

## RELEASE of CLAIMS

*Between*

The City of Saint Paul, Minnesota; &  
Bench Strength Partners, Inc

This Release of Claims (this “Agreement”) is entered into by The City of Saint Paul, Minnesota (the “City”); and Bench Strength Partners (“BSP”).

### Recitals

A. On January 26, 2016, the City and BSP executed a Representation Agreement for Lease of, or License to Use, Municipal Parks Property for Cellular Antennas along with attached Exhibits and Amendments (Representation Agreement);

B. On March 14, 2016 the City and BSP executed the First Amendment to the Representation Agreement to expand the scope of the Agreement to include negotiation of leases for the installation of small cell communication systems (“Small Cell Systems”) on City property managed by its Department of Public Works (“Public Works”), Traffic and Engineering Division;

C. This Representation Agreement entitled BSP to collect fees for certain contract the City entered into for small-cell services with telecommunication providers, with the fee being predetermined by an agreed-on fee schedule;

D. The parties now desire to terminate this Representation Agreement and mutually release each other from any and all claims that they may believe they are entitled to now or in the future under that Representation Agreement, with such termination and releases conditioned upon the full and complete payment by the City to BSP as provided below;

NOW, the parties to this Agreement, in consideration of the promises, covenants, and agreements made by each to the other, do hereby agree as follows:

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## Article 1

### *Recitals & Exhibits.*

- Section 1.1.*     **Recitals.** The Recitals outlined at the start of this Agreement are incorporated into this Agreement by this reference.
- Section 1.2.*     **Exhibits.** All Exhibits referred to in and attached to this Agreement upon execution, or thereafter attached or thereafter amended by mutual written agreement, are incorporated in—and form a part of—this Agreement as if fully set forth herein.
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## Article 2

### *City Payment*

- Section 2.1.*     **Payment.** The City of Saint Paul will issue payment to BSP in the amount of **\$383,941.38**. This payment will be made within thirty (30) days of the passage of a City Council resolution and the Mayor's signature of that resolution approving a budget amendment intended to allocate adequate funding for this Agreement. Said resolution will be approved by the Saint Paul City Council no later than June 19, 2024. If said signed resolution is beyond this date, the payment will earn interest at the prorated portion of 8% annual interest. Additionally, **if the payment is not made within the specified time period, BSP has the right to rescind this settlement agreement and the release contained in Section 3.1 and pursue all of BSP's original claims and rights under the January 26, 2016 agreement and its Amendment.**
- Section 2.2.*     **Payee information.** Payment will be mailed to the following party:

Bench Strength Partners, Inc  
26 First Street  
P. O. Box 8581  
Pelham, NY 10803

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## Article 3

### *Release of Liability*

- Section 3.1.*     Mutual **Release of liability.** In consideration of the payments made under Article 2

of this Agreement, BSP and the City agree to release, acquit, and forever discharge each other and their respective agents, servants, successors, heirs, executors, administrators, and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, attorney's fees, and compensation whatsoever, which either party had, now have or which they may accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, injuries and damages and the consequences thereof resulting from the parties' agreement dated January 26, 2016 and the First Amendment dated March 14, 2016 (and attached to this Mutual Release Agreement for convenience).

*Section 3.2.* **No inducement.** BSP and the City represent that in making this release it is understood and agreed that each party is relying wholly upon its own judgment, belief, and knowledge of the nature, extent, effect, and duration of potential damages and liability and is made without reliance upon any statement or representation of the other party hereby released or its representatives.

*Section 3.3.* **No admission.** The Plaintiffs understand and acknowledge that neither BSP nor the City admit any wrongdoing, improper action, or liability for any of the other party's demands, allegations, or claims.

*Section 3.4.* **Counsel review.** By executing this agreement, the undersigned parties acknowledge that this Settlement Agreement and Release has been read by their legal counsel, and that they understand and fully agree to each and every provision within this document.

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## Article 4

### *Miscellaneous Provisions.*

*Section 4.1.* **Governing law, jurisdiction, venue & waiver of jury trial.** All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by, interpreted and determined in accordance with the laws of the state of Minnesota without regard to its conflict and choice of law provisions. Any litigation arising out of this Agreement shall be venued exclusively in Ramsey County District Court, Second Judicial District, state of Minnesota and shall not be removed to any other federal or state court. BSP hereby consents to personal jurisdiction and venue in this court. BSP waives a trial by jury for any litigation arising out of this Agreement.

*Section 4.2.* **Calculating time.** Unless otherwise stated, all references to "day" or "days" shall

mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

*Section 4.3.* **Entire agreement.** This Agreement reflects the entire agreement of the parties with respect to the matters addressed herein and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to such matters.

*Section 4.4.* **Amendments, changes, and modifications.** This Agreement may not be amended or any of its terms modified except by written amendment authorized and executed by the City and BSP.

*Remainder of page intentionally left blank; signatures on following page*

**SIGNATURES**

*City of Saint Paul, Minnesota*

*Bench Strength Partners*

By: \_\_\_\_\_  
Mayor's Office

By: \_\_\_\_\_  
Francis P. Clerkin  
*President & CEO*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sean Kershaw  
*Director, Public Works*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John McCarthy  
*Director, Office of Financial Services*

Date: \_\_\_\_\_

*Approved as to form by:*

By: \_\_\_\_\_  
*Assistant City Attorney*  
City of Saint Paul, Minnesota

Date: \_\_\_\_\_