

# SPECIAL COUNCIL MEETING AGENDA



## **Casper City Council City Hall, Council Meeting Room Tuesday, December 11, 2018, p.m.**

Following the regularly scheduled Work Session (which begins at 4:30 p.m.)

1. ROLL CALL
2. RESOLUTION
  - A. Consent
    1. Approving a Contract for Professional Services with Thomas F. Duchon & Associates, Inc., d/b/a **River Oaks Communications Corporation** for a **Cost Study and Ordinance Updating**.
3. ADJOURN INTO EXECUTIVE SESSION – REAL PROPERTY TRANSACTION AND PERSONNEL
4. ADJOURNMENT

Upcoming Council meetings

### **Council meetings**

6:00 p.m. Tuesday, December 18, 2018– Council Chambers

6:00 p.m. Tuesday, January 8, 2018 – Council Chambers

### **Work sessions**

4:30 p.m. Tuesday, January 15, 2018 – Council Meeting Room

4:30 p.m. Tuesday, January 29, 2018– Council Meeting Room

We are CASPER

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December 5, 2018

MEMO TO: J. Carter Napier, City Manager *JCN*

FROM: John Henley, City Attorney *JH*  
Wallace Trembath, Deputy City Attorney *W.T.*

SUBJECT: Contract for Professional Services with Thomas F. Duchen & Associates, Inc., d/b/a River Oaks Communications Corporation, for a Cost Study and Ordinance Updating

Meeting Type & Date  
Special Council Meeting  
December 11, 2018

Action type  
Resolution

Recommendation

That Council, by resolution, approve a Contract for Professional Services with Thomas F. Duchen & Associates, Inc., d/b/a River Oaks Communications Corporation (“Consultant”) to perform a cost study and update the City’s *Wireless Communications Facilities Regulations* in the Casper Municipal Code.

Summary

Earlier this year, Council passed an ordinance updating section 17.12.124 of the Casper Municipal Code (*Wireless Communication Facilities Regulations*). Later, on September 27, 2018, the FCC released a *Declaratory Ruling and Third Report and Order* (“Order”) that limits state and local management of wireless communication facilities, and the associated fees for use of the rights-of-way and public property in the rights-of-way. The Ruling and Order will take effect January 14, 2019.

The City needs to update Section 17.12.124 of the Casper Municipal Code based on the Order. Part of the Order requires that for the City to receive fees over the Order’s presumptively reasonable amounts, the City must show that: 1) The fees are a reasonable approximation of costs; 2) The costs themselves are reasonable; and 3) The fees are non-discriminatory. A cost study is necessary to establish reasonable fees that may hold up to FCC and judicial scrutiny.

We are recommending a contract with the Consultant to perform this work because: 1) The Consultant worked well with the City to rewrite its *Wireless Communication Facilities Regulations* earlier this year to produce a quality product; and, 2) The Consultant is well regarded in the telecommunications industry, and has the flexibility and capacity to perform the cost study on a tight deadline, before the Order takes effect on January 14, 2019.

Financial Considerations

The Contract for Professional Services is for a cost not-to-exceed of \$55,000, plus costs and expenses not-to-exceed \$2,500. This would require a budget amendment.

Oversight/Project Responsibility

Wallace Trembath

Attachments

Resolution

Contract for Professional Services

# CONTRACT FOR PROFESSIONAL SERVICES

## PART I - AGREEMENT

This Contract for Professional Services (“Contract”) is entered into on this \_\_\_\_ day of December, 2018, by and between the following parties:

1. The City of Casper, Wyoming, a Wyoming municipal corporation, 200 North David Street, Casper, Wyoming 82601 (“City”).
2. Thomas F. Duchon & Associates, Inc., d/b/a River Oaks Communications Corporation, 6860 S. Yosemite Court, Suite 2000, Centennial, Colorado 80112 (“Consultant”).

Throughout this document, the City and the Consultant may be collectively referred to as the “parties.”

### RECITALS

- A. On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (“Order”) related to Wireless Communication Facilities (WCF) and Small Cells that limits state and local management of small wireless infrastructure deployment and the associated fees for use of the rights of way and public property in the rights of way.
- B. Among other things, the Order purports to preempt local government controls by capping fees, preempting certain aesthetic requirements, imposing new time limitations (shot clocks) for government approval, and defining physical sizes of the WCF and Small Cells.
- C. The Order allows local government to charge fees that differ from the presumptively reasonable amounts in the Order if the fees are non-discriminatory, a reasonable approximation of costs, and the costs themselves are reasonable.
- D. The Order takes effect on January 14, 2019.
- E. The City needs to review and evaluate its current Wireless Communication Facilities (WCF) and Small Cells regulation and management practices, and the associated cost categories being utilized to develop its current fee structures.
- F. The City also needs to update its WCF ordinance to harmonize with the Order.
- G. The Consultant represents that it is ready, able, and will provide professional services to City to develop a cost study and update its WCF ordinance.
- H. The City desires to retain the Consultant for such services, all as further specified below.

**NOW, THEREFORE**, in consideration of the covenants and conditions set forth herein to be performed, the parties agree as follows:

1. SCOPE OF SERVICES:

- A. The Consultant shall perform the services described in Exhibit A, the *Statement of Work for the City of Casper, Wyoming Concerning a Cost Study and Associated Fee Structure Development Relating to Small Wireless Facilities Regulation and Management*, which is attached hereto and hereby made a part of this Contract.
- B. The parties understand and agree that the Consultant is responsible for the completion of the Scope of Services under this Contract, but will use CBG Communications, Inc., as its subconsultant. The City approves of the use of CBG as a subconsultant in accordance with Part II, Section 10 of this Contract.

2. TIME OF PERFORMANCE:

- A. The Consultant shall complete the Scope of Services before the FCC Order goes into effect on January 14, 2019.

3. COMPENSATION:

In consideration of the performance of services rendered under this Contract, the Consultant shall be compensated for services performed in accordance with paragraph 1, not to exceed a lump sum of Fifty-Seven Thousand Five Hundred Dollars (\$57,500).

4. METHOD OF PAYMENT:

Payment will be made following completion of the terms set forth herein and receipt of an itemized invoice, certified under penalty of perjury, from the Consultant for services rendered in conformance with the Contract, and following approval by the Casper City Council. The invoice for payment must specify the correct amount due; that the Consultant has performed the services rendered under this Contract, in conformance with the Contract, and that it is entitled to receive the amount requested under the terms of the Contract.

If amounts owed by the Consultant to the City for any goods, services, licenses, permits or any other items or purpose remain unpaid beyond the City's general credit policy, those amounts may be deducted from the payment being made by the City to the Consultant pursuant to this Contract.

5. TERMS AND CONDITIONS:

This Contract is subject to and incorporates the provisions attached hereto as PART II -- GENERAL TERMS AND CONDITIONS.

6. EXTENT OF CONTRACT:

This Contract represents the entire and integrated Agreement between the City and the Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the City's and the Consultant's authorized representatives.

The City and the Consultant each individually represent that they have the requisite authority to execute this Contract and perform the services described in this Contract.

**IN WITNESS WHEREOF**, the undersigned duly authorized representatives of the parties have executed this Contract as of the day and year above.

APPROVED AS TO FORM

Walke D. ...

ATTEST

CITY OF CASPER, WYOMING  
A Municipal Corporation

Fleur D. Tremel  
City Clerk

Ray Pacheco  
Mayor

WITNESS

CONSULTANT  
Thomas F. Duchen & Associates, Inc.  
d/b/a River Oaks Communications Corporation

By: Thomas F. Duchen, President

Robert M. Duchen  
Vice President

Printed Name: THOMAS F. DUCHEN

Robert M. Duchen  
Vice President

Title: PRESIDENT

## **CONTRACT FOR PROFESSIONAL SERVICES**

### **PART II - GENERAL TERMS AND CONDITIONS**

#### **1. TERMINATION OF CONTRACT:**

1.1 The City may terminate this Contract anytime by providing thirty (30) days written notice to Consultant of intent to terminate said Contract. In such event, all finished or unfinished documents, data, studies and reports prepared by the Consultant under this Contract shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

1.2 Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City, by virtue of termination of the Contract by Consultant, or any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant are determined.

#### **2. CHANGES:**

The City may, from time to time, request changes in the scope of the services of the Contract. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon between the City and the Consultant, shall be incorporated in written amendments to this Contract. There shall be no increase in the amount of Consultant's compensation unless approved by Resolution adopted by City.

#### **3. ASSIGNABILITY:**

The Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City: provided, however, that claims for money due or to become due the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer shall be furnished to the City within five (5) business days of any assignment or transfer.

#### **4. AUDIT:**

The City or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, and transactions.

5. EQUAL EMPLOYMENT OPPORTUNITY:

In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The Consultant shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices required by the government setting forth the provisions of this nondiscrimination clause. The Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

6. OWNER OF PROJECT MATERIALS:

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by the Consultant under this Contract shall be considered the property of the City, and upon completion of the services to be performed, they will be turned over to the City provided that, in any case, the Consultant may, at no additional expense to the City, make and retain such additional copies thereof as Consultant desires for its own use; and provided further, that in no event may any of the documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, or other reports retained by the Consultant be released to any person, agency, corporation, or organization without the written consent of the City.

7. FINDINGS CONFIDENTIAL:

All reports, information, data, etc., given to or prepared, or assembled by the Consultant under this Contract are confidential and shall not be made available to any individual or organization by the Consultant without the prior written consent of the City.

8. GOVERNING LAW:

This Contract shall be governed by the laws of the State of Wyoming. The Consultant shall also comply with all applicable laws, ordinances, and codes of the local, state, or federal governments and shall not trespass on any public or private property in performing any of the work embraced by this Contract.



9. PERSONNEL:

The Consultant represents that it has, or will secure, all personnel required in performing the services under this Contract. Such personnel shall not be employees of the City. All of the services required shall be performed by the Consultant, or under its supervision, and all personnel engaged in the work shall be fully qualified. All personnel employed by Consultant shall be employed in conformity with applicable local, state or federal laws.

10. SUBCONSULTANT:

The Consultant shall not employ any subconsultant to perform any services in the scope of this project, unless the subconsultant is approved in writing by the City. Any approved subconsultant shall be paid by the Consultant.

11. INSURANCE AND INDEMNIFICATION:

A. **Prior to the commencement of work, Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its subconsultants, agents, representatives, or employees.**

B. *Minimum Scope and limit of Insurance.*

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. The CGL policy shall be endorsed to contain Employers Liability/Stop Gap Coverage
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than Five Hundred Thousand (\$500,000) per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of Wyoming with Statutory Limits.

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to any claimant for any number of claims arising out of a single transaction or occurrence; or the sum of Five Hundred Thousand Dollars (\$500,000) for all claims arising out of a single transaction or occurrence. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location.

C. *Higher Limits.* If the Consultant maintains higher limits than required under this Agreement, then the City shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

D. *Other Insurance Provisions*

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. *Additional Insured Status*

The City, its officers, elected and appointed officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

2. *Primary Coverage*

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected and appointed officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. *Notice of Cancellation*

Each insurance policy required above shall state that coverage shall not be canceled, materially changed, or reduced, except with notice to the City. Such notice to the City shall be provided in a commercially reasonable time.

4. *Waiver of Subrogation*

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5. *Deductibles and Self-Insured Retentions*

Consultant has two options regarding deductibles and self-insured retentions:

- a. Option 1: Any deductibles or self-insured retentions must be declared to and approved by the City. Unless otherwise approved by the City in writing, any deductible may not exceed Ten Thousand Dollars (\$10,000). Unless otherwise approved in writing by the City, self-insured retentions may not exceed Ten Thousand Dollars (\$10,000), and the City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- b. Option 2: Consultant shall carry insurance with terms that require its insurance company to pay the full value of a covered claim from the first dollar of coverage, even if the Consultant is unable to pay any deductible or self-insured retention amount(s) required by the insurance policy. Consultant shall provide a written endorsement from its insurance carrier that such insurance coverage is in place, and shall keep such coverage in place during the term of this Contract and any subsequent time period required for claims made policies.

6. *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise agreed to in writing by the City.

7. *Claims Made Policies*

If any of the required policies provide coverage on a claims-made basis:

- a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work*. However, Consultant's liabilities under this Contract shall not be deemed limited in any way by the insurance coverage required.
- c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract

effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3)* years after completion of contract work and at all times thereafter until the applicable statute of limitations runs.

8. *Verification of Coverage*

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. *Subconsultants*

Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the City is an additional insured on insurance required from subconsultants.

10. *Special Risks or Circumstances*

City reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

E. Consultant agrees to indemnify the City, the City's employees, elected officials, appointed officials, agents, and volunteers, and all additional insured and hold them harmless from all liability for damages to property or injury to or death to persons, including all reasonable costs, expenses, and attorney's fees incurred related thereto, to the extent arising from negligence, fault or willful and wanton conduct of the Consultant and any subconsultant thereof.

12. INTENT:

Consultant represents that it has read and agrees to the terms of this Contract and further agrees that it is the intent of the parties that Consultant shall perform all of the services for the compensation set forth in this Contract. Consultant also agrees that it is the specific intent of the parties, and a material condition of this Contract, that it shall not be entitled to compensation for other services rendered unless specifically authorized by the City by Resolution of its governing body. Consultant agrees that it has carefully examined the Scope of Services, and that the compensation is adequate for performance of this Contract.

13. WYOMING GOVERNMENTAL CLAIMS ACT:

The City does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statutes Section 1-39-101 et seq., and the City

specifically reserves the right to assert any and all rights, immunities, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

14. NO THIRD PARTY BENEFICIARY RIGHTS:

The parties to this Contract do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.



*St. Paul Office:* 1597 Race Street, St. Paul, MN 55102  
*Philadelphia Office:* 73 Chestnut Road, Suite 203, Paoli, PA 19301  
*New York Office:* 522 North Maple Ave., Suite A13, Ridgewood, NJ 07450

**STATEMENT OF WORK  
FOR  
THE CITY OF CASPER, WYOMING  
CONCERNING  
A COST STUDY AND ASSOCIATED  
FEE STRUCTURE DEVELOPMENT  
RELATING TO  
SMALL WIRELESS FACILITIES REGULATION  
AND MANAGEMENT**

**By**

**CBG Communications, Inc.**

**Thomas Robinson, President & CEO  
73 Chestnut Rd  
Paoli, PA 19301  
(610) 889-7470**

**River Oaks Communications Corporation**

**Bob Duchen, Vice President  
6860 S. Yosemite Court, Suite 2000  
Centennial, CO 80112  
(303)721-0653**

**November 29, 2018**

**EXHIBIT**

A

Page 1 of 5

## STATEMENT OF WORK

CBG and River Oaks will utilize a variety of data gathering methods that will allow CBG and River Oaks to review and evaluate the City of Casper's (City's) current Wireless Communication Facilities (WCF)<sup>1</sup> and Small Cells<sup>2</sup> regulation and management practices and the associated cost categories being utilized to develop their current Small Cell fee structures. This will include analysis of application, permitting, inspection, maintenance and overall management and enforcement activities, processes, procedures and policies in relation to the current fees charged, in order to identify the potential for any unrecovered cost related to the new FCC Declaratory Ruling and Third Report and Order regarding Wireless Infrastructure Deployment in the Public Rights of Way and allowable fees.

### Small Cell WCF Cost Ascertainment Process

CBG and River Oaks would provide time and cost templates, data analysis, Ordinance review, cost analysis and fee recommendations through the following means:

Due to the compressed timeframe for the project, CBG and River Oaks would require early integral participation of pertinent City departments including Public Services, Community Development and other pertinent departments such as Financial Services and Support Services. CBG and River Oaks would first develop a number of templates for information gathering, have initial conference calls/meetings with pertinent City departments and then have the departments gather and/or assemble a variety of initial data. The City would send the pertinent initial data to CBG and River Oaks, whereupon it would be analyzed and follow-up tasks would be developed and additional interviews scheduled. Then, CBG and River Oaks would further gather Small Cell WCF-related cost data through meetings (including on-site), records research, personnel interviews, activity monitoring, workflow analysis, and other data gathering methods. Once all the data has been gathered and analyzed, a data set would be used to determine an initial Small Cell management fee structure along with any necessary changes to pertinent WCF Ordinances and policies.

Overall, Tom Robinson, Project Manager, Dick Nielsen, Senior Engineer, and Krystene Rivers, Research Associate, will work with the City to review the current Small Cell management and oversight program, fee structures and their basis. As part of this review, River Oaks will review with CBG the current regulatory posture of the City with respect to Small Cell management. CBG will then review the current existing WCF policies and procedures, including ordinances, regulations, rules, policies, forms and other documentation related to permitting, inspections and related processes. This would be done in conjunction with the other documentation review performed by CBG for the Small Cell cost study.

<sup>1</sup> "Wireless Communication Facilities" or "WCF" means a staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

<sup>2</sup> "Small cells" mean compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells.

CBG will review current and projected Small Cell installation, permitting, inspection and maintenance procedures, including information flow management and installation oversight. Ultimately, this will allow determination of how the Small Cell management tasks and corresponding reimbursement best should be apportioned and allocated.

We would then review the current and projected directly reimbursable administrative, permitting, and inspection costs, maintenance costs, and zoning costs, as well as supporting and related costs. This will allow the modification and further development of application and permit fees, ongoing Small Cell management/inspection fees, and/or other applicable fees.

After review and discussion, new and/or additional Small Cell management fees would then be folded into an amendment to the current fee structures and/or proposed WCF regulatory provisions to be developed or revised. We would revise and fine tune the proposed fee structure as necessary, based upon input during the City's review process, including as determined by the City, any industry review, etc., after initial development.

More specifically, based on the data gathered, CBG would determine the following Small Cell management cost elements:

- **Directly reimbursable costs** – CBG would use both an analysis of current operations as well as a comparative and historical analysis to determine the administrative, permitting, inspection, and ongoing management (including costs incurred based on improper restoration, relocation and other post-installation activities) that would be directly attributable to the use of the public right of way by a variety of WCF/Small Cell service providers.
- **Indirect costs** – CBG would review the amount of indirect costs attributable to installation and ongoing use of the public right of way including a variety of administrative and support costs (executive branch, legislative branch, public safety, etc.) that isn't always traditionally factored into the overhead and indirect costs associated with direct cost centers such as Public Services and other pertinent departments. This includes a variety of costs such as facility support services, clerical and other administrative support, and other similar costs that don't directly factor into pertinent cost formulas.
- **Embedded versus incremental costs** – As part of our review, CBG will delineate the incremental costs (change in costs) incurred by the City related to the City's WCF management program and the newly implemented FCC regulations regarding Small Cells. While the industry typically believes that incremental costs are the only reasonable cost to be reimbursed to municipalities, CBG and River Oaks do not agree and therefore will gather, review and analyze fully allocated embedded costs and compare the two types in our report.

Once costs are fully determined, they then need to be allocated to the WCF and Small Cell user community based on a defensible methodology. These costs will be allocated based on the impact of each wireless facility and its usage of the right of way, and thus a direct comparison to



the FCC's fees can be conducted. Overall apportionment of cost is typically directly related to the impact that the provider has on the right of way (for example, those with greater placements in the right of way typically cause the largest ongoing management costs, while those that have the most significant installation during any given period will have the greatest costs associated with permitting, inspection and zoning).

- **Compensation methodology/Fee Structure** – From all the information gathered, CBG would ultimately recommend an appropriate compensation methodology and level of compensation, potentially resulting in changes to the current fee structure, depending upon findings during the information-gathering phase.
- **Recommendation for implementation/further action** – CBG and River Oaks would provide recommendations for appropriate Small Cell fees and a plan for implementation, as well as recommendations for any changes to City processes, policies and procedures and possibly further review and analysis if necessary.
- **Written report** – CBG and River Oaks will provide their recommendations in a thorough but concise written report to the City.

### **Small Cell/WCF Regulatory Review Process**

River Oaks has already developed Wireless Communication Facilities regulations for the City. During this cost review, River Oaks will review any proposed changes in the fees needed to properly reimburse the City's management for the Small Cells in the rights of way. These fees will be compared to the new FCC Declaratory Ruling and Third Report and Order regarding Wireless Infrastructure Deployment in the Public Rights of Way. In that regard, River Oaks will develop the following:

- **Drafting of any proposed changes to Wireless Communications Facilities Regulations** – After or before the regulatory and cost reviews are completed, River Oaks will draft appropriate documents to address those and other key changes in the City Ordinance. The documents would include changes to the existing WCF ordinance that are consistent with applicable federal and state law, telecommunications laws, rules, regulations and controlling court decisions. It would also include documents necessary for the implementation of the changes to the ordinance. River Oaks will then submit the proposed documents to the City officials for review and comment. This step will be done in conjunction with the preparation of the Small Cell cost study conducted by CBG.

A conference call and meeting can then be scheduled to receive comments and answer any questions the City may have regarding the recommended documents. CBG and River Oaks will incorporate suggested comments and changes into the documents and finalize them for consideration by the elected governing bodies.

- **Provider identification and engagement** – Once the documents are completed, we recommend that the City, with the assistance of CBG and River Oaks, identify the

providers/telecommunications companies who would likely be impacted by the new policies and to inform the key providers regarding the new substantive provisions. In our experience, this is a prudent course of action for at least two reasons.

First, the engagement process helps to create (or maintain) an atmosphere of cooperation with the industry representatives by informing them regarding their new regulatory obligations. Second, and perhaps more important, it allows the City to obtain comments and any objections to the new fee structure before it is implemented. The City may then decide whether or not to revise the ordinance or other documents to address these concerns prior to implementation.

The identification of providers would involve CBG and River Oaks working with the Public Services Department and any other appropriate officials to pull permits and any other evidence of providers that occupy the public rights-of-way. We would also utilize our firms' knowledge of providers in the area as well as independent research. We would then attempt to contact all or a selected subset of these providers to advise them of the pending new fee structure and to obtain their comments. We would recommend that this be accomplished through one face-to-face meeting, and that such meeting include CBG and River Oaks.

### **Approval and Implementation of Changes to the Wireless Communication Facilities Ordinance**

The final step in the Statement of Work is to assist the City in the approval and implementation of changes to the Ordinance and related documents. River Oaks will draft an executive summary of the ordinance changes and CBG will draft an executive summary of the cost ascertainment report for the elected officials.

Once the ordinance changes have been approved, River Oaks can draft letters to providers notifying them of enactment of the changes.

The Cost Study incorporates a significant amount of work that can be done by E-mail, telephone, and Federal Express. When personnel are needed on-site at your location for a variety of Small Cell management cost analyses, review and assessment tasks, planning sessions, document drafting and negotiations, public meetings, etc., we will be there.

RESOLUTION NO. 18-264

A RESOLUTION AUTHORIZING A CONTRACT FOR PROFESSIONAL SERVICES WITH THOMAS F. DUCHEN & ASSOCIATES, INC., D/B/A RIVER OAKS COMMUNICATIONS CORPORATION.

WHEREAS, the City is undertaking a project to perform a cost study and revise the Casper Municipal Code (“Code”) to address new federal laws, rules and regulations regarding telecommunications; and,

WHEREAS, the project requires professional services to update section 17.12.124 (*Wireless Communication Facilities Regulations*) and any other applicable portions of the Code; and,

WHEREAS, the project requires professional services to perform a cost study about fees in City rights-of-way; and,

WHEREAS, Thomas F. Duchen & Associates, Inc., d/b/a River Oaks Communications Corporation (“Consultant”) represents that it is ready, willing, and able to provide the professional services to City as required by the Contract; and,

WHEREAS, the City desires to retain the Consultant for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: That the Mayor is hereby authorized and directed to execute, and the City Clerk to attest, a Contract for professional services between the City and Consultant.

BE IT FURTHER RESOLVED: That the City Manager is hereby authorized to make verified partial payments throughout the term of the agreement, in an amount not to exceed Fifty-Seven Thousand, Five Hundred Dollars (\$57,500).

PASSED, APPROVED, AND ADOPTED on this \_\_\_ day of \_\_\_\_\_, 2018.

APPROVED AS TO FORM:



ATTEST:

\_\_\_\_\_  
Fleur D. Tremel  
City Clerk

CITY OF CASPER, WYOMING  
A Municipal Corporation

\_\_\_\_\_  
Ray Pacheco  
Mayor