

PUBLIC WORKS & UTILITIES COMMITTEE

13-0207R

RESOLUTION AUTHORIZING AN AGREEMENT WITH BENCH STRENGTH PARTNERS, INC., FOR PROFESSIONAL SERVICES IN THE NEGOTIATION OF CONTRACTS FOR RENTAL OF SPACE BY COMMUNICATION CARRIERS ON DESIGNATED COMMUNICATION AND WATER TOWER INFRASTRUCTURE, TO BE PROVIDED AT NO COST TO THE CITY UNTIL A SPECIFIC ECONOMIC RESULT IS ACHIEVED.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Bench Strength Partners, Inc., (BSP), substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for professional services in the negotiation of contracts for all carriers on the city's communication and water tower infrastructure to be provided at no cost to the city until BSP earns specific economic results in accordance with the "BSP Success-Based Fee Structure" specified in Exhibit B of the contract; said compensation payable from revenues deposited in Water Fund 510 and payable from Dept./Agency 500 (Public Works & Utilities), Div. 1900 (Public Works Director's Office), Obj. 5441 (Other Services & Charges).

Approved:



Department Director

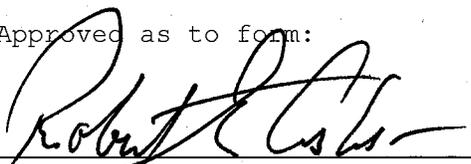
Purchasing Agent 

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution authorizes an agreement with Bench Strength Partners, Inc., (BSP), whereby BSP becomes the city's sole and exclusive representative for the negotiation of leases, licenses, or other agreements for the rental of space on city property for the placement of cellular antennas and related equipment for the locations listed in the contract. The city shall draft and approve all contracts with carriers. BSP shall earn a fee providing services described in the agreement, based on revenues generated for the city of Duluth.

The "BSP Success-Based Fee Structure" is listed below:

Increased Rent		BSP Fee
From	Up to	Percentage
0%	20%	0%
20.01%	30%	15%
30.01%	40%	20%
40.01%	50%	25%
50.01%	or above	30%

Bench Strength Partners, Inc., is a consulting firm, located in Pelham, New York, with a focus on helping clients achieve the maximum value for cell tower assets.

Requisition No. 13-0315

BENCH STRENGTH PARTNERS, INC.
EXCLUSIVE REPRESENTATION AGREEMENT
FOR LEASE OF, OR LICENSE TO USE MUNICIPAL PROPERTY

THIS EXCLUSIVE REPRESENTATION AGREEMENT ("Agreement"), effective as of the date of attestation by the City Clerk, is made by and between Bench Strength Partners, Inc. a corporation having an office at 99 Tulip Avenue, Floral Park, NY 11001 ("BSP") and the City of Duluth, Minnesota municipal corporation having an office at 411 West 1st Street, Duluth, Minnesota 55802 ("CLIENT").

The CLIENT hereby designates BSP as its sole representative and grants BSP the exclusive right to negotiate leases, licenses or other agreements for the rental of space on CLIENT property identified on the attached Exhibit A for the placement of cellular antennas and related equipment based on the terms and conditions contained herein. BSP agrees that (i) all leases, licenses or other agreements are subject to CLIENT City Council approval, and (ii) CLIENT is not obligated to accept any leases, licenses or other agreements negotiated by BSP.

1. **TERM AND TERMINATION:** The term of this Agreement commences on the date of execution and will end on the 5th anniversary of such date unless earlier terminated as provided for herein. Either party shall have the right to terminate this Agreement due to a material breach by the other party of any of its representations, warranties, covenants or obligations under this Agreement, which breach has not been cured within a reasonable time after receipt of notice specifying such breach. Notwithstanding the foregoing, beginning at the fourth (4th) year of the Agreement, either CLIENT or BSP shall have the right to terminate this Agreement with or without cause upon ninety (90) days written notice. Notice shall be provided in accordance with the terms of this Agreement. In the event of early termination, CLIENT will pay to BSP its earned Fee based on Schedule B for the term of the Tenant's lease (excluding any renewal), unless the BSP is in material breach or default under this Agreement. In the event of termination due to breach by BSP, CLIENT shall retain all other remedies available to it, and the CLIENT shall be relieved from payment of any fees in respect of the services of BSP which gave rise to such breach

2. **SCOPE of AGREEMENT:** CLIENT appoints BSP as its sole and exclusive representative for the negotiation of leases, licenses or other agreements for the rental of space on CLIENT property for the placement of cellular antennas and related equipment for the location(s) listed on Exhibit A ("CLIENT Property"). Exhibit A may be amended by Client upon written notice to BSP in the event Client determines in good faith that the addition or removal of a location is in the best interests of the citizens of Duluth. This agreement covers: (a) renewals on existing leases for cell carriers, (b) new leases for carriers that seek new or additional space on CLIENT property, and (c) renegotiation of existing leases should that occur outside the context of a lease renewal. BSP shall not be responsible for drafting the lease document. Instead, BSP will work with CLIENT counsel and suggest best practices model lease terms including but not limited to pricing, access controls and changing and modification of equipment on CLIENT Property for CLIENT's counsel to incorporate into the final lease document.

3. **BSP SERVICES:** BSP will provide its best efforts to negotiate leases acceptable to CLIENT. If BSP reasonably determines that it is necessary, in its sole and absolute discretion, to retain other experts as part of the negotiation process, BSP will engage such experts at its own cost. BSP will be responsible for the actions or inactions of such experts.
4. **CLIENT REFERRALS:** CLIENT shall refer to BSP all inquiries and offers received by CLIENT regarding the lease or offer to lease any CLIENT property for the placement of cellular antennas and related equipment, regardless of whether the location of such offer is listed on Exhibit A. All negotiations for leases on locations listed on Exhibit A will be conducted solely by BSP or under BSP's direction, subject to CLIENT's review and final approval.
5. **BSP FEES:** As compensation for the professional services rendered by BSP, CLIENT will pay BSP based on the Fee Schedule included as part of this agreement as Exhibit B. CLIENT and BSP agree that the Fee Schedule is a success fee structure, and that no fee will be earned by BSP unless specific economic results are achieved, all as more particularly defined on Exhibit B.
6. **PROPERTY INFORMATION:** CLIENT acknowledges that BSP is not responsible to determine whether toxic or hazardous wastes, substances, or levels of radio frequency emissions or undesirable materials or conditions currently exist or that could potentially exist in the future at the locations listed on Exhibit A. CLIENT acknowledges that it is solely CLIENT's responsibility to conduct investigations to determine the presence of such materials or conditions.
7. **INSURANCE:**
 - a. **Insurance Requirements-Operator.** BSP shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below:
 - i. Comprehensive General Liability with limits no less than \$1,000,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, Facilities and products/completed operations liability, contractual liability, and independent contractors liability.
 - ii. Business Automobile Liability with limits no less than \$1,000,000 each occurrence including leased automobile liability and non-owned and hired automobile liability.
 - iii. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employees Liability Insurance in limits of \$100,000 per employee.
 - iv. Employee dishonesty insurance on all of its employees in an amount of not less than \$250,000 for each occurrence.

- b. The CLIENT represents that it is self-insured with regard to comprehensive liability and property damage claims with a combined single limit of \$1,500,000 which are set forth within Minnesota Statute 466. The CLIENT also represents that it is self-insured with regard to Workers' Compensation claims. There are no certificates that are issued for self-insured Workers' Compensation and General Liability insurance.
- c. Requirements for All Insurance. All insurance required in this paragraph shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota and with companies or underwriters satisfactory to the City Attorney.
- d. Additional Insureds. The CLIENT shall be named as additional insured on each of the BSP's policies above except the Workers' Compensation policy.
- e. Insurance Primary. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by CLIENT.
- f. Insurance Certificate. Certificates showing that BSP is carrying the above-described insurance in the specified amounts shall be furnished to CLIENT prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with CLIENT during the term of this Agreement. Failure of BSP to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve BSP from any responsibility to carry the required types and amounts of insurance.
- g. Notice of Change or Cancellation. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least thirty (30) days' advanced notice being given to CLIENT. Failure to give such notice to CLIENT shall render any such change or changes in said policy or coverages ineffective as against CLIENT.
- h. ACORD Form. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by CLIENT Attorney's Office.
- i. Disclaimer. CLIENT does not represent or guarantee that these types or limits of coverage are adequate to protect the BSP's interests and liabilities. It shall be the obligation and responsibility of BSP to insure, as it deems prudent, its own personal property, against damage. The CLIENT does not have insurance coverage for BSP's property and CLIENT expressly disclaim any and all liability for any and all losses, damage and/or claims to personal possessions of BSP.

8. **INDEMNITY.** BSP shall defend, indemnify and hold CLIENT and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the

BSP's a) breach of this agreement or b) its negligence or misconduct or that of its experts, agents or contractors in performing the Services hereunder or c) any claims arising in connection with BSP's employees, agents, experts or contractors, or d) the use of any materials supplied by the BSP to the CLIENT unless such material was modified by CLIENT and such modification is the cause of such claim. This Paragraph shall survive the termination of this Agreement for any reason.

9. DATA, RECORDS AND INSPECTION.

- a. The CLIENT agrees that it will make available all pertinent information, data and records under its control for BSP to use in the performance of this Agreement, or to assist BSP wherever possible to obtain such records, data and information.
- b. Records shall be maintained by BSP in accordance with requirements prescribed by the CLIENT and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- c. BSP will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d. BSP shall be responsible for furnishing to the CLIENT records, data and information as the CLIENT may require pertaining to matters covered by this Agreement.
- e. BSP shall ensure that at any time during normal business hours and as often as the CLIENT may deem necessary, there shall be made available to the CLIENT for examination, all of its records with respect to all matters covered by this Agreement BSP will also permit the CLIENT to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

10. BSP REPRESENTATION AND WARRANTIES.

BSP represents and warrants that:

- a. BSP and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. BSP and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the CLIENT and in

accordance with the then current generally accepted standards of the profession for the provisions of services of this type.

c. BSP has complied or will comply with all legal requirements applicable to it with respect to this Agreement. BSP will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the BSP is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the BSP contrary to the terms of any instrument or agreement.

e. There is no litigation pending or to the best of the BSP's knowledge threatened against the BSP affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the BSP to perform its obligations hereunder.

f. The BSP will not, without the prior written consent of the CLIENT, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

11. **OTHER CLIENTS:** BSP believes that each location is unique and that no conflicts of interest currently exist or will arise in the future. However, it is possible that BSP could be engaged to represent a landlord other than CLIENT in the same geographic area of a CLIENT location that is listed on Exhibit A. If that were to occur, BSP will notify CLIENT of that potential conflict and request the CLIENT to consent to BSP's representation of such other landlord unless:

- a. the location for the other landlord is greater than 2 miles from a CLIENT location listed on Exhibit A; OR
- b. the location for the other landlord is within 2 miles from a CLIENT location listed on Exhibit A, but the representation agreement between BSP and such other landlord is executed after CLIENT's lease for CLIENT's location has been executed, and provided further that the leases for such other landlord are not scheduled to expire within 12 months of a future lease expiration on CLIENT's location(s) listed on Exhibit A.

BSP and CLIENT agree that situations covered by subparagraphs (a) and (b) within this section 7 are deemed not to present a conflict of interest.

12. **AUTHORITY:** Each party represents to the other that it has the authority to enter and sign this Agreement. The individuals signing this Agreement represent that they are authorized signatories of CLIENT and BSP.

13. **PROFESSIONAL ADVICE:** BSP recommends that CLIENT obtain legal, tax, or other professional advice relating to this Agreement and the leases that may result from services rendered pursuant to this Agreement. Notwithstanding the foregoing, BSP acknowledges and agrees that CLIENT is relying on BSP's expertise relating to the valuation and negotiation of the leases for space on municipal assets for the placement of cellular antennas and related equipment
14. **CONFIDENTIAL & PROPRIETARY INFORMATION:** BSP represents that it has developed a unique process regarding the valuation and negotiation of leases for space on municipal assets for the placement of cellular antennas and related equipment. The factors used by BSP and the process used to determine such value and to negotiate leases has been developed through the investment of significant resources for research and development, database development, and geocoding mapping, along with the investment of significant time to accumulate market, industry, and technological information that is critical to BSP's unique process. Disclosure of this information by CLIENT may cause substantial injury to the competitive position of BSP. Accordingly, to the extent allowed by law including the Minnesota Data Practice Act, CLIENT shall not disclose any non-public, proprietary or confidential information labeled as "CONFIDENTIAL" regarding BSP's proprietary approach, unique process, factors considered, method of BSP Fee calculation .

BSP agrees that all reports, data, information, documentation and materials given to or prepared by BSP pursuant to this Agreement will be confidential and will not be released by BSP without prior authorization from the CLIENT.

Notwithstanding the foregoing, both BSP and CLIENT agree that any final executed lease resulting from the services of BSP shall not be considered confidential nor is the amount of any fee paid to BSP considered confidential under the provisions of this paragraph.

15. INDEPENDENT CONTRACTOR.

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting BSP as an agent, representative or employee of the CLIENT for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. BSP and its employees shall not be considered employees of the CLIENT, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of BSP's employees while so engaged, and any and all claims whatsoever on behalf of BSP's employees arising out of employment shall in no way be the responsibility of CLIENT. Except for compensation provided in Paragraph 5 of this Agreement, BSP's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from CLIENT, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, CLIENT shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's

intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

c. BSP expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

16. **SURVIVAL:** This Agreement is binding upon the parties hereto and their respective successors and assigns.
17. **MISCELLANEOUS:** Unless the context clearly indicates the contrary, words in this Agreement used in this singular number shall include the plural number and words in this Agreement used in the plural number shall indicate the singular number. This Agreement shall be governed by the laws of the State of Minnesota, without giving effect to Minnesota's principles of conflicts of law.
18. **SEVERABILITY** In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement
19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between CLIENT and BSP and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both CLIENT and BSP. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties thereto.
20. **NOTICES:** Notices to CLIENT and BSP shall be delivered to the addresses noted below.

Bench Strength Partners, Inc.
99 Tulip Avenue, Suite 202
Floral Park, NY 11001
Attn: Mr. Francis Clerkin

City of Duluth, Minnesota
411 West 1st Street
Duluth, Minnesota 55802

Executed, this _____ day of _____, 2013

BENCH STRENGTH PARTNERS, INC.

BY: 

Name: Francis P. Clerkin _____

Title: Partner _____

CITY OF DULUTH

By: _____
Its Mayor

Attest:

By: _____
City Clerk
Date:

Countersigned:

City Auditor

Approved as to form:

City Attorney

**BENCH STRENGTH PARTNERS, INC.
EXCLUSIVE REPRESENTATION AGREEMENT
FOR LEASE OF OR LICENSE TO USE MUNICIPAL PROPERTY**

EXHIBIT A – SCHEDULE OF LOCATIONS

This Exhibit A to the agreement dated April ____ 2013 (“Agreement”) between the City of Duluth, Minnesota (“CLIENT”) and Bench Strength Partners, Inc. (“BSP”) describes the location(s) for which the CLIENT has designated BSP to act as CLIENT’s Exclusive Representative.

LOCATION(S):

- 1. ELEVATED WATER TOWER (ORPHANAGE) LOCATED AT EAST MANKATO STREET & MINNEAPOLIS AVENUE, DULUTH, MN WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

- 2. ELEVATED WATER TOWER (PROCTOR) LOCATED AT VINLAND STREET & PORTAL AVENUE, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

- 3. ELEVATED WATER TOWER (HIGHLAND) LOCATED AT NORTH BASSWOOD AVENUE & OLIVE STREE, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

- 4. ELEVATED WATER TOWER (HAWKS RIDGE) LOCATED AT EAST SKYLINE PARKWAY, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

- 5. SKI JUMP STRUCTURES (CHESTER PARK) LOCATED AT 1805 EAST SKYLINE PARKWAY, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

- 6. RADIO TOWER (PARK POINT) LOCATED AT MINNESOTA AVENUE, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.**

7. BUILDING (WADE STADIUM) LOCATED AT 101 NORTH 35TH AVENUE WEST, DULUTH, MN, WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.

8. BUILDING (CITY HALL) LOCATED 411 WEST 1ST STREET, DULUTH, MN AT , WITH A 5 YEAR TERM COMMENCING ON THE DATE OF EXECUTION OF THE EXCLUSIVE REPRESENTATION AGREEMENT INCLUDING EXHIBITS A & B.

Executed, this _____ day of April 2013

BENCH STRENGTH PARTNERS, INC.

CITY OF DULUTH, MINNESOTA

BY:

Francis P. Clerkin

BY: _____

Name: Francis P. Clerkin

Name: _____

Title: Partner

Title: _____

BENCH STRENGTH PARTNERS, INC.
EXCLUSIVE REPRESENTATION AGREEMENT
FOR LEASE OF OR LICENSE TO USE MUNICIPAL PROPERTY

EXHIBIT B – FEE SCHEDULE

This Exhibit B to the Representation Agreement, (“Agreement”) between the City of Duluth, Minnesota (“CLIENT”) and Bench Strength Partners, Inc. (“BSP”) describes the conditions upon which a fee will be earned by BSP and the terms concerning the timing of payment of such fee.

1. **FEE SCHEDULE:** BSP shall earn a fee for providing the services described in the Agreement, but only if such services result in an executed lease between CLIENT and a Tenant as hereinafter defined. Fees are earned only on the Increased Rent to be paid to CLIENT by Tenant over the Term of the lease. Tenant means the cell carrier who has or intends to place cellular antennas and/or related equipment on a CLIENT Property. The Term of the lease is the initial fixed term as defined in the lease. Renewal options or extensions of the new lease are discussed in paragraph 2 below. The Increased Rent is defined as the total rent scheduled to be paid over the Term of the lease plus any additional rent enhancements discussed in paragraph 6 below, minus the Baseline Rent, defined as the product of (i) the annual rental in effect at the conclusion of the existing lease and (ii) the term, in years, of the new lease. The Fee Percentages applied to the increased rent shall be those on the schedule below. The Fee Percentages within each range of increased rent shall be applicable only to the increased rent within that range of percentage increases.

Increased Rent		BSP Fee
<u>From</u>	<u>Up To</u>	<u>Percentage</u>
0%	20%	0%
20.01%	30%	15%
30.01%	40%	20%
40.01%	50%	25%
50.01% or above		30%

For example, if a new lease was executed and the Increased Rent was 20%, no fee would be earned. If the Increased Rent were 35%, the fee earned by BSP would be the sum of (i) the BSP Fee Percentage (20%) applied to the Increased Rent between 30% and 40%, plus (ii) the BSP Fee Percentage (15%) applied to the Increased Rent between 20% and 30%.

2. **REPLACEMENT TENANTS:** In the event that BSP negotiates a lease with a new Tenant and such Tenant replaces the space leased by an existing Tenant that elects not to renew their lease, BSP shall earn a fee on the lease with the Replacement Tenant on the same terms as described in paragraph 1 above, and in such event the Baseline Rent shall be based on the rent of the Tenant that is being replaced by the new Tenant.
3. **ADDITIONAL TENANTS:** In the event that BSP negotiates a lease with a Tenant not currently leasing space on a particular CLIENT property and such Tenant is in addition to and not in replacement of an

existing Tenant, BSP shall earn a fee for negotiating such lease based on the same terms as described in paragraph 1, and in such event the Baseline Rent shall be based on the highest of the annual rents ("High Annual Rent") then in effect for all other leases at the subject location, except that any leases then in effect that have been entered into as a result of the services provided by BSP pursuant to this Agreement shall be ignored and the annual rental of leases in effect at the specific location prior to leases resulting from services provided by BSP shall be used in calculating such High Annual Rent.

4. **TENANT LEASE CANCELLATION CLAUSES:** In the event that either CLIENT or Tenant have the right to cancel a lease at a time subsequent to the execution of the lease, BSP shall be paid fees for the entire lease term (excluding renewal options) as though such right to cancel did not exist.
5. **ENHANCED REVENUE:** In calculating the fees pursuant to paragraph 1 above, the increased rent shall include all incremental revenue to which CLIENT is entitled that either stems from lease provisions that were not present in the existing lease, or relate to increased revenue terms for lease provisions that were present in the existing lease. The forgoing does not include any fees or costs that CLIENT passes on to a Tenant for payment of services provided by CLIENT. (For example: if the CLIENT pays a tower climber to inspect Tenant's equipment and then request payment from the Tenant as reimbursement, BSP would not be entitled to any compensation related to such service payment)
6. **TIME OF PAYMENT:** Fees earned by BSP pursuant to this Agreement shall be earned upon execution of a lease agreement with a Tenant, or upon exercise of any renewal options with Tenant attributable to services provided to CLIENT by BSP and upon subsequent payment by Tenant to CLIENT. CLIENT shall pay BSP its fee of the enhanced revenues actually received by CLIENT under the Tenant lease until the fee computed pursuant to paragraph 1 has been fully paid. The first such payment shall be made on the date of Rent Commencement under the subject lease. Additional payments shall be made on each anniversary of the date of Rent Commencement until the total fee earned by BSP has been paid.
7. All payments to BSP will be made without deduction for taxes, contributions or social costs or of any kind. BSP shall have sole responsibility for payment of all taxes, contributions and social costs imposed or required by any country or jurisdiction under unemployment insurance, workers compensation, social security and income tax laws and other tax laws and for filing all required forms with the appropriate jurisdictions with respect to any amounts paid by CLIENT to BSP. BSP shall indemnify and hold CLIENT harmless against any claim or liability (including penalties) resulting from failure of BSP to pay such taxes or contributions, or failure of BSP to file any such forms.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Executed, this ___ th day of _____, 2013.

BENCH STRENGTH PARTNERS, INC.

CITY OF DULUTH

BY: Francis P. Clerkin

By: _____
Its Mayor

Attest:

Name: Francis P. Clerkin

By: _____
City Clerk
Date: _____

Title: Partner

Countersigned:

City Auditor

Approved as to form:

City Attorney



Proposed Purchase for City of Duluth

Public Administration Department- Communications-Public Works & Utilities

Resolution: 13-0207R

Subject: Bench Strength Partners Contract for Professional Services

Purpose: This proposal is one of the recommended projects of the City’s Communications Committee to address areas of improvement and innovation in citywide communications. Last year, Bench Strength Partners hosted a seminar for municipalities in the state to hear about their services and expertise in the area of negotiating fair, market rate contracts between municipalities and communications carriers. Staff from the Communications Committee attended and since that time, have met with Bench Strength to discuss our specific situation to learn how they could assist the City to more effectively manage our tower and water tank assets. From those discussions, we feel it would be beneficial to enter into a performance based agreement with them. This agreement is a five year agreement with the City maintaining the ability to opt out at the end of the third year.

With the growing need for carrier communications bandwidth along with our local geographic topology, our towers and water tanks are a valuable commodity to many when trying to expand a carrier’s communications footprint to better serve their customers. Bench Strength Partners offers expertise in the ability to properly value and negotiate market level revenues for City assets which may be currently valued at rates below market level. Also, with the potential growth in vendors using our assets as well as the complexity of these issues, they will bring expertise to assist us in standardizing all of the various carrier rental agreements to ensure that the City’s interests are met in a consistent manner. We will be more proactive in the assessment and management of changes on each of the various communication structures to eliminate the potential for interference or disruption of service to our rental customers, as well as our own public safety communication needs.

Cost/Benefit Information: The City currently has eight separate sites with multiple leases per site, with all rental agreements handled on a case by case basis. Rental costs have typically been based upon what neighboring communities are receiving and have been primarily status quo for more than a decade. The City currently receives approximately \$140,000 annually for all lease agreements combined. The shortcoming in this approach is that it does not consider the unique value of each location or any of the many factors such as the availability of alternative sites, the infrastructure investment, the coverage provided at the existing site, and the population density surrounding the site – all of which should be used in rate setting. We will utilize Bench Strength Partners to provide expertise to properly value our assets and then negotiate agreements with vendors to obtain fair, market value rates. This agreement is performance based and therefore has no initial up-front cost for this service. Bench Strength Partners will be paid on a percentage scale that is detailed below and will receive no fee unless the City realizes an increase of at least 20.01%. Once that is attained, Bench Strength is paid a fee percentage on only the additional revenue negotiated.

Increased Rent		BSP Fee Percentage
From	Up to	
0%	20%	0%
20.01%	30%	15%
30.01%	40%	20%
40.01%	50%	25%
50.01%	or above	30%

Funding Information: Any costs will be payable from the revenues that are generated from the services provided by in this agreement.