

## **AGREEMENT**

This agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between RICHARD A. COMI, d/b/a THE CENTER FOR MUNICIPAL SOLUTIONS (herein after referred to as Consultant) (mailing address: 70 Cambridge Drive, Glenmont. New York 12077), party of the first part, and THE CITY OF DULUTH (hereinafter referred to as Client) (mailing address: 411 W. First Street, Room 208, Duluth, Minnesota 55802), party of the second part.

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

1. **PURPOSE**

Client hereby retains Consultant for the purpose of reviewing and analyzing select applications received by Client for Wireless Telecommunications Facilities.

The Consultant shall furnish appropriate Wireless Telecommunications Facilities siting assistance and advice to Client and Client officials involved in the processing of applications for Wireless Telecommunications Facilities, and, in connection therewith, shall:

- (a) Review new location (where no existing facilities are on that structure) facility applications filed with Client for Wireless Telecommunications Facilities;
- (b) Assist and advise Client as regards new location (where no existing facilities are on that structure) facility applications, to include attending meetings with the Applicants and/or Client's staff and/or officials as required;
- (c) Recommend in writing to Client whether a particular application should be approved or disapproved, and set forth in writing the reasons for such approval or disapproval; and,
- (d) Inspections of the construction of the facility and in writing recommend when/if the certificate of compliance should be issued.

In addition to review of new location (where no existing facilities are on that structure) facilities, consultant shall, at the request of Client, review and advise Client in relation to applications for modifications and collocations to existing facilities. In these cases the entire application will be reviewed by CMS.

2. **TIMES AND ATTENDANCE: COOPERATION BY CLIENT**

Consultant shall perform the services described herein in as expeditious a manner as is reasonably possible and with due consideration of the time requirements of Client. Client recognizes that the timing of the performance of Consultant's services may be affected by previous commitments to other clients (including the delivery of promised services and work product and previously scheduled meetings), and situations normally and

traditionally deemed to be matters of a force majeure nature, including those influenced by the weather, strikes, or power outages.

Client agrees to cooperate with Consultant, as needed, and to provide Consultant with copies of any records, documents and other information needed for the fulfillment of this agreement on a timely basis. Client further agrees to provide Consultant with access to appropriate officials and/or employees of Client, as may be needed in the fulfillment of the agreement. Moreover, both parties understand and agree that mutual accountability and responsiveness is critical to the successful completion of the project, and therefore both shall always make their best faith efforts to be accountable and promptly responsive to each other.

3. COMPENSATION

In payment for the services to be performed hereunder by Consultant, Client shall make payments to the Consultant as follows:

- (a) For the services to be performed by the Consultant pursuant to paragraph 3 hereof, Client shall pay Consultant its normal hourly rate (which at the date of this agreement is \$250.00 per hour, but is subject to reasonable change over time) for each hour of time devoted by Consultant to the performance of such services, provided, however, that for time traveling by Consultant in conjunction with the performance of such services Client shall pay Consultant only 50% of the Consultant's normal published rate. (The draft Ordinance as initially provided to Client shall require an applicant to pay, in advance of any work related to the application or the application process, a sum to be put into an escrow account to assure that Client is reimbursed by the applicant for the amounts payable by Client hereunder to the Consultant.)
- (b) Consultant shall invoice Client regularly, but no less frequently than monthly, after services have been performed, for any compensation payable pursuant to paragraph 5(b) of this agreement. Such itemized invoices shall be due and payable upon receipt, but in no case later than thirty (30) days.

4. REIMBURSEMENT FOR EXPENSES

For services performed hereunder, Client shall reimburse Consultant, for reasonable out-of-pocket expenses for the following items: (a) Travel-related costs such as coach airfare, car rental, night lodging accommodations and meals consumed while on-site or enroute, except that such meal reimbursement shall not include alcoholic beverages; (b) Expedited or overnight delivery service; (c) Any other reasonably necessary expenses directly related and attributable to the fulfillment of this agreement.

Consultant's requests for expense reimbursement shall be included in Consultant's invoice at actual cost, with no markup.

5. TERM OF AGREEMENT: TERMINATION

This agreement shall be for a period of a minimum of three (3) years commencing on the date set forth at the top of page one (1) of this agreement. At the end of the three years

this agreement will be terminated. In the event that the Consultant refuses or fails to provide services hereunder with due diligence, or is guilty of a substantial violation of any provision of this agreement, Client shall send Consultant written notice that the Consultant has thirty (30) days to cure said default; and, if at the end of said thirty (30) day period Consultant has not cured said default, this agreement may be terminated.

6. STATUS OF CONSULTANT

Consultant and Client agree that in the performance of Consultant's services hereunder, Consultant shall not be deemed to be an employee of Client for any purpose whatsoever, nor act under Color of State.

7. NOTICES

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

8. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and interpreted in accordance with the Laws of the State of Minnesota. Any dispute shall be venued In the State District Court of Minnesota, St. Louis County, Sixth Judicial District, Duluth.

9. COMPLETE AGREEMENT: MODIFICATION

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

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

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

CITY OF DULUTH

CONSULTANT

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
R.A. Comi  
The Center for Municipal Solutions

Attest: \_\_\_\_\_  
City Clerk

Countersigned:

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City Auditor

Approved as to form:

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City Attorney