

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

THIS REPRESENTATION AGREEMENT ("Agreement"), dated as of the _____ day of _____, 20____, (the "Effective Date") between **Bench Strength Partners, Inc.** a corporation located at 26 First Street, Pelham, NY 10803 ("BSP") and the **City of Saint Paul**, a municipal corporation of the State of Minnesota, Department of Parks and Recreation, located at 25 West 4th Street, Saint Paul, Minnesota 55102 (the "CLIENT").

The CLIENT hereby designates BSP as its sole representative and grants BSP the exclusive right to negotiate leases, licenses, lease buyouts or other agreements for the rental of space on CLIENT Parks and Recreation property, as defined herein, for the placement of cellular antennas and related equipment based on the terms and conditions contained herein.

1. **TERM:** The term of this Agreement commences on the date of execution and will end on the 5th anniversary of such date. This Agreement may not be terminated, unless a party breaches the agreement, until the second anniversary of the Effective Date. This Agreement may be terminated by CLIENT at any time after such second anniversary. In the event of such a termination, BSP shall be entitled to a fee, computed and payable in accordance with this Agreement, if the CLIENT concludes a new agreement or modification to an existing agreement for the placement of cellular antennas and related equipment within two (2) years from the date of such termination, provided that BSP has, during the first two years of this Agreement, earned a fee as set forth in paragraph 5.
2. **SCOPE of AGREEMENT:** CLIENT appoints BSP as its sole and exclusive representative for the negotiation of leases, licenses, lease buyouts or other agreements for the rental of space on CLIENT Parks and Recreation property for the placement of cellular antennas and related equipment for the location(s) listed on Exhibit A. 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 model lease terms for CLIENT's counsel to incorporate into the final lease document, or other form of agreement.
3. **BSP SERVICES:** BSP will provide its best efforts to negotiate lease terms acceptable to CLIENT. All lease terms and proposals negotiated by BSP are subject to the CLIENT approval. CLIENT is not bound to accept lease terms negotiated by BSP. 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.

4. **CLIENT REFERRALS:** CLIENT shall refer to BSP all inquiries and offers received by CLIENT regarding the leases defined in Section 2, including any offer to buy out the revenue stream from the lease or offer to lease any CLIENT property for the placement of cellular antennas and related equipment, including, at the CLIENT's discretion, when the location of such offer is not listed on Exhibit A. All negotiations for leases on locations listed on Exhibit A will be conducted by BSP or under BSP's direction, subject to CLIENT's review and final approval.
5. **ADDITIONAL LEASE PARTNERSHIPS:** BSP shall be the only representative authorized to negotiate lease terms on behalf of the CLIENT for the locations listed on Exhibit A.
6. **BSP FEES:** CLIENT agrees to compensate BSP, and BSP agrees to accept compensation for its services, 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.
7. **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.
8. **INSURANCE:** BSP shall, at its expense, maintain insurance in full force and effect during the term of this Agreement of the kind and in the amounts shown below for the life of the contract. Insurance certificates for General Liability should state that the City of Saint Paul, its officials, employees, agents and representatives are named as Additional Insured(s) in such amounts as to meet the minimum limits of liability specified below:
 - a. **Public Liability Insurance**
 - \$1,500,000** per occurrence
 - \$2,000,000** aggregate per project
 - \$2,000,000** products/completed operations total limit
 - \$1,500,000** personal injury and advertising

Policy must include an "all services, products, or completed operations" endorsement
 - b. **Automobile Insurance**
 - i. Bodily Injury
 - \$750,000** per person
 - \$1,000,000** per accident
 - ii. Property damage not less than \$50,000 per accident

- c. Workers Compensation and Employer's Liability
 - i. Worker's Compensation per Minnesota Statute
 - ii. Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
 - iii. If BSP has 10 or fewer employees and does not have Worker's Compensation coverage, BSP is required to provide CLIENT with a letter verifying its number of employees.
- d. Professional Liability Insurance
 - i. \$1,000,000 per occurrence
 - ii. \$2,000,000 aggregate
- e. General Insurance Requirements
 - i. The policy is to be written on an occurrence basis or as acceptable to CLIENT. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. All certificates of insurance shall provide that CLIENT's Division of Contract and Analysis Services be given not less than thirty (30) days prior written notice of cancellation, non-renewal or any material changes in the policy, including, but not limited to, coverage amounts. Agent must state on the certificate if policy includes errors and omissions coverage.
 - ii. BSP shall not commence work until a Certificate of Insurance covering all of the insurance required for this project is approved and the project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extensions periods.
 - iii. CLIENT reserves the right to review BSP's insurance policies at any time, to verify that CLIENT's requirements have been met.
 - iv. Nothing shall preclude CLIENT from requiring BSP to purchase and provide evidence of additional insurance.
 - v. Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance, of "each occurrence" and "aggregate" limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

9. **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. CLIENT has the discretion and absolute right to choose to enter or not to enter into any new or modified lease agreements. BSP does not guaranty any future lease revenue amounts, as that is specifically conditioned on the terms of any lease agreements accepted by CLIENT. Accordingly, this indemnification shall not be construed to include any loss from the decline of lease revenue that may occur in the future.

10. 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. To the extent applicable to the compensation provisions of this Agreement, 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 to the extent applicable to the compensation provisions of this Agreement,
- f. All records provided to BSP shall remain property of the CLIENT and shall be returned to the CLIENT upon the termination of this agreement or upon request.
- g. BSP understands and acknowledges that all information, data and records pertaining to this Agreement are subject to the provisions of the Minnesota Data Practices Act and all laws related thereto.

11. BSP REPRESENTATION AND WARRANTIES.

BSP represents and warrants that:

- a. BSP and all personnel to be provided by it hereunder has 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 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. 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.
- g. BSP employees are Independent Contractors to BSP and are not employees of the Clients for purposes of any tax withholding requirements.

12. **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 11 are deemed not to present a conflict of interest.

BSP also agrees that it will not accept representation of another landlord within 2 miles of any of the CLIENTS location(s) listed on Exhibit A, without consent of CLIENT, until any negotiation of CLIENTS contracts which are then ongoing for renewal or modification has been concluded as evidenced by a new agreement or modification of an existing agreement.

13. **AUTHORITY:** CLIENT represents to BSP that it has the authority to enter and sign this Agreement. The individuals signing this Agreement represent that they are authorized signatories of CLIENT.
14. **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.
15. **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. Accordingly, to the extent not prohibited by law, CLIENT shall not disclose information regarding BSP's proprietary approach, unique process, factors considered, method of BSP Fee calculation, or any other information labeled as "CONFIDENTIAL" by BSP and arising out of the performance of this Agreement, including voluntary disclosure, or involuntary disclosure pursuant to a Freedom of Information Law ("FOIL") request except as required under Minnesota State Law. 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. BSP understands and acknowledges that all information, data and records pertaining to this Agreement are subject to the provisions of the Minnesota Data Practices Act and all laws related thereto.
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. **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.

19. **NOTICES:** Notices to CLIENT and BSP shall be delivered to the addresses noted below.

Bench Strength Partners, Inc.
26 First Street P. O. Box 8581
Pelham, NY 10803
Attn: Mr. Francis Clerkin

City of Saint Paul
Office of Financial Services – Real Estate Section
25 W. 4th St., Rm. 1000
Saint Paul, MN 55102
Attn: Real Estate Manager

Executed, this _____ day of _____, 20____

BENCH STRENGTH PARTNERS, INC.
("BSP")

CITY OF SAINT PAUL
("CLIENT")

BY: Francis P. Clerkin

BY: _____

Name: Francis Clerkin

Name: _____

Title: Partner

Title: _____

BY: _____

Name: _____

Title: _____

BY: _____

Name: _____

Title: _____

**REPRESENTATION AGREEMENT
FOR LEASE OF OR LICENSE TO USE MUNICIPAL PROPERTY**

EXHIBIT A – SCHEDULE OF LOCATIONS

This Exhibit A to the agreement dated _____, 20__ (“Agreement”) between the CITY OF SAINT PAUL (“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. Merriam Park Recreation Center grounds located at 2000 Saint Anthony, Saint Paul, MN 55104**
- 2. Edgcumbe Recreation Center located at 320 Griggs Street South, Saint Paul, MN 55105-**

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EXHIBIT B – FEE SCHEDULE

This Exhibit B to the agreement dated _____, 20__ (“Agreement”) between the **City of Saint Paul, Department of Parks & Recreation** (“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 or lease amendment between CLIENT and a Tenant. Fees are earned only on the Increased Rent to be paid to CLIENT by Tenant: (a) over the Term of the new lease or (b) the term of the lease amendment or (c) the remaining term of an existing lease, the financial terms of which have been modified, or (d) on the value or increased value of termination provisions, as the case may be. The Term of the new lease or the lease amendment is the initial fixed term as defined in the lease or amendment. Renewal options or extensions of the new lease are discussed in paragraph 2 below. The “Increased Rent” is defined as the total rent or license fee scheduled to be paid over the Term of the new lease or license agreement plus any additional monetary enhancements discussed in paragraph 6 below, minus the Baseline Rent, defined as the product of (i) the annual rental (or license fee) in effect at the conclusion of the existing lease or license agreement or the amount of such annual rent scheduled to be paid in the current year in the case of an amendment and (ii) the term, in years, of the new lease or license agreement, or the remaining years of an amended 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. **RENEWAL OPTIONS:** If the new lease contains options to renew for additional terms, BSP shall earn a fee for such renewal terms and such fee will be computed in accordance with paragraph 1 above, as if the renewal term was a part of the original fixed term. However, such fee shall only be earned upon exercise of such renewal, and will be payable to BSP according to the payment provisions in paragraph 7. CLIENT agrees to notify BSP of any decision by a Tenant to exercise a renewal option.
3. **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.
4. **ADDITIONAL TENANTS:** (a) 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 average of the annual rents ("Average Annual Rent") then in effect for all other leases at the subject location for the year immediately preceding the commencement of the lease for the new tenant, 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 Average Annual Rent. (b) In the event BSP is asked by CLIENT to negotiate a new agreement with a Tenant at a location which is not currently listed on Exhibit A, 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 average of the annual rents ("Average Annual Rent") then in effect for all other leases at the locations listed on Exhibit A, for the year immediately preceding the commencement of the lease for the new tenant 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 Average Annual Rent. In the event CLIENT does not currently have any leases nor has CLIENT had any leases in the previous 3 years then the Baseline Rent shall be based upon the average of leases in the BSP database within a 5 mile radius of the site of the new lease or license agreement. The radius of the new site will be increased in 5 mile radius increments until at least a total of 6 leases are obtained. Any leases then in effect that have been entered into as a result of the services provided by BSP shall be excluded from this

average computation. If the BSP database contains no leases as the radius is expanded up to 25 miles then BSP will proceed to obtain such leases from municipalities within such area and upon obtaining a total of 6 leases, BSP will use those leases average as the Baseline Rent.

5. **CANCELLATION CLAUSES:** In the event that CLIENT has the right to cancel a lease at a time subsequent to the execution of the lease, BSP shall be paid a fee for the entire lease term (excluding renewal options) as though such right to cancel did not exist.
6. **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. In the case that BSP's review of the lease terms and the payment history under such lease terms determines that there are unpaid or underpaid rents or fees due to the CLIENT, which have not been paid in the previous 3 months BSP shall be entitled to 25% of all such unpaid or underpaid rents which BSP collects on behalf of the CLIENT. The payment for such collections will not be considered as increased rents, as defined in section 1 of this agreement and the 25% fee will be paid within 30 days of the receipt of the past due payments to the CLIENT
7. **TIME OF PAYMENT:** Fees earned by BSP pursuant to this Agreement shall be earned upon execution of the lease or lease amendment, or upon exercise of any renewal options. In the case of a new lease, lease amendment or lease renewal, CLIENT shall pay BSP its fee by allocating seventy five percent (75%) of the enhanced revenues scheduled to be received by CLIENT under the lease until the fee computed pursuant to paragraph 1 has been fully paid. The first such payment shall be made within 30 days of the receipt of the amounts paid pursuant to the terms of the new lease or lease amendment. Additional payments shall be made on each anniversary of the date of the Lease Execution until the total fee earned by BSP has been paid. In the case of a renewal option, such fee shall be paid in the same manner as a new lease or lease renewal described above.
8. **ACCELERATION:** In the event that CLIENT enters into a transaction to assign the lease or the cash flows stemming from this lease to a third party, any remaining fee then due to BSP shall be accelerated and paid in full as of the effective date of any such assignment. If such payments include renewal periods, which have not yet been exercised, but which are included in the transaction for the sale of such rights, then the BSP fee due for such renewal will also be due as of the effective date of any such assignment. Such renewal fee payment due BSP will be subject to the same discount rate utilized in arriving at the discounted rents.