

10/15/97

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

ORDINANCE NO. 749

AN ORDINANCE APPROVING A CONTRACT WITH
METROSITE MANAGEMENT, LLC, FOR CONSULTING SERVICES
RELATED TO WIRELESS COMMUNICATION TOWERS,
CITY OF LEROY, MC LEAN COUNTY, ILLINOIS

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY
THIS 15th DAY OF September, 1997

PRESENTED: September 15, 1997

PASSED: September 15, 1997

APPROVED: September 15, 1997

RECORDED: September 15, 1997

PUBLISHED: September 15, 1997

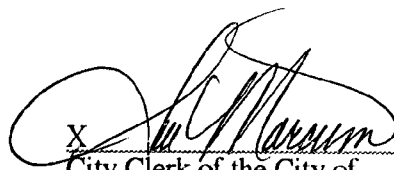
In Pamphlet Form

Voting "Aye" 5

Voting "Nay" 0

The undersigned being the duly qualified and City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)

X 
City Clerk of the City of
LeRoy, McLean County, Illinois

Dated: September 15, 1997.

ORDINANCE NO. 749

AN ORDINANCE APPROVING A CONTRACT WITH
METROSITE MANAGEMENT, LLC, FOR CONSULTING SERVICES
RELATED TO WIRELESS COMMUNICATION TOWERS,
CITY OF LEROY, MC LEAN COUNTY, ILLINOIS

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have determined that it is in the best interests of the City and its residents to obtain consulting services and marketing services in regard to making cellular, PCS, and other wireless communication tower and antennae sites available to providers in the industry; and

WHEREAS, MetroSite Management, LLC, is in the business of providing such services and has proposed a contract for consideration by the City of LeRoy,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of LeRoy, Illinois, in lawful meeting assembled, as follows:

Section 1. The proposed contract between MetroSite Management, LLC, and the City of LeRoy, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference, is hereby approved.

Section 2. The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of that agreement as set forth in Exhibit "A" attached hereto, being certain to obtain one or more fully signed copies for the records of the City.

Section 3. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by
Dawn Thompson....., seconded by Dick Oliver..... by roll
call vote on the 15th day of September, 1997, as follows:

Aldermen elected 6

Aldermen present 5

VOTING AYE:

Ryan Miles, Ron Litherland, W. H. Weber, Dawn Thompson, Dick Oliver
(full names)

VOTING NAY:

None
(full names)

ABSENT, ABSTAIN, OTHER:

Dave McClelland, absent
(full names)

and deposited and filed in the office of the City Clerk in said municipality on the 15th day of
September, 1997.



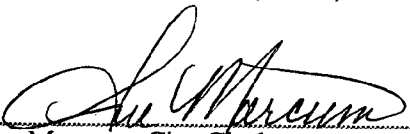
Sue Marcum, City Clerk of the City of LeRoy,
McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 15th day of
September, 1997.



Robert Rice, Mayor of the City of LeRoy, McLean
County, Illinois

ATTEST: (SEAL)


Sue Marcum, City Clerk,
City of LeRoy, McLean County, Illinois

WIRELESS COMMUNICATIONS CONSULTING
AND MARKETING AGREEMENT

THIS EXCLUSIVE WIRELESS COMMUNICATIONS CONSULTING AND MARKETING AGREEMENT ("Agreement") is entered into as of the ___ day of _____, 199__ by and between MetroSite Management, LLC, an Arkansas Limited Liability Company, having its principal place of business at #1 Shackleford Drive, Suite 500, Little Rock, Arkansas 72211 ("MetroSite"), and City of LeRoy, McLean County, _____, (the "Client").
Illinois, an Illinois
municipal corporation

WITNESSETH:

WHEREAS, the Client desires to engage MetroSite to provide consulting and marketing services to Client; and

WHEREAS, MetroSite desires to enter into this Agreement subject to the terms, covenants and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SERVICES

1.1 Description and Performance of Services. MetroSite shall provide the following services to the Client during the Term of this Agreement:

(a) Electronic Database. The establishment of an electronic database which shall include an inventory of the Client's assets which may be marketed as potential wireless communications facilities (Facilities). The Client shall provide the necessary information or allow MetroSite reasonable access to the Facilities to obtain such information.

(b) Marketing. MetroSite shall market Facilities for lease to wireless communications companies.

(c) Negotiation. MetroSite shall coordinate in the negotiation of leases or licenses on behalf of Client. Client shall provide reasonable assistance to MetroSite in the performance of MetroSite's services under this Agreement.

(d) Coordination. MetroSite shall provide assistance to and on behalf of the Client in coordinating the equipment installation utility requirements and means of ingress and egress of wireless communications companies.

(e) Lease Administration. MetroSite shall collect on behalf of the Client and shall disburse the revenues to the Client within thirty (30) days of the date of receipt of those sums by MetroSite.

2. COMPENSATION

In consideration of MetroSite's performance of the Services, MetroSite shall receive a portion of all revenues arising from any lease or license of Facilities. Said consideration shall be deducted from revenues in accordance with section 1(e). Notwithstanding a termination of this Agreement by either party pursuant to section 6.2, MetroSite shall receive a portion of all revenues arising from the lease or license of Facilities by the Client to wireless communications companies for the initial term of the lease or license and any extensions or renewals thereof which leases or licenses were entered into by the Client during the term of this Agreement or which were entered into by the Client after the termination of this Agreement but Client had been introduced to the prospective wireless communications company by MetroSite. MetroSite shall periodically notify the Client in writing of the wireless communications companies contacted by MetroSite on behalf of Client in order to document this list of wireless communications companies which MetroSite introduced to Client. Compensation for all Illinois municipalities shall be according to the Fee Schedule Addendum Number One attached.

3. OTHER SERVICES AND COSTS

In addition to the services itemized in section 1.1 above, MetroSite may provide such additional services as may be requested by Client at the rates disclosed on Addendum Number Two attached hereto which may be revised by MetroSite from time to time upon notice to Client.

4. EXCLUSIVITY

During the term of this Agreement, the Client shall not engage an independent contractor, consultant or employees to perform services the same as or similar to the Services on behalf of the Client unless MetroSite has materially breached any of the terms, covenants or conditions contained in this Agreement and MetroSite has failed to cure any such breach within sixty (60) days of the date of receipt by MetroSite of notice of an alleged breach from the Client.

5. RECORDS AND REPORTS

5.1 Books and Records. MetroSite shall maintain books and records at MetroSite's offices in Little Rock, Arkansas which shall be available for inspection by the Client through its agents or representatives during normal working hours as the Client shall reasonably request. MetroSite shall maintain such books and records for not less than three (3) years following the termination or expiration of this Agreement.

5.2 Status Reports. MetroSite shall submit to the Client periodic status reports setting forth a summary of all expenses and the revenues generated by all Facility leases or licenses entered into by Client.

6. TERM AND TERMINATION

6.1 Term. Subject to the termination provisions set forth in Section 6.2, this Agreement shall have an initial term of five (5) years, commencing on Oct. 1, 1997 and terminating on Sept. 30, 2002, (Initial Term) which shall be automatically extended for three (3) separate additional five (5) year terms unless either party shall provide the other written notice of its desire not to renew this Agreement ninety (90) days in advance of the lapse of the then existing term.

6.2 Termination and Actions Thereafter.

(a) This Agreement may be terminated by the Client by written notice to MetroSite upon a material breach by MetroSite of any of the provisions of this Agreement provided Client has provided written notice to MetroSite specifying the facts giving rise to the alleged breach and MetroSite fails to commence and diligently proceed with efforts to cure the alleged breach within thirty (30) days of the date of receipt of said notice from the Client.

(b) This Agreement may be terminated by MetroSite by written notice to the Client upon a material breach by the Client of any of the provisions of this Agreement, provided MetroSite has provided written notice to the Client specifying the facts giving rise to the alleged breach and the Client fails to commence and diligently proceed with efforts to cure the alleged breach within thirty (30) days of the date of receipt of said notice from MetroSite.

7. RELATIONSHIP OF THE PARTIES

7.1 Independent Status. The relationship of MetroSite to the Client hereunder shall be that of an independent contractor. Nothing in this Agreement is intended or shall be construed to constitute MetroSite, or any of its employees, agents or subcontractors, an employee agent or partner of the Client, nor shall MetroSite, or any of its employees, agents or subcontractors have authority to bind the Client in any respect. The Client shall not be liable for any negligent or willful act or omission of MetroSite or its employees, agents or subcontractors, and MetroSite agrees to indemnify, defend and hold harmless the Client and its directors, officers, partners, agents and employees from and against any and all losses, damages, costs and expenses (including attorneys' fees and expenses) in any manner resulting from or arising out of any negligent or willful act or omission or any breach of MetroSite's obligations under this Agreement. The Client shall hold harmless MetroSite and its directors, officers, members, agents, and employees from and against any and all losses, damages, costs and expenses (including attorney's fees and expenses) in any manner resulting from or arising out of any negligent or willful act or omission, any breach of the Client's obligations under the Agreement or any defect or unsafe or dangerous condition existing on Premises owned by Client.

7.2 Political Subdivisions. Client represents and warrants to MetroSite that it has full right, power and authority to enter into this Agreement and to bind Client's affiliates, subsidiaries and political subdivisions to this Agreement.

8. RESTRICTIVE COVENANTS

8.1 Confidential Information. Unless authorized or instructed in writing by MetroSite, the Client shall not, during or at any time after the term of this Agreement except as required in the conduct of MetroSite's business, disclose to others, or use, or permit to be disclosed to others or used, any of MetroSite's works, ideas, information, or knowledge which the Client may obtain during the course of or in connection with the services provided by MetroSite, including such works, ideas, information, or knowledge relating to systems, software, research and/or development, designs, compositions, formulae, processes, business methods, present and prospective customers of MetroSite, business dealings with such customers, prospective marketing, promotion, sales and advertising programs and strategies. Irrespective of whether or not such inventions, discoveries, works, ideas, information, knowledge or data have been identified by MetroSite as secret or confidential, unless and until, and then to the extent and only to the extent that such information becomes available to the public otherwise than by the Client's act or omission, all inventions, discoveries, works, ideas, information, knowledge, and data

described or referred to in this Section 8.1 are referred to herein collectively as "Confidential Information".

8.2 Essence of Agreement. The Client acknowledges (i) that the use, misappropriation or disclosure of the Confidential Information (as defined in Section 8.1) would constitute a breach of trust and cause irreparable injury to MetroSite, (ii) that all such Confidential Information is the property of MetroSite and (iii) that it is essential to the protection of the goodwill and to the maintenance of MetroSite's competitive position that the Confidential Information be kept secret and that the Confidential Information not be disclosed by the Client to others or used by the Client to the Client's own advantage or the advantage of others. The Client further acknowledges that the Client's agreement to the provisions of this Article 8 and the enforceability of such provisions against the Client are an essential element of this Agreement and that, absent such provisions and the enforceability thereof, MetroSite would not (i) engage the Client nor (ii) permit the Client access to and use of Confidential Information.

8.3 Non-solicitation. During the term of this Agreement and for 180 days thereafter, the Client shall not (i) solicit or induce any employee of MetroSite to leave the employ of MetroSite or (ii) hire or attempt to hire any employee of MetroSite.

8.4 Equitable Relief. The Client acknowledges that the provisions of Articles 7 and 8 of this Agreement are material to MetroSite, that MetroSite would not have entered into this Agreement if it did not include Articles 7 and 8, and that the damages sustained by MetroSite as a result of a breach of those Articles cannot be adequately remedied by damages at law. MetroSite shall be entitled to injunctive and any other equitable relief to prevent or curtail any breach of Articles 7 and 8 of this Agreement, in addition to any other remedy it may have at law.

9. INSURANCE

MetroSite shall maintain, at its expense, a policy or policies of insurance for each type of coverage and with the minimum limits stated below:

(a) Commercial general liability insurance and errors and omissions insurance, including broad form contractual coverage, insuring against liability arising out of or based upon any act or omission of MetroSite its officers, directors, employees and agents. Such insurance shall provide coverage to a limit of not less than One Million Dollars (\$1,000,000);

(b) Comprehensive automobile liability insurance covering liability arising out of or based upon the use of any owned, hired or non-owned automobile or other automobile equipment. Such insurance shall provide coverage to a limit of not less than One Million Dollars (\$1,000,000); and

(c) Workers' compensation insurance covering the liability of MetroSite and its subcontractors arising out of or based upon injury to and death of employees. Such insurance shall provide coverage for employer's liability under any applicable state or federal workers' compensation law to a limit of not less than the requirements of applicable law.

(d) Fidelity Bonding coverage is an amount not less than One Hundred Thousand Dollars \$100,000).

10. MISCELLANEOUS

10.1 Additional Actions and Documents. Each of the parties hereto shall take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further documents, and will obtain such consents, as may be necessary or as may be reasonably requested in order to effectuate fully the purposes, terms and conditions of this Agreement.

10.2 Entire Agreement; Amendment. This Agreement together with Addendum One and Addendum Two constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed and delivered by the party against whom enforcement of the amendment, modification, or discharge is sought.

10.3 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

10.4 Governing Law. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Illinois .

10.5 Notices. All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, sent by overnight courier or mailed by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by telegram, facsimile or telex, addressed as follows:

(a) If to the Client:

City of LeRoy
111 East Center Street
LeRoy, IL 61752
Attn: City Clerk
(309) 962-3031

(b) If to MetroSite:

MetroSite Management
#1 Shackelford Drive, Suite 500
Little Rock, AR 72211
Attn: Olan Asbury
(501) 228-6400

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication that shall be hand delivered, sent, mailed, telecopied or telexed in the manner described above shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or (with respect to a facsimile or telex) the answerback being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

10.6 Headings. Article and Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

10.7 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

10.8 Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

10.9 Limitation on Benefits. The covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto and their respective successors and permitted assigns.

10.10 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assign.

10.11 Survival. The provisions contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties shall survive completion of performance and termination of this Agreement, including the making of any and all payments due hereunder.

10.12 Force Majeure. MetroSite shall not be responsible for delays resulting from failure by the Client to respond in a timely manner with respect to decisions required to be made by the Client under this Agreement. In addition, MetroSite shall not be responsible for delays caused by factors beyond the reasonable control of MetroSite, including but not limited to, weather, strikes, or problems with governmental or zoning approval; provided, however, that in the case of problems with governmental approvals, MetroSite agrees to notify the Client as soon as it becomes apparent that a particular site may present unusual or inordinate delays in obtaining the necessary zoning of other governmental approvals.

ADDENDUM NUMBER ONE

Fee Schedule

Contractor and the "IML" agree that the fees paid to the Contractor by Illinois municipalities shall not be greater than the following:

<u>LEASE TERM</u>	<u>FEE</u>
1 st five years of each lease	30% of gross lease value
Lease years 6-10	27% of gross lease value
Lease years 11 and greater	25% of gross lease value

In order to provide an incentive for municipalities of all sizes throughout Illinois to retain Contractor, Contractor will prospectively discount the above fees for all existing and future leases based upon the number of Illinois municipalities served by Contractor;

<u>NUMBER OF ILLINOIS MUNICIPALITIES</u>	<u>FEE DISCOUNT</u>	<u>FEE</u>	
0 - 100	zero	same as above	
101 - 250	10%	1 st 5 years	27%
		years 6-10	24.3%
		years 11+	22.5%
251 - 500	12.5%	1 st 5 years	26.25%
		years 6-10	23.63%
		years 11+	21.88%
501 or more	15%	1 st 5 years	25.50%
		years 6-10	22.95%
		years 11+	21.25%

IN WITNESS WHEREOF, the Client and MetroSite have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

Client:
City of LeRoy

Date: September 15, 1997

By: x Robert Rice
Name: Robert Rice

Title: Mayor, City of LeRoy

ATTEST: (SEAL)

By: _____
Sue Marcum
Title: City Clerk, City of LeRoy

MetroSite Management, LLC

Date: September 15, 1997

By: _____
Name: _____

Witness: _____

Title: _____

ADDENDUM NUMBER TWO

ADDITIONAL SERVICES AND FEES

Zoning and Permitting Consultation	\$ _____/hour
Land Use and Land Planning Consultation	\$ _____/hour
Radio Frequency (RF) Review	\$ _____/hour
Tower Construction Consultation	\$ _____/hour
Zoning Application Review	\$ _____/hour

CERTIFICATE

I, Sue Marcum, certify that I am the duly appointed and municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on September 15, 1997, the Corporate Authorities of such municipality passed and approved Ordinance No. 749, entitled:

AN ORDINANCE APPROVING A CONTRACT WITH
METROSITE MANAGEMENT, LLC, FOR CONSULTING SERVICES
RELATED TO WIRELESS COMMUNICATION TOWERS,
CITY OF LEROY, MC LEAN COUNTY, ILLINOIS,

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 749, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on September 15, 1997, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 15th day of September, 1997.

(SEAL)


Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, Sue Marcum, do hereby certify that I am the duly qualified and acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such acting City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE APPROVING A CONTRACT WITH
METROSITE MANAGEMENT, LLC, FOR CONSULTING SERVICES
RELATED TO WIRELESS COMMUNICATION TOWERS,
CITY OF LEROY, MC LEAN COUNTY, ILLINOIS.

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 15th day of September, 1997, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 15th day of September, 1997.



City Clerk

(SEAL)