

MEMORANDUM

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445 Hamilton Avenue
White Plains, NY 10601
Phone 914.946.4777
Fax 914.946.6868

■ Mid-Hudson Office
200 Westgate Business Center
Fishkill, NY 12524
Phone 845.896.0120

■ New York City Office
505 Park Avenue
New York, NY 10022
Phone 646.794.5747

TO: Supervisor Chris Burdick and the
Members of the Town of Bedford Town Board

FROM: Keane & Beane, P.C. 

RE: Proposed Agreement with CityScape Consultants, Inc. –
Wireless Telecommunications Infrastructure Masterplan

DATE: August 8, 2019

Attached is a proposed agreement with CityScape Consultants, Inc. (“CityScape”) with respect to the review of the Wireless Telecommunications Infrastructure Masterplan. Also attached is the Proposal for the Study and Report of Emergency Service and Wireless Telecommunications Infrastructure Master Plan and a Memorandum dated May 17, 2019 from the Town of Bedford Wireless Facilities Working Group recommending the hiring of a consultant.

Keane & Beane has reviewed the proposed agreement and recommends that the Town Board approve the agreement with CityScape and authorize the Supervisor to take all actions necessary to effectuate its terms.

Please do not hesitate to contact me if you have any questions.

Enclosure

cc: Jeff Osterman, Director of Planning
Lisbeth Fumagalli, Town Clerk
Joel H. Sachs, Esq.

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 Town of Bedford, New York, a body politic and corporate of the State of New York, hereinafter referred to as the "Town."

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 Town desires to engage the services of the Consultant to perform for the Town wireless consulting services regarding a town-wide study and report of Emergency Service and Wireless Telecommunications Infrastructure Master Plan (hereinafter "Wireless Master Plan") to ensure the Town's compliance with the aforementioned provisions of existing and proposed federal regulation and legislation; and to minimize the aesthetic impact of these facilities in the Town; and

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

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

1. **Scope of Work.** In accordance with the Scope of Work ("SOW") attached hereto as Exhibit "A" of this Agreement, Consultant shall perform a town wide study, report its findings to the Town and develop a Wireless Master Plan for the Town. 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. Within thirty (30) days of the Effective Date of this Agreement, Consultant and Town shall agree upon a projected timeline for the completion of each task, which shall provide for the Wireless Master Plan to be completed in a timely and efficient manner from the Effective Date. Consultant's ability to fulfill all tasks in the projected timeline depends, in part, on the willingness and ability of Consultant, Town, Town participants, equipment vendors, service providers, third parties and others to provide information and services in a timely manner, and upon the accuracy of the information as supplied. The Town acknowledges and agrees that the Consultant will be relying upon a subcontractor, Federal Engineering, to furnish some of the services contemplated in the Scope of Work but that Consultant shall be ultimately responsible to cause completion of the Scope of Work and provide the deliverables contemplated therein to the Town. The Wireless Master Plan will be subject to applicable laws, rules and regulations, which may include public hearing, and Town Council approval.
2. **Duration of Contract.** This Agreement shall be in full force and effect for a period of one (1) year commencing upon execution of this Agreement by all parties (the "Effective Date"). Time is of the essence of this Agreement in each and all of its provisions in which performance is required. Unless otherwise terminated as provided herein, this Agreement may be extended by either party for a total of six (6) thirty (30) day periods to facilitate completion of the Wireless Master Plan.

3. Compensation and Method of Payment. Consultant shall receive as compensation for the performance of services contemplated by this Agreement a fixed project fee in the amount of One hundred four thousand, seven hundred and fifty dollars (\$104,750.00). The fee schedule is outlined in Exhibit "A" of this Agreement, and will be invoiced by Consultant and paid by the Town upon completion of each Master Plan Task.

Task 1. \$ 13,460.00
Task 2. \$ 15,600.00
Task 3. \$ 9,480.00
Task 4. \$32,294.00
Task 5. \$ 6,500.00
Task 6 \$ 19,460.00
Task 7 \$ 7,956.00

Should additional Town meeting attendance by Consultant be requested and approved in advance by the Town, additional fees will be invoiced at a rate of Three Thousand Dollars (\$3,000.00) per meeting and payable upon completion of actual meeting attendance by Consultant.

4. Scope of Work Modifications: Work that is different from or in addition to the work specified in Exhibit A shall constitute a change in the Scope of Work. Any additional or modified tasking shall be authorized by mutual written agreement through an amendment to this Agreement and in accordance with the rate schedule as provided in Exhibit A or on an agreed fixed price basis. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment and executed by the Town Supervisor and by Consultant. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claims of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

5. 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 S Orange Ave, #317
Orlando, FL 32806
Attn: Kay Miles, Business Manager
Email: kay@cityscapegov.com
Tel: 877-438-2851 Fax: 877-220-4593

TOWN: Town of Bedford
321 Bedford Rd.
Bedford Hills, NY 10507
Attn: Town Supervisor
Email: supervisor@bedfordny.gov
Tel: 914-666-6530 Fax: 914-666-5249

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.

6. 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.
7. 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 Westchester County, New York, having jurisdiction over said claim. The parties waive any right they may have to venue in any other jurisdiction.
8. 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.
9. Insurance. Consultant agrees to procure and maintain in force during the term of this contract, at its own cost, the following coverages:

See Exhibit "B" attached.

10. 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.
11. Assignment. Neither party may assign or transfer its rights or obligations under this Agreement without prior written consent of all other parties.
12. Termination: This Agreement may be terminated by either party, in whole or in part, 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. The Town's obligation shall be to pay Consultant a portion of the price of the SOW terminated reflecting the amount of the work performed prior to the notice of termination, plus any reasonable charges that Consultant can demonstrate to the satisfaction of Town using generally accepted accounting principles, that have resulted from the termination. Upon such termination, the parties shall be entitled to such additional rights and remedies as may be allowed by relevant law.
13. Indemnification. Consultant agrees to protect, defend, indemnify and hold Town, 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-contractors and anyone else

working for or on behalf of Consultant arising out of or from the Work. Consultant further agrees to execute the Indemnification and Hold harmless attached hereto as Exhibit "C".

14. Sovereign Immunity. The Town 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.
15. Relationship. Nothing herein shall be construed to imply a joint venture, partnership, or principal-agent relationship between the Town 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.
16. Non-Discrimination. Consultant, its agents, employees, contractors, and subcontractors shall not discriminate on the basis of race, color, gender, gender identify, sexual orientation, marital status, familial or veteran status, national origin, ancestry, age, sex, religion, or disability in any employment policy or practice.

IN WITNESS WHEREOF, the parties have signed this Agreement on this _____ day of _____, 2019.

CONSULTANT: CITYSCAPE CONSULTANTS, INC.

By:

Title: _____

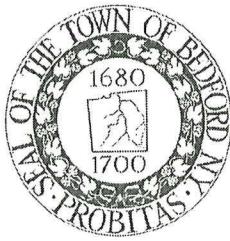
TOWN: TOWN OF BEDFORD

By:

Title: _____

EXHIBIT A

(Attach Scope of Work)



TOWN OF BEDFORD
321 Bedford Road, Bedford Hills, NY 10507

INSURANCE REQUIRED BY CONSULTANTS

Insurance

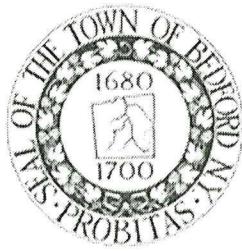
A Consultant working for the Town of Bedford must provide the following:

- 1) Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate and including a waiver of subrogation.
- 2) Automobile Liability
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) Town of Bedford and their agents, officers, directors and employees shall be included as an additional insured on the auto policy.
 - d) Also needs to include waiver of subrogation.
- 3) Workers' Compensation and Employers' Liability and N.Y.S. Disability Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Worker's compensation must include a waiver of subrogation.

Note: ACORD form is not acceptable proof of workers compensation coverage; must provide C-105.2

- 4) Professional Liability – each occurrence \$2,000,000. and \$2,000,000. annual aggregate. The professional insurance shall cover the professional services rendered to the Town of Bedford by the consultant.
- 5) Consultant acknowledges that failure to obtain such insurance on behalf of the Town of Bedford constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Town of Bedford. The consultant is to provide the Town of Bedford with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the Town of Bedford to object to the contents of the certificate or absence of same shall not be deemed a waiver of any and all rights held by the Town of Bedford.

Note: The Town of Bedford and their agents, officers, directors and employees must be listed as additional insured with the exception of the Professional Liability, Workers Compensation and Disability policies and list the specific project. The coverage must be underwritten by an Insurance Company with at least 'A 7' Best rating as defined by A.M. Best. Coverage for the additional insured shall apply as Primary and Non-Contributing Insurance before any other insurance or self-insurance, include any deductible, maintained by, or provided to, the additional insured's.



**Town of Bedford
321 Bedford Road, Bedford Hills, NY 10507**

Consultant Indemnification and Hold Harmless Agreement

To the fullest extent permitted by law, Consultant will indemnify and hold harmless the Town of Bedford, its elected officials, officers, representatives, agents, insureds and employees from and against any and all claims, suits, liens, judgments, damages, losses and expenses, including reasonable legal fees and all court costs and liability (including statutory liability) arising in whole or in part and in any manner from injury and/or death of any person or damage to or loss of any property resulting from the acts, omissions, breach or default of Consultant, its officers, directors, agents, representatives, employees and subcontractors, in connection with the performance of any work by or for Consultant pursuant to any contract, Purchase Order and/or related Proceed Order. Consultant will defend, hold harmless and bear all costs of defending any actions or proceedings brought against the Town of Bedford, its elected officials, officers, representatives, agents and employees and insureds, arising out or relating to actions taken by Consultant, its officers, directors, agents, representatives, employees and subcontractors, and shall not be limited in any way by an amount or type of damage, compensations, or benefits payable under any applicable workers' compensation, disability benefits or other similar employees benefit act.

The Consultant hereby expressly permits the Town of Bedford to pursue and assert claims against the Consultant for indemnity, contribution and common law negligence concerning causes, claims or actions for damages for death and personal injury arising out of or relating to actions taken by the Consultant, its officers, directors, agents, representatives, employees and subcontractors, except for any cause, claim or action arising out of or attributable to the negligent, reckless or intentional acts of the Town of Bedford or its agents and employees.

Name of Consultant: _____

Signature: _____

Name of Authorized Representative: _____

Date: _____

Nature/Scope of Work Being Performed: _____

Please sign, date and return to:

**Town of Bedford
Town Clerk's Office
321 Bedford Road
Bedford Hills, NY 10507**