

AGREEMENT FOR PROFESSIONAL SERVICES
Moss & Barnett

THIS AGREEMENT, entered into this 20th day of November, 2017, by and between the CITY OF DULUTH, (the City), and MOSS & BARNETT, a professional association (Consultant).

WHEREAS, the City desires to secure the professional services to assist it in its cable franchise renewal process and general cable matters; and

WHEREAS, Consultant is able and willing to provide said services to the City and is technically competent to do so.

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

ARTICLE I

Scope of Professional Services

Consultant agrees to provide the following services with regard to the cable franchise renewal process and general cable matters at the direction of the City Administrator or his designee (the City Administrator):

- a. Assist in the assessment of future cable needs in the community;
- b. Conduct a franchise fee payment desk review or audit;
- c. Prepare and finalize franchise documents;
- d. Participate in negotiations with the cable company;
- e. Meet with City officials; and
- f. Provide such other services as may, from time to time, be requested by the City Administrator.

ARTICLE II

Compensation and Billing

The total cost of all payments to Consultant for services rendered and reimbursement of expenses shall not exceed the sum of Twenty Five Thousand and No/100ths Dollars (\$25,000), which shall be payable from Fund 110, Agency 700, Org. 1407, Obj. 5319.

Services shall be billed at the rates set forth in Exhibit A. Any increase in such rates must be approved in writing by the City Chief Administrative Officer (the "CAO") prior to any such increase. In addition, Consultant shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in the performance of its services hereunder including photocopying, delivery and messenger services, telecopying, consultant expenses, WESTLAW, travel, food and lodging. Notwithstanding the above, expenses for consultant's travel and lodging must be approved in advance by the CAO or such expenses shall not be reimbursed.

All bills for services performed or for reimbursement of expenses shall be submitted no more frequently than monthly to the City in care of City of Duluth, 410 City Hall, Duluth, Minnesota 55802, Attn: City Auditor. Such billings shall be accompanied by documentation as shall be reasonably requested by the City and shall include an itemized statement summarizing the services rendered and the costs and expenses incurred on the City's behalf. The City will contact Consultant in writing within thirty (30) days of receipt of its statement if the City has a question regarding any charges on its statement. If Consultant does not hear from the City, it will assume that there are no questions or problems. All balances on the City's account are due forty-five (45) days after the date of the statement. Interest at the legal rate shall accrue on the unpaid balance of the City's account from the due date.

ARTICLE III

Delivery of Services

Mr. Brian Grogan shall assume primary responsibility for the delivery of professional services required by this Agreement. While professionals with Consultant other than Mr. Grogan may perform services on the City's behalf, it is understood and agreed that Mr. Grogan will not be removed or replaced as the primary and responsible attorney for all services without the prior written consent of the CAO. Consultant will use its best judgment to determine the most economical use of its attorneys and staff personnel.

ARTICLE IV

Assignability

Consultant shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the prior written approval of the CAO.

ARTICLE V

Term

The term of this Agreement shall commence upon the date set forth above and continue unless and until terminated by either party as provided for in Article VI, provided nothing herein shall authorize or require Consultant to provide services requiring compensation in excess of that authorized herein without further amendment hereto.

ARTICLE VI

Termination of Services

The City or Consultant may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. Consultant shall be entitled to compensation for work satisfactorily performed by it to and including the date of written notice of termination of this Agreement, including reimbursable expenses.

ARTICLE VII

Standard of Performance

Consultant agrees that all services to be provided to the City pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

ARTICLE VIII

Records and Inspections

A. Records

1. Establishment and Maintenance of Records

Records shall be maintained by Consultant in accordance with requirements prescribed by the City 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 Project.

2. Documentation of Costs

Consultant 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 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.

B. Reports and Information

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

C. Audits and Inspections

Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, and other data relating to all matters covered by this Agreement.

D. Confidentiality of Information

All reports, data, information, documentation and material given or prepared by the Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City except as required for the performance of Consultant's services or as required by law.

E. Ownership of Data

Upon termination or completion of the services provided hereunder, all property and finished or unfinished documents, writings, reports, records and other data prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City.

ARTICLE IX

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 Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Consultant shall not be considered an employee of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Consultant while so engaged and any and all claims whatsoever on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents, contractors or employees shall in no way be the responsibility of the City. Consultant and its officers and employees shall not be entitled to any compensation or

rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the City shall not, in any 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 while performing the work specified by this Agreement.

ARTICLE X

Indemnity and Insurance

A. Indemnity

Consultant agrees that it shall defend, indemnify and save harmless, the City and its officers, agents, servants and employees from and against any and all claims of any type, and any and all demands, suits, judgments, costs and expenses asserted by any person(s), including agents or employees of the City or of Consultant, by reason or death of or injury to person(s) or the loss of or damage to property arising out of Consultant's performance or its obligations under this Agreement. On ten (10) days' written notice from the City, Consultant will appear and defend all lawsuits against the City growing out of such injuries or damages.

B. Insurance

1. During the term of this Agreement, Consultant shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

City of Duluth shall be named as Additional Insured under the General Liability, Excess Umbrella Liability (An Umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured) and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Consultant shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance. Consultant to provide certificate of insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provocations included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less

than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage's evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.

The use of an "Accord" 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 the Duluth City Attorney's Office.

2. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made" insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

ARTICLE XI

Nondiscrimination

Consultant agrees to comply in all respects with all federal, state and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter promulgated pertaining to unlawful discrimination.

ARTICLE XII

Rules and Regulations

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

ARTICLE XIII

Allowed Adverse Representation

A. City acknowledges that Consultant has represented, now represents, and will continue to represent Verizon Wireless on a wide variety of real estate, zoning and leasing

matters in cities throughout the state of Minnesota, including the City of Duluth, and several surrounding states. Consultant's representation of Verizon Wireless is handled by attorneys other than Brian Grogan. Brian Grogan will not handle work on behalf of Verizon Wireless in the City and the attorneys handling the Verizon Wireless work in the City will not undertake any of the work contemplated by the scope of services of this Agreement.

B. Given Consultant's representation of Verizon Wireless, without a binding conflict waiver, conflicts of interest might arise that could deprive the City or Verizon Wireless of the right to select Consultant as their legal counsel. Thus, the City agrees that Consultant may, now or in the future, represent Verizon Wireless, including in litigation, adverse to the City on matters that are not substantially related to the legal services that Consultant rendered, is rendering, or in the future will render to the City under this Agreement (an "Allowed Adverse Representation"). The City also agrees that it will not assert that either (a) Consultant's representation of the City in any past, present, or future matter or (b) Consultant's actual, or possible, possession of confidential information belonging to the City is a basis to disqualify Consultant from representing Verizon Wireless in any Allowed Adverse Representation. The City agrees that any Allowed Adverse Representation does not breach any duty that Consultant owes to the City.

ARTICLE XIV

Notices

Notice to the City or Consultant provided for herein shall be sufficient if sent by the 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: City of Duluth
411 West First Street
402 City Hall
Duluth, MN 55802
Attn: Chief Administrative Office

Consultant: Moss & Barnett
150 South Fifth Street
Suite 1200
Minneapolis, MN 55402
Attn: Brian Grogan

ARTICLE XV

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. The venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

ARTICLE XVI

Amendments

Any amendment 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.

ARTICLE XVII

Waiver

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

ARTICLE XVIII

Severability

In the event any provision herein shall be 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 XIX

Entire Agreement

This Agreement, including all attachments, constitutes the entire Agreement between the City and Consultant and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

MOSS & BARNETT

By: _____
Mayor

By: _____
Its: _____

Attest: _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

Consultant's 2017 hourly rates for communications work on behalf of municipal clients ranges from \$180/hour for paralegal work to \$480/hour for senior shareholder work. Consultant generally finds that the average hourly rate for municipal franchise renewal work is approximately \$295/hour. The parties recognize that neither the City nor Consultant can control the actions of the cable operator during renewal negotiations; and, therefore the cost may be higher or lower than the estimated costs. Consultant's billing rates are subject to change from time to time, generally in January of each year.