

RESOLUTION NO. 2679

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONSULTING AGREEMENT WITH TISCHLERBISE FOR SERVICES RELATED TO THE TOWN'S GENERAL PLAN UPDATE AND UPDATING THE TOWN'S DEVELOPMENT IMPACT FEES.

WHEREAS, in 2003, the Council adopted and the voters ratified Payson's 2003 General Plan Update; and

WHEREAS, pursuant to A.R.S. §9-461.06(K) a municipal general plan is effective for up to 10 years following adoption and ratification; and

WHEREAS, in 2010, the Arizona Legislature passed HB2145 which allowed cities and towns, notwithstanding A.R.S. §9-461.06(K), to delay updating and readoption of their general plans until 2015; and

WHEREAS, updating the Town's General Plan is an endeavor that will require time and resources not available with the Town's existing staffing level; and

WHEREAS, cities and towns normally seek the service of outside consultants in the preparation of a general plan or a general plan update; and

WHEREAS, the Town currently collects development impact fees pursuant to A.R.S. §9-463.05; and

WHEREAS, in 2011, the Arizona Legislature passed and the Governor signed SB1525 requiring that all cities and towns update their development impact fee schedules by August 1, 2014 in accordance with the specific requirements of SB1525; and

WHEREAS, part of SB1525 requires a city or town's development impact fees to be based upon a study or studies conducted by outside entities; and

WHEREAS, TischlerBise (previously Tischler & Associates) is a professional consulting firm that has done work for numerous cities and towns both in Arizona and nationwide; and

WHEREAS, TischlerBise's work includes general plan updates and development impact fee studies; and

WHEREAS, both the Town and Tischlerbise believe that working on the Town's General Plan Update and studies related to the Town's development impact fees simultaneously will not only save the Town money, but will also create a more comprehensive planning process because an integrated fiscal impact model will be used; and

WHEREAS, the Town's FY2012/2013 budget, approved in June of 2012, contained the necessary funding to begin the studies contemplated in such joint consulting agreement,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Consulting Agreement between the Town of Payson and TischlerBise, for consulting services related to the Town's General Plan Update and updated development impact fees ("the Agreement"), attached hereto, is hereby approved in substantially the form attached.

Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is hereby authorized to execute the Agreement in substantially the form attached upon verification that TischlerBise is authorized to do business in Arizona.

Section 3. That the Town of Payson, acting by and through its Mayor and/or its other appropriate officers and officials, is hereby authorized to take all other actions necessary or appropriate to carrying out the terms of this Resolution and the Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2012, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT ____

Kenny J. Evans, Mayor

APPROVED AS TO FORM:



Timothy M. Wright, Town Attorney

ATTEST:

Silvia Smith, Town Clerk

**CONSULTANT AGREEMENT
BETWEEN TISCHLERBISE, INC. AND
TOWN OF PAYSON, ARIZONA**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between Town of Payson, Arizona hereinafter called the "Town", and TischlerBise, Inc., hereinafter called the "Consultant" (collectively "the Parties").

WHEREAS the Town is in need of certain services related to its general plan and an impact fee scheme that are required by state law; and

WHEREAS the Consultant has expertise in comprehensive plan and impact fee preparation and related activities,

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, it is hereby agreed as follows:

1. The Consultant shall provide those services to the Town as more particularly identified in the attached Exhibit "A". Such services shall be completed no later than 10/31/2013.
2. In performing the services identified in the attached Exhibit "A", the Consultant shall perform all steps necessary to the full and effective performance of the tasks specifically referenced in Exhibit "A".
3. Consultant shall provide sufficient qualified personnel to perform all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the Town.
4. The Consultant shall base the analysis on data and information available at the time of the study.
5. (A) The term of this agreement shall be from the date of execution of the Agreement, and shall terminate upon the completion of the appropriate tasks specified in Exhibit "A".

(B) Notwithstanding the foregoing, this Agreement may be terminated by the Town upon ten (10) days written notice, with or without cause. If this Agreement is terminated, the Consultant shall be paid for services performed to the date of Consultant's receipt of such termination notice.

6. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following address:

Town: LaRon Garrett, Assistant Town Manager
Town of Payson
303 N. Beeline Highway
Payson, AZ 85541
Telephone: (928) 474-5242
Fax: (928) 472-7490

Consultant: L. Carson Bise, President
TischlerBise, Inc.,
4701 Sangamore Road, Suite S240
Bethesda, MD 20816
Telephone: (800) 424-4318
Fax: (301) 320-4860

7. This Agreement is non-assignable by the Consultant and its subcontractors.

8. The Town shall pay to Consultant the amounts indicated in Exhibit "B" for those appropriate tasks identified in Exhibit "A". Invoices will be issued by the Consultant to the Town on a percentage completion basis. Payment will be made by the Town within 45 days of receipt of invoice.

9. This Agreement shall be construed under the laws of Arizona and the venue for any litigation resulting out of this Agreement shall be Gila County, Arizona.

10. This Agreement and Exhibits "A" and "B" represent the entire and integrated Agreement between the Town and the Consultant and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Consultant. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

11. In the event any provision of the Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions, or covenant shall not be construed by the other party as a subsequent breach of the same by the other party.

12. The Consultant hereby agrees to indemnify and hold harmless the Town, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits caused by the Consultant's breach of contract or the negligent performance by Consultant (or by any person acting for the Consultant or for whom the Consultant is responsible).

13. The Consultant shall secure and maintain during the life of this Agreement, insurance coverage which shall include comprehensive general and automobile liability coverages in the amount of at least \$1,000,000.00 with an insurer acceptable to the Town. Consultant shall also maintain errors and omissions insurance in the amount of at least \$250,000.00 for the duration of the contract and a period of two years after completion of the contract. Consultant shall provide the Town with proof of such insurance in a form acceptable to Town upon request.

14. No oral orders, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in the Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

15. **Dispute Resolution.** With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq.. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, mediation, litigation in a court, or otherwise.

16. **Cancellation (A.R.S. §38-511).** This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of contracts by the municipality for certain conflicts of interest.

17. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).
- 17.1 Contractor and any Subcontractor employed by Consultant warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).
- 17.2 A breach of the warranty under Section 17.1 above shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of the Agreement.
- 17.3 The Town retains the legal right to inspect the papers of the Consultant or Subcontractor who works on this Agreement to ensure that the Consultant and Subcontractor is complying with Section 17.1.

18. Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any agreement or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Nor shall anything herein be construed as obligating the Town to expend, or as involving the Town in any agreement or other obligation for the future payment of money if the Town does not have sufficient revenues for this expenditure.

19. Scrutinized Business Operations. Pursuant to A.R.S. §§35-391.06 and 35-393.06 the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of this Agreement will not have a scrutinized business operation in either Sudan or Iran.

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed by their duly authorized representatives as of the _____ day of _____, 2012.

TOWN OF PAYSON, ARIZONA

TISCHLERBISE, INC

Kenny Evans, Mayor
Town of Payson

L. Carson Bise, President
TischlerBise, Inc.

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Agreement and approved it as to form and has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

By _____
Timothy M. Wright, Town Attorney

EXHIBIT A

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DETAILED WORK PROGRAM

PHASE 1. PROJECT INITIATION

Estimated Time: 1 Month

In the project initiation, the TischlerBise Team will work with the designated Town staff to establish communication protocol and begin identifying the important aspects of the Town to be addressed in the comprehensive plan. It is our intent to work closely with the Town staff to ensure their unique local knowledge and expertise are captured in the planning process. We will work to identify information and data needs as well as establish the composition of the steering committee other subcommittees, finalize a public outreach plan, and design and launch a project website for communication of information about the plan process and products.

Phase 1. Project Initiation		
Team Work Tasks	Deliverables	Community Input & Participation Events
Project Kick-off Reconnaissance Tour Identification of Data Needs	Data Needs Public Outreach Plan Kick-off Presentation Project Schedule Website	Public Kick-off Event Steering Committee Meeting
City Staff Work Tasks		
Review and Approve Public Outreach Plan Arrange Reconnaissance Tour Provide Background Documents and Data Arranging Venues and Times for Kick-off Activities		

PHASE 2. RESEARCH & ANALYSIS

Estimated Time: 3 Months

The research and analysis phase will focus on the collection and analysis of data relevant to the comprehensive plan process, including all required elements of ARS 9-461.05. It will include two approaches: a technical approach to investigate data and indicators to identify trends and issues, and a public input approach to draw out the concerns and hopes of the community. The culmination of the research and analysis phase will be a "critical issues" report which will synthesize the research in both approaches to begin to identify the focus for the comprehensive plan and downtown plan. The TischlerBise Team will work with staff to identify and collect available data and mapping information relevant to the topical areas of the plan. This includes, but is not limited to, socioeconomic data, levels-of-service, costs and revenue factors, GIS data, building and property maintenance permitting records, market information, and

other information related to the provision of services and general trends in the Town and region. We will also ask local residents and businesses what is important to them to help target some data collection to areas that have significant interest. This phase will focus on establishing a base line of information including inventories and existing conditions for the remainder of the project.

Phase 2. Research & Analysis		
Team Work Tasks	Deliverables	Community Input & Participation Events
Data Collection and Synthesis *Public outreach events *Visual Preference Survey Existing Conditions Inventories *Create Base Maps *Review land use and zoning policies *Identify and review built, natural environment, infrastructure inventories and capacities *Transportation facilities *Establish current levels of service Demographic and Market Assessment *Analyzedemographic and economic trends *Estimate additional residential and nonresidential demand Identify Key Issues, Trends and Challenges	Compendium of Public Input Report Existing Conditions Report *Built and Natural Environment *People and Economy *Growth Area *Public Facilities and Community Services Assessment *Circulation *Water Resources *Open Space *Base Conditions and Assumptions for Fiscal Impact Assessment	Community Issues Identification Workshop *Brainstorming *Visual Preference Survey *SWOT Exercise Steering Committee Meeting 2
City Staff Work Tasks Assistance with organizing public outreach events Provision of input regarding functionality of existing planning policies Review and comment on deliverables		

PHASE 3. VISIONING & SCENARIO SELECTION

Estimated Time: 3 Months

In the visioning & scenario selection phase, the TischlerBise Team will combine the technical findings with the continued public input generated through community workshops to create a series of plan alternatives based on guiding principles established early in the phase. The objective of this phase will be to define the long term vision for the Town and then craft physical plan alternatives that represent the vision. However, this phase will also include the fiscal and future land use modeling of the alternatives to assess the potential impacts. The TischlerBise Team will work with the staff, stakeholders, and officials to represent the comparative impacts of the various alternatives through GIS and a fiscal impact model to help select a preferred scenario. The culmination of this phase will be the preliminary approval of a Vision by the Town council before moving the process into the creation of implementation action strategies to achieve the preferred plan vision.

Phase 3. Visioning & Scenario Selection		
Team Work Tasks	Deliverables	Community Input & Participation Events
Guiding Principles Goals for Required Elements Develop Alternatives and select Preferred Scenario *Land Use, Resources, Growth Area, Infrastructure/Community Facilities, Open Space Recommend Implementation Action Strategies	Draft Guiding Principles (memo) Draft Goals (memo) Alternative Development Scenarios Report Fiscal Impact Analyses of Alternative Scenarios Draft Consolidated Community Vision Document	Information Symposium *Presentation of Critical Issues and Guiding Principles Community Workshop *Land use, connectivity, open space and pedestrian amenities, sustainable design and character Steering Committee Meeting 3
City Staff Work Tasks Assistance with organizing public outreach events Review and comment on deliverables		

PHASE 4. ACTION STRATEGY, ANALYSIS, AND UPDATED AND REVISED COMPREHENSIVE PLAN

Estimated Time: 3 Months

In Phase 4, the TischlerBise Team will assess the preferred scenario recommended in Phase 3. The team will work with staff, stakeholders and the steering committee to identify any adjustments or additions to the vision and then create a series of action statements and tools intended to implement the refined scenario. Once the implementation statements are refined, the team will prepare the updated and revised comprehensive plan, which will incorporate the content of the deliverables from earlier phases in a user-friendly executive summary document. The summary document will cover all the elements required by the COV but will focus on the targeted key elements and issues necessary to address the community's priorities identified through the planning process.

Phase 4. Action Strategy, Analysis, and Updated and Revised Comprehensive Plan		
Team Work Tasks	Deliverables	Community Input & Participation Events
Refine Vision	Comprehensive Plan Annotated Outline and Template	Community Workshop *Presentation, review and comment on Tool Box Report
Identify Best Practices for Execution of Community Vision	Best Practices Presentation	Required Public Adoption Process for Development Fee Study
Review and Evaluation of Implementation Strategies	Draft Implementation Tool Box	Steering Committee Meeting 4
Draft Implementation Tool Box Report	Draft Implementation Matrix	
Draft Implementation Action Matrix	Draft Comprehensive Plan (staff review)	
Development Fee Analysis and Report	Draft Comprehensive Plan (recommended for Planning Commission)	
Comprehensive Plan Document	Draft and Final Development Fee Report	
City Staff Work Tasks		
Assistance with organizing public outreach events		
Review and Comment on Deliverables		

PHASE 5. ADOPTION

Estimated Time: 3 Months

Once the steering committee has made a recommendation to the planning commission, the plan will essentially be complete. We like to keep the planning commission and council informed and active in the

planning process so the final adoption is not a challenge. Of course there may be minor changes to make and then the finalization of the documents upon adoption. In Phase 5 the TischlerBise Team will be available to present summaries of the plan content at public hearings for the planning commission and Town council and make final revisions to the adopted plan documents.

Phase 5. Adoption		
Team Work Tasks	Deliverables	Community Input & Participation Events
Public Hearing and Recommendation by Planning Commission	Recommended Planning Commission Draft Comprehensive Plan	Required Public Hearings for Adoption Process
Public Hearing and Adoption by City Council	Final Comprehensive Plan	
City Staff Work Tasks		
Review and Comment on Deliverables		
Coordinate with Consultant on Final Documents for Publication		

EXHIBIT B

EXHIBIT B

PRICING

The table on the following page shows pricing by phase. All costs reflect fully burdened hourly rates and project expenses. We have made our best effort to separate out components in order for the City to decide on tasks it may feel are superfluous to the development of the Plan (e.g. Steering Committee).

City of Payson Comprehensive Plan Update			
	Average Hourly Rate		
	\$180	Hours	Cost
<i>Phase 1. Project Initiation</i>			
Project Kick-off Activities		16	\$ 2,880
Identification of Data Needs		24	\$ 4,320
Steering Committee Meeting #1		8	\$ 1,440
<i>Subtotal Phase 1</i>		48	\$ 8,640
<i>Phase 2. Research and Analysis</i>			
Data Collection and Synthesis		40	\$ 7,200
Existing Conditions Inventory		40	\$ 7,200
Demographic and Market Assessment		80	\$ 14,400
Identify Key issues, Trends and Challenges		40	\$ 7,200
Community Issues Identification Workshop		36	\$ 6,480
Steering Committee Meeting #2		24	\$ 4,320
<i>Subtotal Phase 2</i>		260	\$ 46,800
<i>Phase 3. Visioning and Scenario Selection</i>			
Formulation of Guiding Principles		16	\$ 2,880
Formulation of Goals for Required Elements		24	\$ 4,320
Develop Alternatives and Select Preferred Scenario		60	\$ 10,800
Recommend Implementation Action Strategies		24	\$ 4,320
Information Symposium		16	\$ 2,880
Community Workshop		16	\$ 2,880
Steering Committee Meetings #3		12	\$ 2,160
<i>Subtotal Phase 3</i>		168	\$ 30,240

Phase 4. Action Strategy, Analysis & Comp. Plan			
Refine Vision		24	\$ 4,320
Identify Best Practices for Achieving Communiy Vision		40	\$ 7,200
Review and Evaluation of Implementation Strategies		16	\$ 2,880
Draft Implementation Tool Box Report		36	\$ 6,480
Draft Implementation Action Matrix		24	\$ 4,320
Development Fee Analysis and Report		220	\$ 37,900
Draft Comprehensive Plan Document		120	\$ 21,600
Community Workshop		16	\$ 2,880
Required Public Adoption Meetings for Development Fee Study		36	\$ 6,480
Steering Committee Meeting #4		32	\$ 5,760
Subtotal Phase 4		564	\$ 99,820
Phase 5. Adoption			
Public Hearing and Recommendation by Planning Commission	-	40	\$ 7,200
Public Hearing and Recommendation by City Council		40	\$ 7,200
Subtotal Phase 5		80	\$ 14,400
TOTAL ALL PHASES		1,120	\$ 199,900