

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: n/a

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CITYSCAPE SITING & MANAGEMENT, INC. FOR TELECOMMUNICATIONS CONSULTING SERVICES.

REPORT IN BRIEF: The Town Council selected Cityscape Siting & Management, Inc. to perform telecommunications consulting services and authorized staff to negotiate an agreement by Resolution R-2002-101. The professional fees are delineated in Exhibit "A" of the contract document. The amount listed in Exhibit "A" is the maximum that the Town could be charged. A reduction in this price can be realized if Town staff perform some or all of the services listed under Engineering and Consulting (items A & B). Exhibit "C" is a Site Management Agreement that the Town may choose to execute at a later date. Exhibit "C" is attached for informational purposes only at this point. The initial contract is a five (5) year agreement with an option to extend the contract for additional five (5) year terms by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by Town Council.

PREVIOUS ACTIONS: Resolution R-2002-101 authorized staff to negotiate a contract.

CONCURRENCES: This contract was negotiated by the Procurement Manager and the Director of Development Services.

FISCAL IMPACT:

Has request been budgeted? yes

If yes, expected cost: \$59,355.00 maximum (see comment in Report in Brief above)

Account Name: Development Services-Contractual Services Account

Additional Comments: Not applicable

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Two (2) copies of agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CITYSCAPE SITING & MANAGEMENT, INC. FOR TELECOMMUNICATIONS CONSULTING SERVICES..

WHEREAS, the Town Council previously selected the firm of Cityscape Siting & Management, Inc. to provide telecommunications consulting services by Resolution R-2002-101; and

WHEREAS, it is in the Town's best interest to execute a contract for these services; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to execute a contract with Cityscape Siting & Management, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Cityscape Siting & Management, Inc. to provide telecommunications consulting services which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2002

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002

Attachment "A"

**CONSULTING AGREEMENT**

THIS CONSULTING AGREEMENT made and entered into as of the ____ day of June, 2002, between CITYSCAPE CONSULTANTS, a Florida Corporation, with a principal place of business at 3300 University Drive, Suite 629, Coral Springs, Florida 33065 (hereinafter referred to as the "Consultant"), and the TOWN OF DAVIE, FL, whose principal municipal offices are located at 6591 Orange Drive, Davie, FL 33312. (hereinafter referred to as "Town").

WHEREAS, Section 704 of the Telecommunications Act of 1996 mandates that municipalities cannot prohibit the provision of personal wireless services and requires municipalities to not unreasonably discriminate among providers of functionally equivalent services; and

WHEREAS, the Town desires to engage the services of the Consultant to perform for the Town consulting services regarding the development of a comprehensive Master Plan for telecommunications services and facilities (i.e. cellular and PCS towers) (hereinafter "Master Plan") to; ensure the Town's compliance with the aforementioned provisions of existing and proposed federal regulation and legislation; to minimize the aesthetic impact of these facilities on the Town; and to maximize the revenue available from the construction and operation of these facilities to the Town; and

WHEREAS, the Consultant desires to consult with the Town's staff, including planning, development, zoning, permitting, and administrative and legal staff, as well as the Town Administrator's office, as an independent contractor of the Town; and

WHEREAS, Consultant desires to consult with the Town Council, and to undertake for the Town consultation and management services as to the aforementioned telecommunications services to be offered by various providers within the Town;

NOW, THEREFORE, it is agreed as follows:

1. Term.

A. Initial Term. The respective duties and obligations of the contracting parties shall be for an initial period of five (5) years commencing on _____, 2002.

B. Renewal Term. This Agreement shall automatically renew for successive renewal terms of five (5) years each thereafter (the "Renewal Terms"), unless at least ninety (90) days prior to the expiration of the Initial Term, or any Renewal Term, either party shall have given the other party written notice of termination.

2. Consultations. Consultant shall be available to consult with the Town Administrator, the Town's administrative and legal staff, and the heads of the respective Town Departments whose functions are relevant to the construction and operation of telecommunications towers. Consultant shall coordinate the Master Plan with the Town and with the private telecommunications providers who seek to provide such services within the Town and elect to participate in the Master Plan.

Specifically, Consultant shall provide the following services to the Town:

A. Furnish consultation to the Town Attorney for development of an ordinance to implement the MASTER Plan and maintain compliance with applicable federal regulations;

B. Provide a workshop for government officials, staff and general public pertaining to specific requirements of the federal government and engineering requirements pertaining to your existing ordinance;

C. Furnish consultation to the Town Administrator, and other Town officials, to develop and implement the Master Plan, including but not limited to ascertainment of available Town owned property, determining the suitability of each site for telecommunications development, private confidential consultation with each telecommunications provider who elects to participate in the Master Plan to ascertain each provider's specific development and siting needs, and, where possible, the combining of these providers' development plans into one location to minimize the aesthetic impact of the facilities;

(1) Oversee design and implementation of all facilities to be located on Town owned property pursuant to and as required by the Master Plan.

(2) Mitigation of existing facilities to add additional providers, and development of facility sites that are aesthetically transparent (where possible) and not to exceed 80 feet in height for a single carrier and 125 feet for multicarrier wherever possible.

3. Liability. With regard to the services to be performed by the Consultant pursuant to the terms of this agreement, the Consultant shall not be liable to the Town, or to anyone who may claim any right due to any relationship with the Town, for any acts or omissions in the performance of services on the part of the Consultant or on the part of the agents or employees of the Consultant, except when said acts or omissions of the Consultant are due to willful misconduct or gross negligence. The Town shall hold the Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the services rendered to the Town pursuant to the terms of this agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct or gross negligence of the Consultant and the Consultant is adjudged to be guilty of willful misconduct or gross negligence by a court of competent jurisdiction. Consultant shall maintain a general liability policy in the amount of \$1,000,000.00 dollars naming the Town as an additional insured thereon.

4. Compensation.

A. For its services as Consultant in connection with the development of a master wireless telecommunications plan (Master Plan), CityScape shall receive as compensation for the performance of services contemplated by this Agreement the amounts set forth in Exhibit A hereto.

B. As contemplated by the ordinance referenced in 2A above, CityScape shall be compensated by the Town for individual site reviews pursuant to such ordinance. Town shall charge such providers a reasonable fee for such individual review which amount shall include CityScape's direct cost for same which is Two Thousand Five Hundred Dollars (\$2,500.00) per review. Town shall remit CityScape's portion of review fee after collecting same from the non-participating provider.

C. Additional individual services, if required and approved in advance by the Town Administrator, shall be compensated in accordance with the Attached Exhibit B.

5. **Additional Services.** Town acknowledges that Consultant, via a related entity, provides tower management services and that the Town and Consultant shall use best efforts to negotiate and enter into a further agreement for Consultant to provide such management services to the Town with respect to any telecommunications facilities which are constructed upon Town owned property as part of the Master plan. The terms of such an agreement shall be based upon the model management agreement attached as Exhibit C.

6. **Information Provided:** Consultant shall provide Town with a schedule of required information necessary from each provider participating in the Master Plan, which providers shall be required to furnish to Consultant (as mandated by the ordinance contemplated herein), including but not limited to the following information:

- A. Location of existing facilities within the Town with the design criteria;
- B. Location of planned facilities for the next 12-month period;
- C. Master plan of development for future growth for such provider;
- D. List of all frequencies utilized at all sites (transmit and receive).

7. **Notices.** Whenever any notice is required or permitted, such notice shall be in writing and shall be deemed duly given if delivered to the address of the party to be notified or if deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the party to be notified as follows:

Town: Town of Davie
6591 Orange Drive
Davie, FL 33314
Attn: Mark Kutney, AICP, Development Services Director
Tel: (954) 797-1101 Fax: (954) 797-1119

CityScape: CityScape Siting & Management, Inc.
3300 University Drive, Suite 629
Coral Springs, FL 33065
Attn: Kay Miles, Business Manager
Tel: (954) 757-8668 Fax: (954) 757-9994

Notices shall be deemed received on the date of delivery to such address or, if mailed, on the date stamped on the return receipt. Either party may change its address for delivery of notice by giving notice of change of address in compliance with the terms of this Section.

8. **Entire Agreement:** This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, proposals and any other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of this Agreement shall be in writing and executed by both parties hereto.

9. **Venue.** In the event of any litigation arising out of this agreement, the parties hereto agree that the 17th Judicial Circuit in and for Broward County, Florida is the proper venue for any such action. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no

action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

10. Authority. Each party hereto represents to the other party that such individual executing this Agreement on behalf of that party is authorized by the requisite action of the party to execute this Agreement.

11. Governing Law. This Agreement shall be construed in accordance with Florida law.

IN WITNESS WHEREOF, CityScape and Town have signed this Agreement as of the day and year first above written.

Witness:

Mara Lepore

MARA LEPORE
Print Name

Witness:

Print Name

CONSULTANT:
CITYSCAPE SITING & MANAGEMENT, INC.

By: *Anthony T. Lepore* Anthony T. LEPORE, V. P.

TOWN OF DAVIE

By: _____
HARRY VENIS, Mayor

Approved as to form:

Town Attorney

action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

10. Authority. Each party hereto represents to the other party that such individual executing this Agreement on behalf of that party is authorized by the requisite action of the party to execute this Agreement.

11. Governing Law. This Agreement shall be construed in accordance with Florida law.

IN WITNESS WHEREOF, CityScape and Town have signed this Agreement as of the day and year first above written.

Witness:

Mara Lepore

MARA LEPORE
Print Name

Witness:

Print Name

CONSULTANT:
CITYSCAPE SITING & MANAGEMENT, INC.

By: *Anthony T. Lepore* Anthony T. LEPORE, V. P.

TOWN OF DAVIE

By: _____
HARRY VENIS, Mayor

Approved as to form:

Town Attorney

EXHIBITA

**Professional Fees
Schedule of Time and Fees for Contracted
Professional Engineering and Legal Services**

LEGAL

- A – Review of Existing Ordinance – 6 hours
- B – Legal Portion of Public Workshop to determine Town Wireless needs and desires, additional consultation with Town staff to ascertain components of interim ordinance – 16 hours (workshop time 2 legal staff) 16 hours (additional consultation) = 32 hours
- C – Drafting, review and revision of interim ordinance, presentation to Town Council regarding adopting of same – 30 hours
- D - Finalization and revision of interim ordinance into final ordinance after adoption and application of Master Plan - 15 hours

TOTAL LEGAL: 83 HOURS @ 185.00 p/h = \$15,355.00

ENGINEERING AND CONSULTING:

- A – Assessment of Existing Facilities – \$125.00 per hour not to exceed a total of \$7,500.00 – Town may provide staff to assist in assessment - \$7,500.00
- B – Assessment of Public Lands – \$125.00 per hour not to exceed a total of \$7,500.00 – Town shall provide staff to assist in assessment - \$7,500.00
- C – GIS Data Analysis from Town resources – 40 hours - \$9,000.00
- D – Compilation of Data, engineering and computer modeling, Development, review and revision of draft Master Plan reflecting Current wireless state for Town of Davie and projecting wireless Facility growth patterns based upon availability of public sites and Zoning restrictions adopted in interim ordinance, presentation of Draft Master Plan for adoption by Town Council - 120 hours \$20,000.00

TOTAL ENGINEERING AND CONSULTING - \$44,000.00

TOTAL CONTRACT SERVICES..... \$59,355.00

EXHIBIT B***Professional Fees*****Schedule of Fees Per Diem for
Professional Engineering and Legal Services*****Legal Services and Research***

| | | |
|--------------------|-----------|--------|
| All Legal Services | \$ 185.00 | Hourly |
| Paralegal/Research | \$ 75.00 | Hourly |

Engineering Services & Expert Testimony

| | | |
|--|-------------|--|
| All Engineering Services | \$ 175.00 | Hourly |
| Full-day Engineering | \$ 1,400.00 | Daily |
| Site Plan and RF Review | \$ 2,500.00 | Per Plan |
| Site Plan and RF Review including site visit and field work | \$ 2,500.00 | Per Plan plus Field/Travel Work costs |
| Site Plan and RF Review including site visit and field work including Public Hearing Testimony | \$ 2,500.00 | Per Plan plus all related Field Work and Travel costs |

Field/Travel Work

| | | |
|-----------------|-----------|--------|
| Travel Time | \$ 75.00 | Hourly |
| Full-day Travel | \$ 900.00 | Daily |

Other Expenses

| | |
|---------------|-----------------|
| Other related | Billed at cost. |
|---------------|-----------------|

April 2002:CS-0801

EXHIBIT C
Form of Agreement for
Management Services
SITE MANAGEMENT AGREEMENT

THIS SITE MANAGEMENT AGREEMENT made and entered into as of the ____ day of _____, 20____ between CITYSCAPE SITING AND MANAGEMENT, INC., a Florida Corporation, with a principal place of business at 3300 University Drive, Suite 629, Coral Springs, Florida 33065 (hereinafter referred to as "CityScape"), and TOWN OF DAVIE whose principal offices are located at 6591 Orange Drive, Davie, FL 33314, hereinafter referred to as "Town").

WITNESS :

A. Town is the owner of one or more tower facilities, or locations suitable for tower facilities, hereinafter referred to as "the Sites," that can be marketed for use by the communications industry, and,

B. CityScape is a communications consulting and engineering company that wishes to market the above mentioned Sites and,

C. Town seeks the expertise and knowledge of CityScape to fully market the Sites and wishes to make use of the marketing and technical expertise of CityScape to both create and increase the revenues generated by the Sites,

CITYSCAPE AND TOWN AGREE AS FOLLOWS:

I. Appointment of Manager. Town appoints CityScape as its exclusive "Site Manager," to solicit and secure contracts for prospective Tenants. The primary responsibility of the Site Manager shall be to establish and maintain the Tenant contracts and their related equipment in such a manner that will yield the highest net revenues to Town on a long-term basis. For the purposes of this Agreement, all users of the Sites are referred to as "Tenants."

II. Duties and Obligations of Site Manager

Section 1 CityScape shall set up and maintain a complete inventory of all users of the Sites including equipment, frequencies, power, antenna, lines and location on site.

Section 2 CityScape shall draft and submit to Town an analysis of the capacity and potential revenue of the Sites, including an analysis of the rate structure and contractual Agreements (term of contracts, rates, escalators, etc.) in report form with recommendations for improvements.

Section 3 CityScape shall actively pursue new Tenants for the Sites through CityScape's association and reputation in the industry and/or advertisement in national industry trade journals. CityScape shall have the authority on behalf of Town to execute all Tenant leases in the form approved by Town.

Section 4 CityScape will assist Town in the negotiation of all new and renewal contracts, and have full responsibility for performing intermod and interference studies, coordinating all installations or modification activities, mediating any disagreements among Tenants, handling of any FCC or FAA matters, including matters of tower compliance with all local standards and conformance to existing EIA standards and Good Engineering Practices, tower lighting (FAA lighting notification) or structural analysis (tower loading evaluations), any necessary ANSI computation and/or measurements to assure the Sites safe for human exposure to non-ionizing radiation. CityScape from time to time, may with Owner's approval, add equipment to the Sites at its own expense to provide additional or enhanced service to the Tenants. CityScape shall use its best efforts to comply with all governmental regulations in force during the term of this Agreement. Town shall be responsible for any additional cost incurred for compliance with any governmental requirements which becomes effective subsequent to the effective date of this Agreement (which costs, if any, can be passed on to the Tenants as part of the uniform lease). Any and all equipment that CityScape adds to the Sites at CityScape's expense shall remain the property of CityScape.

Section 5 CityScape shall provide all necessary maintenance required for the proper operation of the Sites. For maintenance services which can be performed directly by personnel of CityScape there shall be no additional charge to Town other than the cost of materials, which shall be reimbursed to CityScape by Town. For maintenance items that cannot be performed by personnel of CityScape, such services shall be performed by outside contractors at the expense of Town, but subject to the prior approval of Town. CityScape shall use its best efforts to obtain the lowest prices available, and CityScape shall pass on to Town any cost savings derived from the operation by CityScape of other towers under its management.

Section 6 CityScape shall be responsible for all billings to Tenants in connection with their operations on the Sites, and for the collection of any delinquent accounts. Town grants to CityScape the authority, on its behalf, to take such action as may be necessary to collect any delinquent accounts, including tax or insurance reimbursement. The institution of legal action shall require the prior approval of Town, and the cost of such proceedings shall be borne by CityScape and Town in the same proportion as their respective interest in the proceeds as provided for in Part IV below. The proceeds of any recovery from Tenant, whether by settlement or court judgment, including any legal and collection expenses received, shall be paid to CityScape and Town in the same proportion. CityScape does not assume any responsibility to Town for the collection of any unpaid Tenant rents, fees or other charges.

Section 7 In the event that CityScape and Town enter into a Consulting Agreement in connection with the development of a master wireless telecommunications plan, CityScape shall develop such master wireless telecommunications plan (TCD Plan) for the Town with an emphasis on locating facilities on the Sites and other Town owned properties wherever technically possible, thereby maximizing revenues to the Town. In connection therewith, with respect to Sites which do not currently have any constructed facilities thereon, CityScape shall, under the provisions of a Town ordinance which will provide for the master wireless telecommunications plan described hereinabove, (a) design a tower structure to accommodate existing and future wireless Tenants, (b) negotiate with Tenants for such Site to provide for the Tenants to advance the cost of constructing such tower structure; (c) consolidate and remediate existing facilities to relocate wherever possible to one of the Sites and co-locate as many Tenants as is technically feasible on the Sites.

Section 8 CityScape shall serve as telecommunications consultant to the Town for the term of this Agreement.

III. Duties and Obligations of Town

Section 1. Town shall notify all existing Tenants at the Sites in writing upon the effective date of this Agreement that CityScape has been appointed Site Manager with full authority to manage the Sites on behalf of Town, and directing Tenants to remit all rents, fees and other charges to CityScape. Town shall cooperate with CityScape in all matters that require common cooperation in order to maximize the long-term profitability of the Sites.

Section 2. Town shall provide CityScape a complete copy of all existing leases and related contracts, design criteria and any additional related work or studies of the Sites.

IV. Compensation

Section 1. For its services, CityScape shall be entitled to twenty-five (25%) of all rents and fees collected from Tenants whose contracts have been entered into from and after the effective date of this Agreement. For the purpose of this Section, sales taxes, real estate or personal property tax reimbursement, insurance reimbursements and late fees, if applicable, shall be excluded from the amount of the rents and fees upon which the compensation of CityScape is based.

Section 2. CityScape shall remit to Town, on a monthly basis, the amount due to Town all rents, fees, and other amounts collected (less sales tax, if applicable), together with a monthly report including a statement of account detailing all monthly transactions, and showing all amounts collected and all amounts uncollected from Tenants.

V. Term of Agreement

Section 1. Initial Term: This Agreement shall be for a term of five (5) years commencing on _____ and expiring at midnight on _____ (the "Initial Term").

Section 2. Renewal Term: This Agreement shall automatically renew for successive renewal terms of five (5) years each thereafter (the "Renewal Terms"), unless at least ninety (90) days prior to the expiration of the Initial Term, or any Renewal Term, either party shall have given the other party written notice of termination.

VI. Performance of the Site Manager. During CityScape's term as Site Manager, CityScape shall continue to be responsible to Town, to fulfill all the duties as outlined herein. Failure of the Site to generate any specific revenue amount shall not be considered a failure of CityScape.

VII. Indemnification. Town shall indemnify CityScape against any loss or threat of loss as a result of any claim or legal proceedings related to the performance or non-performance of any act concerning the operation of any Site in good faith within what it reasonably believed to be the scope of its authority and for a purpose for which it reasonably believed to be in the best interest of the Town except if CityScape acts with gross negligence or willful misconduct.

VIII. Successors. The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and assigns.

IX. Application of Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed in accordance with, the laws of the State of Florida. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

X. Assignment. This Agreement may be assigned by CityScape for any purpose with the prior written consent of Town, which permission shall not be unreasonably withheld except for the failure or cessation of CityScape as an entity in which case this Agreement shall terminate immediately.

XI. Notices. Whenever any notice is required or permitted, such notice shall be in writing and shall be deemed duly given if delivered to the address of the party to be notified or if deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the party to be notified as follows:

Town: Mr. Mark Kutney
Director Planning & Development
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399
Tel: (954) 797-1101 Fax: (954) 797-1119

CityScape: CityScape Siting & Management, Inc.
3300 University Drive, Suite 629
Coral Springs, FL 33065
Attn: Kay Miles, Business Manager
Tel: (954) 757-8668 Fax: (954) 757-9994

Notices shall be deemed received on the date of delivery to such address or, if mailed, on the date stamped on the return receipt. Either party may change its address for delivery of notice by giving notice of change of address in compliance with the terms of this Section.

XII. Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, CityScape and Town have signed this Agreement as of the day and year first above written.

Witness:

Print Name

Witness:

Print Name

CITYSCAPE SITING & MANAGEMENT, INC.

By: _____

TOWN OF DAVIE

By: _____

Harry Venis, Mayor

Approved as to form:

Town Attorney