

AGREEMENT FOR WIRELESS CONSULTING SERVICES

THIS AGREEMENT FOR WIRELESS CONSULTING SERVICES, hereinafter referred to as the "Agreement," is made and entered into by and between CityScape Consultants, Inc., a Florida Corporation, hereinafter referred to as the "Consultant," and the **Incorporated Village of Oyster Bay Cove, New York**, a body politic and corporate of the **State of New York** hereinafter referred to as the "Village." The Consultant and Village are collectively referred to as the "Parties."

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

WHEREAS, the Village desires to engage the services of the Consultant to perform for the Village consulting services regarding the review of personal wireless service facility application(s) and varied wireless telecommunications consulting services as needed per the Scope of Services to ensure the Village's compliance with the aforementioned provisions of existing and proposed federal regulation and legislation; and to minimize the aesthetic impact of these types of facilities in the Village; and

WHEREAS, the Consultant desires to consult with appropriate Village staff as an independent Consultant of the Village on regarding wireless telecommunications issues or projects within the Village; and

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be performed by Consultant.** The Consultant shall perform those approved wireless consulting services to the Village further described in Exhibit "A" of this Agreement. In performing such approved services, the Consultant shall comply with all federal, state and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with generally accepted professional standards of conduct and performance.
2. **Duration of Contract.** This Agreement is effective on the date it is signed by both parties (the "Effective Date") and shall be in full force and effect for a period of one (1) year ("Initial Term"), with the option to renew Agreement for additional successive one (1) year terms ("Extension Terms") as deemed appropriated and agreed upon by both parties.
3. **Compensation and Method of Payment.** Consultant shall receive as compensation for the performance of services contemplated by this Agreement, the fees, as shown in Exhibit "B" of this Agreement, to be invoiced by Consultant and paid by the Village.
4. **Notices.** Whenever any notice is required or permitted, such notice shall be in writing and shall be deemed sufficiently given if delivered by hand or by guaranteed overnight delivery service 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:

CONSULTANT: CityScape Consultants, Inc.
2423 Orange Ave #317
Orlando, FL 32806
Attn: Contract Administrator
Email: Admin@cityscapegov.com
Tel: 877-438-2851 Fax: 877-220-4593

VILLAGE: Inc. Village of Oyster Bay Cove
68 West Main Street
PO Box 66
Oyster Bay, NY 11771
Attn: Village Clerk
Email: OBCVILLAGECLERK@OPTONLINE.NET
Tel: (516) 922-1016 Fax: (516) 922-1761

Notices delivered in accordance with this paragraph shall be deemed received on the date of delivery to such address or, if mailed, three days following deposit in the United States mail. 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.

5. 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 relating to the subject matter of this Agreement. 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.
6. Governing Law; Jurisdiction; Venue. The construction and performance of this Agreement shall be governed by and construed pursuant to the laws of the State of New York. Venue for any legal actions initiated concerning this Agreement or arising in any way from and out of this Agreement shall be brought in the appropriate state court sitting in Nassau County, New York having jurisdiction over said claim. The parties waive any right they may have to venue in any other jurisdiction.
7. 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.
8. Insurance. Consultant shall maintain a general liability policy in the amount of \$1,000,000 dollar naming the Village and Village as an additional insured thereon.
9. Project Records and Documents. Each party, upon reasonable request of the other party, shall permit examination or audit of all project-related records, books, documents, and papers during or following completion of the project. Each party shall maintain such records, books, documents, and papers for at least three (3) years following completion of the services performed.
10. Assignment. Neither party may assign or transfer its rights or obligations under this Agreement without prior written consent of all other parties.
11. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. Upon such termination, the parties shall be entitled to such additional rights and remedies as may be allowed by relevant law.

12. Indemnification. Consultant agrees to protect, defend, indemnify and hold Village, its employees and elected and appointed officials, harmless from any and all claims, damages, costs, liability, or expenses (including attorney's fees) arising out of or in any way connected with the activities and performance of the Consultant, Consultant's employees, agents, sub-Consultants and anyone else working for or on behalf of Consultant arising out of or from the Work.
13. Sovereign Immunity. The Village does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with respect to any action based on or arising out of this Agreement.
14. Relationship. Nothing herein shall be construed to imply a joint venture, partnership, or principal-agent relationship between the Village and Consultant; and neither Party shall have the right, power, or authority to obligate or bind the other in any manner whatsoever, except as otherwise agreed in writing.
15. Liability for Payment. The fees provided for herein for Consultants services shall be paid by the Village. Consultant shall assist the Village in amending its existing regulations to permit recovery of some or all of the fees from the site applicants while remaining in compliance with applicable state law regarding fees as it relates to expert review of wireless communications facility applications.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 5th day of November, 2020.

CONSULTANT: CITYSCAPE CONSULTANTS, INC.

By: [Signature]

Date: 11/5/2020

Title: President

ATTEST:

[Signature]
Mary Kay Miles
Print Name

COMMUNITY: INC. VILLAGE OF OYSTER BAY COVE

By: [Signature]

Date: 11/5/2020

Title: MAYOR

ATTEST:

[Signature]
Joanne A. Casale
Print Name

EXHIBIT A

A.Scope of Work

1. Wireless Application Review and Analysis

Consultant will provide third party expert Site Application Review of Wireless Communications Facility application(s) submitted to the Village for the placement and construction and/or modification of personal wireless service facilities to ensure they meet the requirements of the zoning, permissible structure height, safety and aesthetics and compliance with applicable federal guidelines.

- a. **Application Materials – Completeness.** Upon receipt of an electronic submittal application package from the Village, Consultant will review and evaluate the materials for completeness and notify Village of any additional materials required to conduct a comprehensive review of the application. (Note: per federal regulations, macro and small wireless facility applications must be reviewed and deficiencies communicated to the applicant to meet the “completeness” timeline. CityScape will require an expedited process with staff to make sure CityScape has the required review materials as soon as submitted otherwise CityScape’s conclusions and recommendations will not be based on all possible information.)

With the Village’s approval, Consultant will communicate directly with the applicant to explain any code inconsistencies, Village mandates and preferences. Approved direct contact between Consultant and the applicant allows for an efficient process for effective and timely review. Consultant will keep Village apprised of all communication and additional materials requested of the Applicant for the completion of the review.

- b. **Review of Application:** CityScape will review the completed application from a regulatory standpoint to ensure each meets the requirements of the applicable local, state and federal ordinances, laws, rules and regulation. CityScape’s process is to evaluate the application against the Village Code Sections Ch. 320: Zoning/Ch 320 Article VI: Telecommunication Facilities, WCF and applicable development regulations and assure compliance in accordance with the federal and state statutes. If concerns are found in any submittal, CityScape will offer the Village suggestions to resolve the situation. CityScape will work directly with necessary staff to make sure the Village is aware of all available options. At the Village’s request, CityScape will communicate directly with the applicant (if applicable) to carry out the Village’s mandate and enable efficient review (e.g., requesting correspondence from applicant during initial phase review). CityScape will keep the Village advised of all communication and materials requested for the completion of the review.

CityScape’s evaluation may include, but not limited to:

- Accuracy and verification of site plan materials and application completeness of submissions (it is understood CityScape may receive applications past the legally allowed time for a completeness assurance);
- Assurance that the Village works within the confines of the applicable “shot clock” and meets the time allowed for disposition of telecommunications applications;
- Compliance with all applicable federal, state, and local structural, safety and RF exposure safety codes;
- Evaluation of site option and /or alternative site options and collocations;
- Compliance with federal and state wireless statutes;
- Compliance with the Telecommunications Act of 1996, Tax Relief and Job Creation Act of 2012, and other applicable federal laws, rules and regulations, whether now existing or hereafter enacted;

- Evaluation of aesthetic impacts and possible mitigation of, structures, shelters, containers and landscaping or alternative site;
 - Evaluation of proposed height of requested facilities, based on capacity or coverage;
 - Applicability of analysis techniques and methodologies;
 - Validity of conclusions reached;
 - Evaluation of FCC Radio Frequency exposure compliance;
 - Evaluation of compatibility with Public Safety Communications systems;
 - Evaluation of compliance with existing ordinance and regulations (*i.e.*, setbacks, tower separations, ordinance definitions, etc.) within the remaining limits of the shot clock;
 - Whether the proposed wireless telecommunications facility complies with the applicable approval criteria set forth in the Village's local regulations as best under the rules of the shot clock;
 - Determination whether the site's search ring is adequate based on generally accepted engineering principles for intended site;
 - Compliance with New York State law including but not limited to holding of Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993) and cases following same (if applicable);
 - Other lawful matters deemed by the Village to be relevant to determining whether a proposed wireless telecommunications facility complies with the provisions of the Village's regulations;
- c. **Generation of Review Report.** Once Consultant has retrieved all application and related materials from the Village and deems the application sufficiently complete for evaluation, Consultant will complete its analysis and submit to the Village, a written report summarizing the petitioner's request and detailing the findings. Consultant will notify the Village and/or applicant if any additional materials or confirmations are necessary throughout the evaluation period in order to expeditiously conduct a comprehensive review of the application. Consultant will provide the report via electronic PDF copy to the Village within fifteen business days or sooner as federal law mandates. Supplemental review letter(s) (maximum two) to the initial report may be provided as required should the applicant attempt to correct deficiencies (if any) identified in the report.
- d. **Technical Advisory on Reviews.** Consultant is aware that some applications may be more complicated and contentious than others, and relevant issues may vary from petition to petition. Additional supplemental review letters (above the maximum of two provided) to the initial report will be provided at the request of the Village. Also upon request and advanced scheduled notice by the Village, Consultant will be available to attend and answer questions regarding Consultant's report at any required quasi-judicial public hearings.

2. Regulatory Advisory

Communication Facilities Ordinance Review and/or Recommendations: CityScape will review the Village's existing Standards and Requirements for Specific Special Permit Uses (Ch 320: Article VI: Telecommunication Facilities) related to traditional macro infrastructure development outside of ROW to harmonize with recent Federal law changes, including provisions regulating timeline for review and approval of applications, addressing "eligible facility requests". Additionally, CityScape will assist the Village in developing an ordinance section to regulate forthcoming "5G" small wireless installations in public rights-of-way (ROW) including provisions for design aesthetics, safety concerns, and concealment to minimize impact on surrounding environment.

CityScape will examine existing land use development standards for wireless infrastructure in the Village's existing code to ascertain conformity with (A) 47 USC 1455 (a/k/a Section 6409 of Middle Class Tax Relief Act);

(B) the FCC's "Shot Clock" 2009 Order; (C) the FCC's 2014 Infrastructure Report and Order; (D) the FCC's Declaratory Ruling and 3rd Report and Order released September 27, 2018 and (E) pending legislation which may affect the new standards associated with wireless infrastructure access to the public ROW.

CityScape can provide support to Village staff throughout the amendment revision and approving process by answering questions posed by the public, elected and appointed officials. CityScape's core business platform is based on the education process. We can attend meetings, develop and make presentations, provide information sessions and materials to help explain next generation Small Wireless (5G) technology trends, types of facilities and the deployment practices of the industry and the role citizenry and local government is afforded through state and federal policies.

Depending on the Village's need for regulatory advisement at this time, CityScape can provide a comprehensive review, not limited to review of specific guidelines regarding wireless infrastructure development. Cross-reference review of wireless facility regulations to other zoning standards, including federal and state mandates and codes, permitted use charts, definitions, compliance amendments to the regulations that implement the State Environmental Quality Review Act (SEQR) Title 6 NYCRR Part 617 to streamline the SEQR process, and other underlying zoning land use development standards will be used to uncover any possible inconsistencies and loopholes. CityScape will review the materials provided by the Village with particular attention to:

- Strengths and weaknesses of the existing zoning regulations;
- Strategies to enhance the Village's permitting and application review process;
- Strategies to control the location of new facilities;
- Strategies to control the aesthetics and reduce the visual impact of new facilities and examine possibilities for concealed facilities and design guidelines;
- Compliances with federal and state mandated guidelines; and
- Effectiveness of the intent of the zoning regulations and process.

CityScape will provide technical instruction and discuss options with Village staff and can either prepare a redline of the existing regulations or amendment recommendations. The amendment recommendations may include, but not be limited to, as applicable:

- Statement of Purpose and Intent;
- Detailed definitions related to wireless facility deployment;
- Provisions for incentives for collocation or combining and the construction of non-intrusive facilities;
- Efficiency in the decision-making process;
- Methods to provide the zoning process more flexibility;
- Proposed language that would establish objective standards for evaluating the aesthetic impact of towers and antennas;
- Development standards, including requirements for non-intrusive facilities;
- Application review standards, including review standards consistent with Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993);
- Development of standards for uses described in the Communications Act of 1996 and all subsequent federal regulations; and
- Development of standards related to 2018 SEQR Amendments, adopted June 27, 2018 and effective as of January 1, 2019;
- Development of standards for Small Wireless facilities within public rights-of-way (as defined by applicable legislation).

B. Consulting Fees

1. Fees for Technical Reports on Zoning Applications

The consultant fees for reviews are paid for by the Applicant through the Village's application and review process and therefore there is no out of pocket expense to the Village. Consultant's review fees are inclusive and fixed project fees with no additional or hidden costs. The fee includes an initial review for "technical completeness," evaluation of the application and/or follow-up review or letters on same application. There will be no incidental charges associated with the review fee (i.e., teleconferencing, faxing, emailing, printing and reproduction costs).

Task	Description	Fee
Site Review Report	▪ Small Wireless Facility Applications (streamlined review)	\$800 per site or node
	▪ "Non-substantial" Macro Collocations, Modifications and Upgrades (streamlined review)	\$1,800 per site
	▪ New Structure, "Substantial" Macro Collocations, Modifications or Upgrades	\$4,000 per site
Expert Testimony for Public Hearing(s)	▪ Expert Testimony to include Attendance by CityScape Representative – In Person: person – includes any travel related expense	\$2,500.00 per meeting
	▪ Expert Testimony to include Attendance by CityScape representative – Via Video Conference (i.e. Zoom)	\$1,000.00 per meeting

Consultant will invoice the Village upon the completion and submittal of the completed review and analysis by Consultant, and attendance at any scheduled meetings, if required and approved in advance by the Village.

[Note: Macro fee is \$4,000 for a substantial facility application (i.e. substantial would be if the applicant needs to increase tower height in excess what is allowed under Part 6409 than and/or an increase of the existing ground compound). Non-substantial application is defined as any change or modifications that would be by right as an eligible facility request according to Part 6409 of the Spectrum Act.]

Consultant's review process on any application does not conclude until the application is approved, denied, withdrawn or dismissed. Additional fees may apply for any requested post-adjudication services (i.e. litigation support) which shall be invoices as Additional Consulting Services per the Per Diem Rates below.

2. Per diem Rates for Additional Consulting Services

For any additional services (i.e. Regulatory review and Ordinance recommendations, presentation and workshops, expert testimony, lease negotiations) may be contracted based on an hourly rate; see below per diem schedule of rates. Travel related expenses for additional services to be billed at cost for hourly service project work.

Per Diem Rate Schedule as of 1/1/2020

Job/Classification	Fee	
Regulatory	\$300.00/hour*	*Plus travel related expense, billed at cost. (These would be fees based only on travel for potential expert testimony and/or requested meetings to be attended by CityScape that required travel)
Senior Engineer	\$250.00/hour*	
Planner	\$150.00/hour*	
Administrative	\$75.00/hour	
Field Engineering/Planning Travel Time	\$75.00/hour	

Note: Any additional consulting project may also be quoted on an individual project basis and fixed project cost at the request of the Village.