

CITY CLERK ORIGINAL

PROFESSIONAL SERVICES AGREEMENT

Actuarial Services
Lewis & Ellis, Inc.

C-8054
05/31/2012

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Lewis & Ellis, Inc., a Texas corporation, authorized to do business in the State of Arizona, ("Consultant") as of the 31st 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 \$14,520 for fiscal year ending June 30, 2012 and \$15,200 for fiscal year ending June 30, 2014 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:

Lewis & Ellis, Inc.
c/o Bonnie S. Albritton, FSA, MAAA
Vice President & Principal
P.O. Box 851857
Richardson, Texas 75085-1857

- 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 Diane Goke
5850 West Glendale 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 two fiscal year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional NO YEARS, 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.

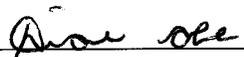
16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

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: Diane Goke
Its: Chief Financial Officer

ATTEST:



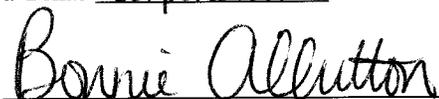
Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

Lewis & Ellis, Inc.,
a Texas Corporation



By: Bonnie S. Albritton
Its: Vice President & Principal

Exhibit A
Lewis & Ellis, Inc.

PROJECT

Actual consulting services as described in Consultant's Proposal for Actuarial Services – GASB 45
Other Post Employment Benefits (OPEB) Compliance for Fiscal Years 2012 and 2014, Section IV,
Scope of Services, attached hereto and incorporated herein.

IV. Cost Proposal

Scope of Services

The valuation includes the following:

- 1) Development of the GASB OPEB liabilities (ARC, OPEB Cost, Net OPEB Obligation, etc.) and all required disclosures under Statement 45.
- 2) A 25-year projection of current covered employees and retirees, expected claims and expenses, expected retiree contributions, net pay-as-you-go costs, GASB liabilities, and OPEB costs under two of the primary cost methods.
- 3) Illustration of the impact of the liabilities under pay-as-you-go funding and advanced funding (if requested).
- 4) Preparation of a GASB 45 report.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

Exhibit B
Lewis & Ellis, Inc.

SCOPE OF WORK

Work as described in Consultant's Proposal for Actuarial Services – GASB 45 Other Post Employment Benefits (OPEB) Compliance for Fiscal Years 2012 and 2014, Section III, Work Plan, attached hereto and incorporated herein.

In performing services, Consultant may rely upon information furnished to Consultant by or on behalf of the City, and/or upon information available from published sources. Consultant assumes no responsibility for the accuracy or completeness of such information and shall have no obligation to independently verify the accuracy of such information.

III. Work Plan

Work Plan

Under current accounting standards, public entities that provide OPEB ("other postemployment benefits") typically recognize the expense for such benefits as they are paid ("Pay-as-you-go"). GASB statement 45 requires those entities to recognize the expense for OPEB more quickly, ideally over the working lifetime of its covered employees.

L&E will develop benefit obligation liabilities for those benefits as specified by GASB 45, including the ARC, the Annual OPEB Cost, and specified disclosures.

To calculate the liabilities, we project post-employment benefit costs for current retirees and current active employees who may retire in the future. The projection includes all post-employment benefits made available to the Sponsor's retirees. The projection considers the likely cost of future benefits, and the expectation of survival of retirees, employees and dependents to receive such benefits. The projection also includes expected expenses (if any) and retiree contributions.

To assist the Sponsor in choosing the optimal rate of expense recognition, L&E will project OPEB costs under two of the primary actuarial cost methods (Unit Credit and Entry Age) over a 25-year period. An example of this projection is included in our sample report.

L&E will make written presentations of all project results to the Sponsor. Please see our sample report included in Appendix B.

More Details

If a benefit program is fully insured, the projection of benefit costs is more complex than a simple estimation of future premiums. The premiums that the plan sponsor pays for medical, vision and dental insurance are not typically rated by age or gender, although sometimes the medical premiums for the over-65 participants are different from the under-65 participants. Paragraph 13a(1) of GASB 45 applies to situations like this: "When an employer provides benefits to both active employees and retirees through the same plan, the benefits to retirees should be segregated for actuarial measurement purposes, and the projection of future retiree benefits should be based on claims costs, or age-adjusted premiums approximating claims costs, for retirees, in accordance with actuarial standards issued by the Actuarial Standards Board."

The statement requires this approach because medical costs increase with advancing age. Therefore, the claim costs for the retiree group are higher than the claim costs for the employee group, even taking Medicare into account. Stated another way, when a plan includes both employees and retirees, the blended premiums are almost always higher than what the premiums would be for employees, and lower than what the premiums would be for retirees, if each group were rated separately. The premium rate difference is referred to as the implicit rate subsidy.

III. Work Plan

To comply with the standard, we compute the underlying cost for retiree coverage by imputing an age-dependent claim cost for our projections. We do that by analyzing the risk characteristics of the entire covered group (employees, dependents and retirees) and applying those in the aggregate to the carrier premium schedule.

If a benefit program is self-insured, the projection of the benefit costs is a composite of the expected claims, stop loss premiums, and administrative expenses for each covered individual from the valuation date to the end of the benefit period. Stop loss premiums and expenses are usually known for the coming fiscal year. For the expected claims, we have to determine an average claim cost from claim and enrollment records, adjusted for the risk characteristics of the covered group and trended to the valuation date.

To develop the total expected benefit costs for each year in the projection, we adjust those values for inflation and for the risk factors for each covered family. If benefits are paid after eligibility for Medicare, then we carve out those benefits that Medicare will cover.

All of our projections are based on assumptions with regard to the survival of plan members, the average per-capita claim costs, and so forth. Those assumptions are disclosed in the appendices attached to our report. One of the most important assumptions is the discount rate, which is used by the model to compute the present value of future post-retirement benefits. The higher the discount rate, the lower the present values, and therefore the OPEB cost.

GASB 45 stipulates that the selection of the discount rate be determined, in part, based on whether the plan benefits are funded in advance. If the employer contributions are at least as great as the OPEB cost for the year, and if they are deposited in an irrevocable trust for the exclusive purpose of paying post-retirement health benefits, the guidance states that the discount rate may be a reasonable long-term rate on the expected investments in that trust. If the employer does not utilize a trust, the employer is limited to using the rate of return expected on all employer assets. If the employer uses a trust, but funds at a level below the OPEB cost, then a blended rate may be used.

Another key assumption for the determination of the plan liabilities is the expected survival of current employees and retirees. We develop age-dependent employee turnover and retirement rates based on the group's experience and expectations, and use a modern industry mortality table. From these we create a model that calculates the probability that each member will survive to retirement, elect to participate in the plan, and receive benefits over their life expectancy.

The liability (present value of benefits) for each enrollee is simply the sum for each future year over his/her life span of the product of three values:

- a) The interest discount factor for that year
- b) The expected cost of benefits (net of retiree contributions) in that year
- c) The probability of receiving retirement benefits in that year

III. Work Plan

Our actuarial model allocates a portion of each employee's and retiree's present value to the current fiscal year. The methodology of that allocation is called an "Actuarial Cost Method." GASB 45 allows the employer a choice between six different cost methods. The three primary methods are known as "Projected Unit Credit," "Entry Age Normal," and "Aggregate." The other three methods are variations of the primary methods.

Work Flow

- 1) L&E provides the client with an updated and detailed data request (see below for example).
- 2) After receipt of the data, staff reviews it for completeness and consistency with the data request. To the extent necessary, follow-up requests are made.
- 3) Project manager contacts the client to discuss appropriate actuarial assumptions and other issues relevant to the liability calculations. In our experience, a telephone conference is more than adequate and more cost-effective than an on-site meeting.
- 4) Preliminary calculations are made and communicated with the client and/or the auditor in a preliminary report.
- 5) Based on feedback, a final report is published and delivered.
- 6) L&E provides answers to follow-up questions from the client and/or its auditors.

Project Schedule (example)

- | | |
|----------------------|--|
| 1) May 7 | L&E submits data requirements |
| 2) May 8-21 | Data and benefit descriptions are collected and reviewed for reasonableness. Questions are forwarded to the Sponsor as needed. |
| 3) May 22- June 30 | Actuarial assumptions are set. Benefit costs are projected and liabilities are calculated. |
| 2) July 1-14 | L&E prepares draft reports. |
| 3) July 15 | L&E presents the projected draft results. |
| 4) July 16-August 14 | Report is finalized, reflecting any Sponsor comments received. |
| 5) August 15 | Final report and final funding recommendations are delivered to the Sponsor. |

Please keep in mind that this schedule is illustrative, and that actual results are sensitive to data quality and availability. We will always make every effort to meet client expectations and deadlines.

III. Work Plan

Project Roles

Sponsor

- Provide census, claim, financial, and other data as requested by L&E. The Sponsor is solely responsible for the completeness and accuracy of all data provided.
- Consult with L&E regarding actuarial methods and assumptions (e.g., discount rates, voluntary turnover, average age and service at retirement, retiree participation ratios).
- Provide feedback with regard to the structure and contents of the actuarial reports.

L&E

- Deliver a detailed data request.
- Review all data from the Sponsor for reasonableness.
- Consult with Sponsor regarding actuarial methods and assumptions (e.g., discount rates, voluntary turnover, average age and service at retirement, retiree participation ratios).
- Generate benefit and liability projections.
- Provide preliminary results for review by the Sponsor.
- Prepare and deliver OPEB report.
- Deliver oral presentations of study results.

Sample Data Request

The following is a sample data request for a self-insured program. Whenever possible, electronic files are preferred.

1. Census data for all employees and retirees, as of *first day of fiscal year*, including the following:
 - a. Date of birth
 - b. Sex
 - c. Status (active/retired)
 - d. Date of hire for employees
 - e. Date of retirement for retirees
 - f. Medical Benefits
 - Benefit option (e.g., High PPO, Low PPO, HMO, etc)
 - Dependent code (i.e., employee only, employee + spouse, family)
 - Spouse covered?
 - Number of dependent children covered (if available)
 - g. Dental Benefits (if applicable)
 - Benefit option (e.g., PPO, HMO, etc)
 - Dependent code (i.e., employee only, employee + spouse, family)
 - Spouse covered?
 - Number of dependent children covered (if available)
 - h. Life insurance amount (if retirees eligible to continue)
 - i. Spouse date of birth (if available)
 - j. Annualized salary rate (for active employees)

III. Work Plan

- k. Retirement system
 - l. Fund/Department (if results need to be presented separately)
 - m. Current ASRS Subsidy amount (if retired)
2. Complete description of all of the plan benefit options. A plan summary booklet is preferred.
 3. Eligibility
 - a. Requirements for continuing coverage at retirement (e.g., eligible for retirement under pension plan and 10 years of service with the Sponsor).
 - b. Approximate percentage of retirees that elect to continue medical coverage at retirement.
 - c. Are spouses and dependent children eligible for continued coverage? If so, are they eligible to continue coverage upon the death of the retiree and for how long?
 4. Premium Rates for Fully-Insured Benefits
 - a. Premium rate schedule charged by insurer for each category of retiree and dependent code for the current year and previous year.
 - b. Does the insurer raise the premium rate schedule? If so, when do you anticipate the next increase?
 5. Retiree Contributions
 - a. Retiree contribution schedule for each category of retiree and dependent code for the current year and previous year.
 - b. Do you periodically raise the contribution schedule? If so, when do you anticipate the next increase?
 6. Historical employee data on either a calendar or fiscal year basis.
 - a. Total employees at the beginning 2008, 2009, 2010, 2011 and 2012
 - b. Total hires during calendar or fiscal years 2008, 2009, 2010 and 2011
 - c. Total retirements during 2008, 2009, 2010 and 2011
 7. List any material changes to the plan over the past 24 months or for the coming funding period that could affect contribution requirements. For example, changes to benefits, carriers, or network.
 8. A copy of the Sponsor's investment policy and most recent investment statements, showing the current allocation of investments (e.g., T-bills, CD's, cash).
 9. Budgeted pay increases for coming year as a percentage, excluding merit adjustments.

Exhibit C
Lewis & Ellis, Inc.

SCHEDULE

All work and the final report for fiscal years ending June 30, 2012 and 2014 must be completed by August 15, 2012 and August 15, 2014, respectively.

For each additional full week past this deadline, Consultant shall pay City a \$500 fee, to be deducted from the final payment from the City. No penalty shall be assessed if the failure to meet the deadline is due to the City's delay in providing the complete requested data by May 20, 2012 for fiscal year ending June 30, 2012 and by a mutually-agreeable date set by Consultant and City for fiscal year ending June 30, 2014.

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Lump sum payment after completion of each fiscal year's report.

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 \$14,520 for fiscal year ending June 30, 2012 and \$15,200 for fiscal year ending June 30, 2014.

DETAILED PROJECT COMPENSATION

NONE.

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.