

DEDA: N/A  
Contract #: 21 860 124

## **PROFESSIONAL SERVICES AGREEMENT**

### **Duluth Economic Development Authority and EntryPoint, LLC, DBA EntryPoint Networks**

THIS AGREEMENT is by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and EntryPoint, LLC, a Limited Liability Company, doing business as EntryPoint Networks, hereinafter referred to as "EntryPoint".

WHEREAS, DEDA desires broadband internet consulting services, and

WHEREAS, EntryPoint is in the business of providing technology, networking, security, municipal broadband internet and other related consulting services (the "Services"); and

WHEREAS, EntryPoint has experience and expertise in providing such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

## **ARTICLE I**

### Scope of Professional Services

- A. Description of Work. EntryPoint will provide technology, networking, security, municipal broadband internet and other related consulting services (the "Services") to the DEDA further-described in Exhibit A, attached hereto and incorporated by reference into this Agreement.
- B. The City will designate a project manager for the Project, and EntryPoint will designate a primary contact for the Services.

## **ARTICLE II**

### Professional Fees and Payment

DEDA shall pay EntryPoint the rates (the "Rates") for the Services as delineated in Exhibit A attached hereto and incorporated by reference into this Agreement. DEDA's total payment under this Agreement shall not exceed twenty-five thousand dollars (\$25,000). Payments shall be made from DEDA fund 860-860-8640-5319. EntryPoint shall be paid for the Services within thirty

(30) days of DEDA's receipt of an invoice. All services provided by EntryPoint pursuant to this Agreement must be performed to the satisfaction of DEDA. EntryPoint shall invoice on a monthly basis up to \$5,000 per month over the estimated 5 months for the professional services engagement. EntryPoint shall not receive payment for work deemed by DEDA to be unsatisfactory, or performed in violation of federal, state, or local law, ordinance, rule, or regulation.

### **ARTICLE III**

#### Assignability

EntryPoint and DEDA shall not in any way assign or transfer any of their rights or interests under this Agreement in any way whatsoever.

### **ARTICLE IV**

#### Term

The term of this Agreement shall commence on August 13, 2021 and shall continue, unless earlier terminated as provided for herein, for a period of December 31, 2021.

### **ARTICLE V**

#### Termination of Services

Either party may terminate this Agreement at any time prior to the end of the Term due to the other party's material breach of any of its obligations hereunder, which breach has not been cured to the non-breaching party's reasonable satisfaction within a reasonable time, not to exceed ten (10) business days, after receipt of written notice specifying such breach.

### **ARTICLE VI**

#### Standard of Performance

EntryPoint agrees that all services to be provided to DEDA pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type. EntryPoint represents and warrants that:

- A. EntryPoint shall perform its respective duties in a professional and diligent manner in the best interests of DEDA and in compliance with all applicable laws.

- B. EntryPoint 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.

## **ARTICLE VII**

### Records and Inspection

A. Establishment and Maintenance of Records.

EntryPoint shall maintain all of its records for a period of six (6) years after receipt of final payment under this project.

B. Accounting.

All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Reports and Information.

EntryPoint shall be responsible for furnishing to DEDA records, data, and information as DEDA may require pertaining to matters covered by this Agreement.

## **ARTICLE VIII**

### Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting EntryPoint as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever. No EntryPoint employees shall be considered an employee of DEDA. No EntryPoint employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay from DEDA.

## **ARTICLE IX**

### Liability

- A. EntryPoint agrees to indemnify, save, and hold DEDA, its employees and representatives harmless from any all claims or causes of action, including attorneys' fees incurred by

DEDA, arising from the performance of this Agreement by EntryPoint or its agents or employees.

## **ARTICLE X**

### **Insurance.**

- a. EntryPoint shall procure and maintain continuously in force a policy of insurance covering all of its activities and services provided pursuant to this Agreement. A Comprehensive General Liability Insurance policy shall be maintained in force by EntryPoint throughout the life of this agreement in an amount not less than Two Million Dollars (\$2,000,000.00). Such coverage shall include all EntryPoint activities and services, regardless of whether said activities are performed by employees or agents under contract to EntryPoint. Such policy of insurance shall be approved by the DEDA Attorney and shall contain a condition that it may not be cancelled without thirty (30) days written notice to DEDA. The Duluth Economic Development Authority shall be named as an additional insured on said policy of insurance required by this paragraph.
- b. EntryPoint shall provide to DEDA Certificates of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal or material change provisions included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the EntryPoint's interests and liabilities.
- c. DEDA reserves the right to require EntryPoint to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn.Stat. Sec. 466.04 are increased.
- d. DEDA does not intend to waive any legal immunities, defenses, or liability limits that may be available.

## **ARTICLE XI**

### **Civil Rights Assurances**

DEDA and EntryPoint hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

## **ARTICLE XII**

### Rules and Regulations

DEDA and EntryPoint agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, and DEDA and their respective agencies, which are applicable to its activities under this Agreement.

## **ARTICLE XIII**

### Data Practices

EntryPoint, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act (HIPAA), if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. If EntryPoint creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of DEDA pursuant to this Agreement, then EntryPoint must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. EntryPoint agrees to defend, indemnify and hold harmless DEDA, its officials, officers, agents, employees, and volunteers from any claims resulting from EntryPoint's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. EntryPoint agrees to promptly notify DEDA if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

#### **ARTICLE XIV**

##### Notices

Notice provided for herein shall be sufficient if sent by email or regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

CITY:

Chris Fleege  
Planning and Economic Development Director  
DEDA  
411 West First Street, Room 160  
Duluth, MN 55802  
[Cfleege@duluthmn.gov](mailto:Cfleege@duluthmn.gov)

ENTRYPOINT:

Devin Cox, EVP Business Development  
[dcox@entpnt.com](mailto:dcox@entpnt.com)  
Entry Point, LLC  
1949 West Printers Row  
Salt Lake City, Utah 84119  
With a Copy to: Jeff Christensen  
[jchristensen@entpnt.com](mailto:jchristensen@entpnt.com)

#### **ARTICLE XV**

##### Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

#### **ARTICLE XVI**

##### Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

#### **ARTICLE XVII**

##### Severability

In the event any provision herein is deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

#### ARTICLE XVIII

##### Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements, negotiations, and previous agreements between the parties relating to the subject matter hereof.

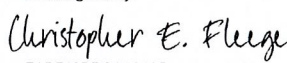
#### ARTICLE XIX

##### Amendments

Any amendment or modification to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

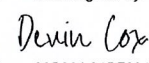
**IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.**

##### **DEDA**

By   
EADF18DDCAA84AD...  
Christopher E. Fleege

Title: Executive Director DEDA  
Dated 8/13/2021

##### **ENTRYPOINT, LLC**

By   
395C8AC1D720494...  
Devin Cox

Title: EVP Business Development  
Dated 8/13/2021

## **EXHIBIT A – SERVICES**

### **SCOPE OF WORK**

---

EntryPoint's Consulting Services Group recommends the following Scope of Work for analyzing the feasibility of deploying city-wide fiber optic infrastructure. EntryPoint will work with representatives of Duluth to develop the proposed detailed Feasibility Analysis and an actionable Broadband Master Plan:

#### **Education**

- » Educate City Leadership {City Council & City Chief Administrative Officer (CAO)} on Key Options for Strategy.
- » Hold 1 on 1 sessions with City CAO and City Council (Department Heads as Needed).
- » Provide a comparison of available media (Fiber Optic, DSL, Coaxial Cable, Wireless).
- » Develop a list of key considerations for the City Council, City CAO, and Staff.

#### **Community Engagement**

- » Develop and conduct a statistically valid broadband survey of residents and businesses.
- » Develop a Community Engagement Plan including budget, timeline, and milestones.
- » Work with the Duluth team to develop and deploy marketing and education messaging.

#### **Planning, Analysis & Documentation**

- » Work with City legal advisor(s) to establish that the City of Duluth has the legal authority to own and operate broadband infrastructure.
- » Work with City leaders and legal advisors to produce a recommendation on the specific legal structure and legal implications of this structure for housing a potential City owned network.
- » Work with the City Council and Mayor and other leaders to create Operational Definitions of Success and document these definitions.
- » Work with the Duluth team to Develop a Broadband Strategy.
- » Conduct a Market Analysis to clearly identify services, service providers, current average prices and speeds from the available carriers operating in Duluth today.
- » Provide the Pros and Cons of available business models currently deployed in the U.S. including the incumbent model and successful / viable municipal broadband models.
- » Document community survey results.
- » Provide a comparison of the cost of Inside Plant and Outside Plant Equipment for the network for a passive Optical Network vs an Active Ethernet Network Design.
- » Conduct a Risk Analysis for all project phases.

- » Identify Potential Project Partners (Engineering, Construction, Middle Mile, ISP).
- » Establish initial pricing from multiple ISPs and Middle Mile Carriers.
- » Work with the City to model a projected Monthly Network Operations Fee for residents and businesses.
- » Create a High-Level Network Design for a Fiber to the Business and Fiber to the Premise Network.
- » Prepare an analysis and recommendation on whether the City should pursue pure aerial, pure underground, or a hybrid (aerial & underground).
- » Prepare a Cost Breakdown for Network Materials.
- » Prepare a Projected Cost Breakdown for Network Installation.
- » Create a Financial Pro-Forma based on Cost Structure.
- » Establish a projected cost per premise based on a breakdown of all cost variables.
- » Projection on engineering and construction costs will not be firm until the City conducts RFPs
- » Develop draft RFP's for Engineering and Construction, including the option of a Design/Build solution for the City own infrastructure needs.
- » Engage Potential Project Partners (Engineering, Construction, Middle Mile, ISP).
- » Provide Planning Assistance for Construction Financing and Long-Term Financing.
- » Work with the City to identify potential sources for construction financing and long-term financing.
- » Determine the optimal legal structure for the project and the associated options for financing the network. Develop recommendations for the funding path for the three financial categories:
  - » Infrastructure
  - » Operations and Maintenance of the network
  - » Service Providers
- » Develop a Broadband Plan and deliver report to the City Council and City CAO.
- » Develop a Next Steps Plan in conjunction with the Broadband Report.