Price Per Meeting	16	\$3,200
Task 12c: Infrastructure Improvements Advisory Committee (Optional)				Price Per Meeting	16	\$3,200
* Hourly rates are inclusive of all costs.						

**EXHIBIT E**  
**Professional Services Agreement**

**DISPUTE RESOLUTION**

**1. Disputes.**

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
  - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
  - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
  - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

**2. Arbitration.**

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
  - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
  - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
  - 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
  - 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
  - 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
  4. **Exceptions.**
    - 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
    - 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
    - 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.