



MEMORANDUM

To: Members of the Finance Committee

From: Rich Olson, City Manager
Matthew Schelly, Director of Community Development

Date: October 3, 2018

Re: Consideration – Approve Wireless Communications Consultant and New Fee Schedule Items

BACKGROUND:

In 2017, the State Legislature approved significant and detailed changes affecting how the City may and may not regulate and encourage the installation and replacement of wireless communications facilities. These changes were approved in anticipation of an expansion in the demand for wireless communication services, and by the desire for installation of wireless communication equipment in public rights-of-way. In order to meet these needs, the City will need to replace our current wireless requirements, which were last revised about a decade ago. The wireless requirements we have in place do not address issues of locating these facilities in a right-of-way, nor do they include a set of detailed requirements from the State Legislature or the anticipated visual impact of potentially hundreds of new wireless facilities throughout our community.

ANALYSIS:

Many aspects leading to the approval of applications for these new facilities are technical, structural, and complicated. In order to approve an application, the City needs to be assured that the application is complete and meets our requirements. These requirements include safety, structural, technological, legal, and aesthetic considerations. Our staff can handle processing the application, maintaining the files, communicating with City departments, reviewing the literal requirements, and other related tasks; however, we do not have structural engineering expertise, wireless communication technology knowledge, or federal communications legal expertise. The City does not follow the practices of the wireless communications industry on a day-to-day basis; therefore, staff does not know what is possible and what the alternatives are for any given proposal. Based on these limitations, staff has requested that the City engage a wireless communications consultant.

City staff conducted thorough research of the available consultants who could perform these tasks, and was able to identify three firms: Carolina Telecommunications Services, LLC, from Chapel Hill, NC; CityScape Consultants, LLC, from Boca Raton, FL; and Baller Stokes & Lide, P.C., from Washington, DC. Of these, only Carolina Telecommunications Services (CTS) included the areas of expertise we require. Additionally, CTS was clearly independent from the wireless communications industry and would provide their services at no cost to the City. Their costs would be paid by the applicants' fees. A draft contract, as well as a draft of the new fee schedule items are attached to this memo. The values of the fees are set forth as allowed by state statute.

CTS has a team of professional wireless frequency, structural, civil, and metallurgical engineers, attorneys, planners, and former industry regulatory specialists. They work exclusively for local governments and have no ties, direct or indirect, with any member of the wireless industry. They have reviewed and analyzed more than 1,000 applications and their recommendations have never been challenged. They know the numerous options and alternatives to what is being proposed, and they know the legal rights of local governments and how to use the law for the benefit of the public. Furthermore, they would be able to locate any inaccuracies within applications.

STAFF RECOMMENDATION:

By motion, recommend that the City Council engage the services of CTS at no cost to the City, and recommend approving the new fee schedule items.

(draft) AGREEMENT

This agreement made and entered into this _____ day of _____, 2018 by and between CAROLINA TELECOMMUNICATIONS SERVICES, LLC (herein after referred to as Consultant) (mailing address: 2917 Carriage Meadows Dr., Wake Forest, NC 27587 Attention: Jackie B. Hicks) party of the first part, and the Elizabeth City, North Carolina (hereinafter referred to as Client) (mailing address; P. O. Box 347 Elizabeth City, NC 27907-0347) party of the second part.

Consultant and the Client, for the consideration named, hereby agree as follows.

1. PURPOSE

Client hereby retains Consultant for the purpose of assisting, advising, and representing Client on matters relating to:

- a) Reviewing and analyzing all applications received by the Client for Wireless Telecommunications Facilities;
- b) Reviewing and analyzing the existing regulations re towers and wireless facilities;
- c) Drafting proposed changes or replacement regulations to Client's existing tower and wireless facilities regulations;

2. SPECIFIC SERVICES

- a) Consultant shall review, analyze, evaluate, and make written recommendations on all applications for towers and/or wireless facilities, including attending any hearings related to such.
- b) Consultant shall be available to assist, advise, and represent Client on all negotiations involving leases for towers and/or wireless facilities on municipally-owned property and facilities and the modification, extension or renewal of such.

3. SPECIFIC SERVICES: PROCESSING OF APPLICATIONS

Consultant shall i) serve as Client's expert and review all applications for permits involving the construction and/or modification of Wireless Telecommunications Facilities, including both technical and non-technical issues; siting analysis, attending all hearings and on-site meetings; and ii) provide advice to Client and Client's officials involved in the processing of applications for Wireless Telecommunications Facilities, and, in connection therewith, shall:

- a) Review all applications related to Wireless Facilities and/or their support structures, including but not limited to applications for co-locations, modifications, and upgrades of wireless facilities and support structures;
- b) Assist and advise Client in the analysis of the applications, to include attending meetings with Applicants, as well as meetings with Client's officials as needed or requested;
- c) Work Product shall be a report on the degree of compliance with Client's wireless regulations, including consultant's (non-binding) opinion as to whether a particular application should be approved or disapproved, and set forth in writing the reasons for such approval or disapproval: and
- d) Review and certify completion of the construction requested in the application and in writing recommend when/if the certificate of compliance should be issued.

4. TIME AND ATTENDANCE: COOPERATION BY THE CLIENT

Consultant shall perform the services described herein in as expeditious a manner as is reasonably possible and with due consideration of the time-related needs of Client. Client recognizes and acknowledges that the timing of the performance of Consultant's services may be affected by previous commitments to other clients (including the delivery of promised services and work product and previously scheduled meetings), and situations normally and traditionally deemed to be matters of a force majeure nature, including those influenced by weather, strikes, or power outages.

Client agrees to cooperate with Consultant on a timely basis, as needed, and to provide Consultant with copies of any records, documents, and other information needed for the fulfillment of this agreement. Client further agrees to provide Consultant with access to appropriate officials and/or employees of Client, as may be needed in the fulfillment of the agreement.

Both parties understand and agree that mutual accountability and responsiveness is critical to the successful completion

of the respective responsibilities, and therefore both shall always make their best faith efforts to be accountable and promptly responsive to each other.

5. COMPENSATION

In payment for the services to be performed hereunder by Consultant, Client shall make payments to the Consultant as follows and shall amend Client's Fee Schedule to comport with Exhibit B of this Agreement:

- a) Amendment of Schedule of Fees: To assure taxpayers are not forced to pay for the cost necessitated by applicants, Client shall promptly amend its Schedule of Fees to reflect the amounts set forth in subsections (b) through (g) of this Paragraph and Exhibit A of this Agreement.
- b) Small Wireless Facilities in the Pubic ROW: Client shall pay Consultant a "Flat Fee" of \$500.00 (up to 25 facilities can be submitted per application).
- c) Eligible Facilities: For the services to be performed by Consultant pursuant to paragraph 3 hereof as pertain to the review of the technical aspects of applications for 'Eligible Facilities' pursuant to NC GS 160A-400.53(a,3) Client shall pay Consultant a 'Flat Fee' of \$1,000.00.
- d) 'Substantial' Modifications: For the services to be performed by Consultant pursuant to paragraph 3 hereof as pertain to an un-amended/unmodified application for 'Substantial' Modification and Co-Location (as defined by applicable State law), Client shall pay Consultant a 'Flat Fee' of \$7,500.00, 50% of which shall be paid prior to any work being done related to the application, and the remaining 50% to be paid within thirty (30) days after the submittal of Consultant's written recommendation.
- e) New Towers/Support Structures: For the services to be performed by Consultant pursuant to paragraph 3 hereof involving a new tower or other support structure or for any application that is not for an Eligible Facility, Client shall pay Consultant a 'Flat Fee' of \$7,500.00, 50% of which shall be paid prior to any work being done related to the application, and the remaining 50% to be paid within thirty (30) days after the submittal of Consultant's written recommendation.
- f) Invoices shall be due and payable upon receipt, but in no case shall payment be made later than ninety (90) days after the date of the invoice.
- g) In the event of any contest or challenges of any amount owed or paid to Consultant, Consultant shall be informed of such prior to, and shall be a party to, any and all meetings, discussions, negotiations, and/or hearings involving any third party.

6. TERM OF AGREEMENT; TERMINATION

- a) This agreement shall be for a period of one (1) year, commencing on the date set forth at the top of page 1 of this Agreement. This Agreement shall be automatically renewed on an annual basis, unless written notice of non-renewal is given by either party to the other at least sixty (60) days prior to the end of the then current term.
- b) This agreement may also be cancelled by either party due to default of the other party upon 30 days' notice of said default; provided however that before terminating this agreement due to default, the non-defaulting party shall send the defaulting party written notice of the specific default, in which case the defaulting party shall have thirty (30) days to cure said default. If said default is not cured within the thirty (30) day period, then the non-defaulting party may immediately terminate this agreement. "Default" shall mean failure to comply with the terms of this agreement with due diligence, or violation of any provision of this agreement or of state or federal law.
- c) Cancellation of this agreement or failure to collect all applicable amounts as set forth in Exhibit A shall not relieve Client from paying all outstanding amounts legally due to Consultant under this agreement as of the effective date of the cancellation.

7. AGENT STATUS OF CONSULTANT

Consultant and Client agree that in the performance of Consultant's services hereunder, Consultant is an agent of Client and shall not for any reason or under any circumstances be deemed to be an employee of Client for any purpose whatsoever, nor may Consultant act under Color of State law on behalf of Client.

8. NOTICES

Any and all notices, invoices, and payments required hereunder shall be addressed to the parties at their respective addresses set forth on page 1 hereof, or to such other address as may hereafter be designated in writing by either party

hereto.

9. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

10. COMPLETE AGREEMENT; MODIFICATION

There are no terms, conditions or obligations other than those contained herein, and there are no written or verbal statements or representations, warranties or agreements with respect to this agreement which have not been embodied herein.

This agreement constitutes the complete understanding of the parties with respect to the subject matter hereof. No modification or amendment of any provisions of this agreement shall be valid unless such is in writing and signed by both parties.

IN WITNESS THEREOF, the Consultant and the Client, by individuals duly authorized to do so, have signed this agreement, the day and year first above written.

CONSULTANT

CLIENT

By: _____
Jackie B. Hicks
President
Carolina Telecommunications Services, LLC
Date: _____

By: _____(signed)
_____(printed)
Title: _____
Date: _____

EXHIBIT A

Expert Assistance Compensation:

Small Wireless Facilities in any Public ROW within the City Limits or ETJ (Up to 25 facilities can be submitted per application)	\$ 500.00
Eligible Facility (any co-location or Non-Substantial Modification):	\$1,000.00
Substantial Modification (as defined):	\$7,500.00
New Wireless Support Structure (other than utility poles):	\$7,500.00

CITY OF ELIZABETH CITY
Fee Schedule for Application Reviews of Towers and Wireless Facilities

Small Wireless Facilities in any Public ROW within the City Limits or ETJ: (\$500 Technical Consulting Fee, plus \$100 Application Fee per facility for the first five small wireless facilities addressed in the application, plus \$50 per each additional small wireless facility addressed in the application. Up to 25 facilities can be submitted per application.)	\$ 600.00 to \$2,000.00
Eligible Facility (any co-location or Non-Substantial Modification): (\$1,000 Technical Consulting Fee, plus \$250 Application Fee. Only one facility can be submitted per application.)	\$1,250.00
Substantial Modification (as defined): (\$7,500 Technical Consulting Fee, plus \$500 Application Fee. Only one facility can be submitted per application.)	\$8,000.00
New Wireless Support Structure (other than utility poles): (\$7,500 Technical Consulting Fee, plus \$500 Application Fee. Only one facility can be submitted per application.)	\$8,000.00