RESOLUTION NO. 2958-07

AUTHORIZING MAYOR TO EXPEND FUNDS FOR IMPACT FEE ORDINANCE AND POLICY AND TERMINATE EXISTING CONTRACT

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Foley, Alabama, that Mayor John E. Koniar is authorized to expend up to $70,000 to hire Tischler Bise for purposes of doing research to formulate an impact fee ordinance and related policy. Mayor Koniar is further authorized to expend up to $12,000 to terminate the City's existing relationship with an agency to do the same work.

PASSED, ADOPTED AND APPROVED THIS 5TH day of March 2007.

John E. Koniar, Mayor

ATTEST:

A. Perry Wilbourne, CMC
City Clerk/Administrator

FILE COPY

CONSULTANT AGREEMENT
BETWEEN TISCHLERBISE., AND
FOLEY, AL

THIS AGREEMENT, entered into this 9th day of March, 2007, by the City of Foley, hereinafter called the "City", and TischlerBise, hereinafter called the "Consultant".

WHEREAS the City is in need of certain services; and

WHEREAS the Consultant has expertise in 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 City as more particularly identified in the attached Exhibit "A".

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 City.

4. A) The term of this agreement shall be from the date of execution of the Agreement, and shall terminate upon the completion of Tasks 1-8 specified in Exhibit "A"

(B) Notwithstanding the foregoing, this Agreement may be terminated by the City 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.

5. 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:

<u>City:</u> John E. Koniar, Mayor, City of Foley, 407 East Laurel Avenue, Foley, Alabama 36535. Phone number: 251-943-1545. Facsimile number: 251-952-4014.

<u>Consultant:</u> L. Carson Bise II, TischlerBise, Inc., 4701 Sangamore Road, Suite S240, Bethesda, MD 20816. Phone number: 800-424-4318. Facsimile number: 301-320-4860. Email Carson@tischlerbise.com

6. This Agreement is non-assignable by the Consultant.

7. The City shall pay to Consultant the amounts indicated in Exhibit "B" for Task 1-8. Invoices will be issued by the Consultant to the City on a percentage completion basis. Payment will be made by the City within 30 days of receipt of invoice.

8. This Agreement shall be construed under the laws of Alabama.

9. This Agreement and Exhibits "A" and "B" represent the entire and integrated Agreement between the City 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 City 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.

10. 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.

11. The Consultant hereby agrees to indemnify and hold harmless the City, 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).

12. The Consultant shall secure and maintain during the life of this Agreement, insurance coverage which shall include comprehensive general and automobile liability in the amount of at least $1,000,000.00 coverage with an insurer acceptable to the City. 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 City with proof of such insurance in a form acceptable to City upon request.

13. 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.

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed by their duly authorized representatives as of the 9th day of MARCH, 2007.

CITY:

John E. Koniar, Mayor
City of Foley, AL

CONSULTANT:

L. Carson Bise II, Vice President
TischlerBise, Inc.

EXHIBIT A

-Work Plan-

The following tasks are recommended to provide a defensible impact fee study.

Task 1: Recommend Land Use Assumptions

TischlerBise will review and, if appropriate, update annual projections of population, employment, housing units, and commercial, industrial and other nonresidential square footage data for at period of twenty years. This will be based on discussions with City staff. We will prepare a memorandum discussing the recommended land use projections. This task will serve to establish forecasts reflecting population, housing, employment, nonresidential building area and other relevant data.

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

There are several important components to this task that are outlined below.

1) *Ascertain Demand Factors* – The actual demand factors that generate the need for new capital facilities will be reviewed.

2) *Evaluate Existing Levels of Service* – It is important to note that impact fees should use existing levels of service for the purpose of calculating requirements from new demand, unless there are extenuating circumstances. We will determine existing level of service by conducting onsite interviews, evaluating appropriate studies and analyzing relevant local data.

3) *Determine Geographic Service Area* – The appropriate geographic service area for purposes of calculating the impact fees will be determined.

The above subtasks will enable us to ensure that three important impact fee requirements are met; namely the proportionate share, benefit test and rational nexus.

Task 3: Review Capital Needs and Costs and Allocate to Growth

This task will culminate in the relevant capital needs and costs due to growth.

1) *Long Range Capital Need* - In this subtask, TischlerBise will further review the various studies and other data germane to the City's capital facilities. This subtask may include not only an understanding of the specific costs, but also whether these capital facility needs were due to normal replacement, catch-up, or new demand. The issue of catch-up will be discussed in the context of new development paying for higher levels of service than those that currently exist.

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

3) *Evaluate Different Allocation Methodologies* – TischlerBise will consider different possible allocation methodologies to determine which is the most appropriate for each component of the particular impact fee.

As part of calculating the fee, the jurisdiction may include the construction contract price; the cost of acquiring land, improvements, materials and fixtures; the cost for planning, surveying, and engineering fees for services provided and directly related to the construction system improvement; and debt service charges, if the City plans to use impact fees as a revenue stream to pay the principal and interest on bonds, notes or other obligations issued to finance the cost of system improvements. All of these components will be considered in developing an equitable allocation of costs.

Task4: 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 impact fee methodology. There is considerable confusion among those who are not immersed in impact fee law about the definition of a credit and why it may be required.

There are, in fact, two types of "credits" each with specific, distinct characteristics, but both of which will be included in the development of impact 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, which is covered by the impact fee. The second is a credit toward the payment of an impact fee for the required dedication of public sites and improvements provided by the developer and for which the impact fee is imposed.

Task 5: Complete Impact Fee Methodology and Calculation

The completion of the above task will enable the impact fee methodology and calculations to be finalized. The maximum justifiable fee that can be charged and conform to fee requirements will be calculated. (The City will subsequently decide what percentage of the maximum justifiable fee it wants to charge.)

Task 6: Conduct Funding and Cash Flow Analysis

In order to prepare a meaningful capital improvement plan, it is important to evaluate the anticipated funding sources. In this task, TischlerBise will prepare a cash flow analysis, which indicates the sources of funding, independent of different impact fee amounts. This calculation will allow the City to better understand the various revenue sources possible and the amount, which would be needed if the impact fees were discounted. It will also provide a good understanding of the cash flow needed to cover the infrastructure costs both for existing and new development.

The initial cash flow analysis will indicate whether additional funds might be needed or whether the capital improvements plan 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 7: Preparation of Impact Fee Report

TischlerBise will prepare a draft report that summarizes the need for impact fees for the appropriate public facility category, the relevant methodologies employed, document all assumptions and cost factors, and impact fee schedules for each infrastructure category. The report will include at a minimum the following information:

- Executive Summary
- A detailed description of the methodologies used during the study
- A detailed description of all level of service standards and cost factors used and accompanying rationale
- A detailed schedule of all proposed fees listed by land use type and activity
- Other information which adequately explains and justifies the resulting recommended fee schedule

Following the City's review of the draft report, we will make mutually agreed upon changes and issue five copies of the final report.

TischlerBise's fee report will have flow diagrams clearly indicating methodologies and approaches, 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. Because of the firm's extensive experience in calculating impact fees and preparing such reports, we have developed a succinct written product that leaves a well-understood paper trail.

Task 8: Presentation/Meeting

The work plan has three onsite meetings built into the tasks listed above. In addition, there are likely to be additional opportunities for meetings when TischlerBise staff are in the area for meetings associated with our current impact fee assignments with Daphne, Fairhope and Gulf Shores. In addition to the meetings included above, TischlerBise will attend one meeting/public hearing to explain the analysis and conclusions of the Study.

DELIVERABLES

TASK		DELIVERABLE
Task 1.	Recommend Land Use Assumptions	Memorandum Discussing Land Use Projections
Task 2.	Ascertain Demand Factors and Level of Service for Relevant Public Facilities	Memorandum As Appropriate
Task 3.	Review Capital Needs and Costs and Allocate to Growth	Memorandum As Appropriate
Task 4.	Determine Need for and Calculate "Credits" to be Applied Against Capital Costs	Memorandum As Appropriate
Task 5.	Complete Impact Fee Methodology and Calculation	See Impact Fee Report Below
Task 6.	Conduct Funding and Cash Flow Analysis	Cash Flow Analyses Reflecting Capital Improvement Plan(s) and Applicable Impact Fees
Task 7.	Preparation of Impact Fee Report	Impact Fee Report
Task 8.	Presentation/Meeting	Appropriate Materials and Graphics

SCHEDULE

The time estimated to complete the impact fee report is approximately four months from the start of Task 1. This assumes prompt receipt of requested materials and data from the City, as well as allowing sufficient time for City staff to review the appropriate products. The anticipated four-month schedule is indicated below.

TASK	MONTH 1	MONTH 2	MONTH 3	MONTH 4
[redacted] Recommend Land Use Assumptions				
Task [redacted]n Demand Factors and Level of Service for Relevant Public Facilities				
Task 3. [redacted]pital Needs and Costs and Allocate to Growth				
Task [redacted]ne Need for and Calculate "Credits" to be Applied Against Capital Costs				
T[redacted]omplete Impact Fee Methodology and Calculation				
Task [redacted]luct Funding and Cash Flow Analysis				
Task [redacted]of Impact Fee Report				
Task 8. [redacted]esentation/Meeting				

EXHIBIT A

COST

The cost for the Impact Fee Study is indicated below, broken out by fee category. It is important to note that the cost for each impact fee category is a fixed fee amount, inclusive of all travel expenses, materials and overhead.

Category		Cost
Roads		$15,800
Fire/EMS		$11,600
Police		$10,400
Parks & Recreation		$13,400
	Total	***$51,200***

TischlerBise's consultant cost can be recaptured as part of the impact fee calculation.