

ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM



July 9, 2019

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
E. Thomas Jones, Treasurer

Cc: Terrence D. McCracken, Secretary
Karen A. Prendergast, Chief Financial Officer
Margaret A. Murphy, General Counsel

From: Jacqueline Mattina, Associate Attorney
Lavonya Lester, Director of Administration
Susan Rinaldo, Cash Manager

Subject: Request for Information: Cell Tower Lease Consultant

The Erie County Water Authority (the "Authority") recently issued a Request for Information (RFI) to ten (10) cell tower lease consulting firms for professional services relating to cell tower leasing valuation, review of existing leases and other related services. Currently, there is no one within the Authority who has any knowledge or experience in valuing these leases or who can advise the Authority if it is receiving full market rates for such leases.

The RFI was issued to the following cellular lease consulting firms:

BSP
Vertical Consultants
Tower Genius, LLC
Steel in the Air
Tower Opportunities, LLC
Edward Frawley
c/o Tectonic Engineering
Airwave Advisors

Lease Advisors
Cell Waves
Unison Site Management

Of those companies only two, BSP and Tectonic Engineering, submitted responses.

The proposals were reviewed and discussed by a committee made up of Susan Rinaldo, Cash Manager, Lavonya Lester, Director of Administration, and Jacqueline Mattina, Associate Attorney. Experience, staffing, scope and project approach were considered as well as fee structure. It was determined that while both firms possessed the relevant qualifications to perform the work proposed, the respondents had different fee structures. We also reviewed previous client interaction provided by the firms and references.

Fee Structure: The RFI specifically requested proposals based on a “success fee structure” although alternative proposals were allowed. BSP proposed a “success fee structure” while Tectonic offered an alternative fee structure.

BSP works on a success fee basis in which no fee is due when and until they achieve a minimum 20% increase in an annual rental. Above the 20% hurdle the fees are based on a percentage of the increased revenues on the leases and the fees are only paid out of the increased revenues. The fees were specifically identified and laid out in detail in their proposal. Tectonic proposed an alternative fee structure which they indicated will satisfy the Authority’s request for a “success fee structure”. Tectonic indicates it will be able to “greatly reduce their lease amount fee by providing all design services of the related services for the carrier’s installations by having the carrier pay for them directly”.

BSP has provided cell tower lease consultancy and lease negotiations on behalf of numerous municipal governmental organizations and water authorities. Also, BSP is presently representing the Monroe County Water Authority in a similar capacity as a lease consultant on a “success fee structure” basis. Attached is a copy of the Monroe County Water Authority Agreement with BSP. BSP does not represent any cellular companies.

Tectonic Engineering on the other hand has represented cellular companies in lease negotiations with the Authority. While Tectonic assures the Authority there are two separate divisions in their firm with one handling cellular carriers and the other the landlord or in this case the Authority, it seems that much of their representation has been on behalf of cellular companies. It also appears from the Tectonics proposal that they may possibly be envisioning their firm, albeit separate divisions, representing both the cellular company and the Authority on the same

transaction. The Board may want to review this to determine if they believe there would be a conflict of interest.

Attached are the scoresheets used to evaluate the proposals. Upon review of the proposals, fee structures and history of representation, we unanimously recommend to the Board of Commissioners retaining the professional services of BSP. We are requesting the Board's approval to enter into negotiations with BSP for the above referenced project.

RFPEVALUATION SCORESHEET
CELL TOWER CONSULTANTS - SUPPORT SERVICES
ERIE COUNTY WATER AUTHORITY
Project No: 201900127

Reviewed by: Lavonya Lester, Susan Rinaldo and Jacqueline Mattina

Company Name: (BSP) Bench Strength Partners,

RFP - Required Information and Scoring

Items 1 - 7 / Required Information / Pass or Fail	Max. Points /Item	Check if Included (Pass)
1. Acceptance period and Location. Required copies and RFP submitted information by the response date.	P/F	P
2. Organizational Information: company's legal name; address; phone; fax; website, email address. Organization of qualifications and proposal statements.	P/F	P
3. Title Page / Firm Overview	P/F	P
4. Personnel Information including background information and experience	P/F	P
5. Relevant Experience and Expertise	P/F	P
6. Marketing / Schedule / Cost Proposal / References / Third Party Partnerships	P/F	P
7. Certifications & Insurances	P/F	P
Item 8 / Qualifications and experience / 60 Points Max.	60	SCORE
General qualifications and experience on projects of similar size and scope either in the public or private sector.		60
Item 9 / Public sector experience / 40 Points Max.	40	SCORE
Previous demonstrated successful experience with public sector projects, including unique knowledge of key members related to the project, or team experience on similar public sector projects.		40
Item 10 / Managerial and staff capability / 50 Points Max	50	SCORE
Evaluate the number of staff assigned to the project, résumés of staff assigned to the project, and financial stability of the company.		40
Item 11 / Proposed study methodologies / 40 Points Max	40	SCORE
Evaluate how the company plans to approach the project and the steps to be taken to complete the project. Does the company demonstrate an understanding of the magnitude and importance of the project?		40
Item 12 / Reference checks / 20 Points Max.	20	SCORE
Experience with company reported by previous public and private clients.		15
Item 13 / Professionalism of the proposal / 30 Points Max	30	SCORE
Was the response to the RFP clear, concise, professionally written, well organized, and responsive?		25
Item 14 / Company's cost and time proposal / 30 Points Max	30	SCORE
Company's process for assuring the project cost is within budget and completed on time. Has the company demonstrated experience in completing similar projects on time and within budget?		25
TOTAL POINTS	270	245

RFP EVALUATION SCORESHEET
CELL TOWER CONSULTANTS - SUPPORT SERVICES
ERIE COUNTY WATER AUTHORITY

Project No: 201900127

Company Name: Tectonic Surveying & Engineering

Reviewed by: Lavonya Lester, Susan Rinaldo and Jacqueline Mattina

RFP - Required Information and Scoring

Items 1 - 7 / Required Information / Pass or Fail	Max. Points /Item	Check if Included (Pass)
1. Acceptance period and Location. Required copies and RFP submitted information by the response date.	P/F	P
2. Organizational Information: company's legal name; address; phone; fax; website, email address. Organization of qualifications and proposal statements.	P/F	P
3. Title Page / Firm Overview	P/F	P
4. Personnel Information including background information and experience	P/F	P
5. Relevant Experience and Expertise	P/F	P
6. Marketing / Schedule / Cost Proposal / References / Third Party Partnerships	P/F	P
7. Certifications & Insurances	P/F	P
Item 8 / Qualifications and experience / 60 Points Max.	60	SCORE
General qualifications and experience on projects of similar size and scope either in the public or private sector.		30
Item 9 / Public sector experience / 40 Points Max.	40	SCORE
Previous demonstrated successful experience with public sector projects, including unique knowledge of key members related to the project, or team experience on similar public sector projects.		30
Item 10 / Managerial and staff capability / 50 Points Max	50	SCORE
Evaluate the number of staff assigned to the project, résumés of staff assigned to the project, and financial stability of the company.		40
Item 11 / Proposed study methodologies / 40 Points Max	40	SCORE
Evaluate how the company plans to approach the project and the steps to be taken to complete the project. Does the company demonstrate an understanding of the magnitude and importance of the project?		30
Item 12 / Reference checks / 20 Points Max.	20	SCORE
Experience with company reported by previous public and private clients.		15
Item 13 / Professionalism of the proposal / 30 Points Max	30	SCORE
Was the response to the RFP clear, concise, professionally written, well organized, and responsive?		25
Item 14 / Company's cost and time proposal / 30 Points Max	30	SCORE
Company's process for assuring the project cost is within budget and completed on time. Has the company demonstrated experience in completing similar projects on time and within budget?		20
TOTAL POINTS	270	190



MONROE COUNTY WATER AUTHORITY
P.O. Box 10999 • 475 Norris Drive • Rochester, New York 14610-0999
Phone: (585) 442-2000 Fax (585) 442-0220

BOARD RESOLUTION
#15-173

AUTHORIZING PROFESSIONAL SERVICES AGREEMENT
with Bench Strength Partners, Inc. (BSP)

#15-173 Authorize the Executive Director to enter into a Professional Services Agreement with Bench Strength Partners, Inc. (BSP) for on-going support services for cellular and other antenna lease agreements with the fee earned for providing services on a success-fee basis.

On a motion made by Ms. Bleier-Mervis, seconded by Mr. Hurlbut, and duly put to a vote on roll call, the foregoing resolution #15-173 unanimously carried. AYES: 5 (Magguilli, Nasca, Hurlbut, Bleier-Mervis, Rulison); NAYS: 0.

* * *

I, KATHLEEN EISENMANN, duly appointed and qualified Secretary of the Monroe County Water Authority do hereby CERTIFY that the foregoing resolution was adopted at a meeting duly called and held in the office of the Authority, a quorum being present on the 10th day of September, 2015, and that said copy is a true, correct and compared copy of the original resolution so adopted and that the same has not been revoked or rescinded.

WITNESSETH, my hand and seal this 14th day of October, 2015.




Kathleen Eisenmann, Secretary to the Authority



**AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES
WITH THE
MONROE COUNTY WATER AUTHORITY**

PROJECT NAME: **Exclusive Representation Agreement for Cellular Antenna Leases**

ENGINEERING NUMBER: **15-S15**

CONSULTANT'S NAME AND ADDRESS: **Bench Strength Partners, Inc.**
26 First Street
Pelham, NY 10803

Monroe County Water Authority
475 Norris Drive
Rochester, New York 14610

**PROFESSIONAL SERVICES AGREEMENT
FOR LEASE OF, OR LICENSE TO USE MUNICIPAL PROPERTY**

THIS AGREEMENT, entered into this 15th day of October, 2015, by and between the **MONROE COUNTY WATER AUTHORITY**, having its office and principal place of business at 475 Norris Drive, City of Rochester, County of Monroe, State of New York, hereinafter called the "**Authority**" and **BENCH STRENGTH PARTNERS, INC.** a corporation with offices at 26 First Street, Pelham, NY 10803 hereinafter called the "**Consultant**".

1. **SCOPE OF AGREEMENT:** Authority appoints Consultant as its sole and exclusive representative for the negotiation of leases, licenses, lease buyouts or other agreements for the rental of space on Authority property for the placement of cellular antennas and related equipment (the "Work") for the locations 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 Authority property, and (c) renegotiation of existing leases should that occur outside the context of a lease renewal. Consultant shall not be responsible for drafting the lease document. Instead, Consultant will work with Authority counsel and suggest model lease terms for Authority's counsel to incorporate into the final lease document, or other form of agreement.
2. **CONSULTANT SERVICES:** Consultant will provide its best efforts to negotiate leases acceptable to Authority. All lease proposals prepared by Consultant, and all offers and counter offers received by Consultant are subject to the Authority approval. Authority is not bound to accept leases negotiated by Consultant. If Consultant reasonably determines that it is necessary, in its sole and absolute discretion, to retain other experts as part of the negotiation process, Consultant will engage such experts at its own cost.
3. **AUTHORITY REFERRALS:** Authority shall refer to Consultant all inquiries and offers received by Authority regarding the lease including any offer to buy out the revenue stream from the lease or offer to lease any Authority property for the placement of cellular antennas and related equipment, regardless of whether the location of such offer is listed on Exhibit A. All negotiations for leases on locations listed on Exhibit A will be conducted solely by Consultant or under Consultant's direction, subject to Authority's review and final approval.
4. **TERM:** This Agreement shall commence upon execution by the parties (the "Effective Date") and shall remain in effect for five years. This Agreement may not be terminated unless a party breaches the agreement or until the second anniversary of the Effective Date. This Agreement may be terminated by Authority at any time after such second anniversary. In the event of such a termination, Consultant shall be entitled to a fee, computed and payable in accordance with this Agreement, if the Authority 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 Consultant has, during the first two years of this agreement, earned a fee as set forth in paragraph 5. However, no such termination shall relieve the Consultant of any outstanding duties imposed by this Agreement, including the requirement to hold the Authority harmless and to maintain insurance coverage insuring against loss arising out of the Work.
5. **CONSULTANT FEES:** Authority agrees to compensate Consultant, and Consultant agrees to accept compensation for its services, based on the Fee Schedule included as part of this Agreement as Exhibit B. Authority and Consultant agree that the Fee Schedule is a success fee structure, and that

no fee will be earned by Consultant unless specific economic results are achieved, all as more particularly defined on Exhibit B.

6. **PROPERTY INFORMATION:** Authority acknowledges that Consultant 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. Authority acknowledges that it is solely Authority's responsibility to conduct investigations to determine the presence of such materials or conditions.

7. **INSURANCE AND INDEMNITY**

- a. During the term of this Agreement the Consultant shall procure, at its own expense, the insurance listed below. The Consultant shall provide satisfactory written proof of insurance on a form provided by the Authority. Any sub-contractor of the consultant shall also procure insurance as required below. Insurance carriers must have a Best's Rating of A or better, and be admitted to do business in New York State.

Insurance shall be provided in the following amounts:

		<u>SINGLE LIMITS OF LIABILITY</u>	
	<u>KIND OF INSURANCE</u>	<u>BODILY INJURY/PROPERTY DAMAGE</u>	
A.	General Liability (Written on an	\$1,000,000	Each Occurrence
	occurrence basis, including	\$1,000,000	Personal & Advertising Injury
	Contractual Liability, XCU, and a	\$2,000,000	General Aggregate
	per project aggregate limit).	\$2,000,000	Products/Completed Operations Aggregates
		\$50,000	Fire Damage Legal
B.	Commercial Automobile (To include Owned, Hired and Limit Liability Non-owned Auto Liability)	\$1,000,000	Combined Single
C.	Umbrella/Excess Liability	\$2,000,000	
D.	Workers Compensation and Employer's Liability Insurance		
	1. Coverage A	Statutory	
		\$100,000	Each Accident
	2. Coverage B - Employer Liability	\$100,000	Disease - Each Employee

\$500,000 Disease - Policy Limit

E. Professional Liability

\$1,000,000 Each Act, Error or Omission

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- b. The insurance requirements imposed upon the Consultant hereunder shall not limit any liability of the Consultant or the rights of the Authority under this Agreement. If at any time, the Consultant or its sub-contractors shall not have the insurance required by this Agreement in full force and effect, the Authority shall have the right to: (a) suspend the Consultant's performance hereunder, and the Consultant shall not be entitled to any lost profit, damages, increase in the compensation due hereunder, and (b) purchase any such insurance for the Project, and the Consultant shall reimburse the Authority for all expenses incurred therefore on demand.
- c. Claims Made Insurance:
If any insurance shall be provided on a claims made basis, the Consultant agrees that:
- i. Policy retroactive dates coincide with or precede the Consultant's start of Work (including subsequent policies purchased as renewals or replacements).
 - ii. The Consultant will use his best efforts to maintain similar insurance for at least six (6) years following final acceptance of the Project, including the requirement of adding the Authority as an additional named insured (with exceptions to additional named insured as stipulated in below).
 - iii. If the insurance is terminated for any reason, the Consultant agrees to use his best efforts to purchase an extended reporting provision to cover Claims arising from the Work performed for the Authority for at least six (6) additional years.
 - iv. Notice shall be given to the Authority of circumstances or incidents that might give rise to future claims.
- d. General Insurance Provisions: Before beginning Work, the Consultant shall provide the Authority with a certificate(s) of insurance from a financially responsible company(ies) licensed in New York, evidencing that the insurance required hereunder is in force. All such insurance shall provide that it shall not be canceled, amended or materially changed except upon thirty (30) days' prior written notice to the Authority. Except as provided in Paragraph 8 c – Claims Made Insurance, all such insurance shall remain in effect until one year after the earlier of the Authority's final written acceptance of Consultant's Work or termination of this Agreement (unless otherwise required by Paragraph 8 c). All such insurance, except that required under paragraphs 8 a - C, D, and E, shall name the Authority as an additional insured. All insurance policies of Consultant and any sub-contractor shall contain endorsements providing that the respective underwriters and insurers waive any right of subrogation against the Authority, its affiliates, employees, insurers and underwriters.
- e. Consultant's Liability:
- i. To the fullest extent permitted by the General Obligations Law of New York, the

Consultant shall indemnify and save harmless the Authority, and its employees from and against any and all liabilities, losses, damages, detriments, suits, claims, demands, costs, attorneys' fees and expenses ("Claims") of any kind or nature to the extent directly or indirectly caused by or arising out of any negligent act, omission, breach or fault of the Consultant, its employees, agents or sub-contractors.

- ii. Consultant shall not settle or compromise any Claim for which the Authority might in any way be liable without the prior written consent of the Authority. Consultant's obligations hereunder shall not be limited in any way by the provision of insurance, workers' compensation, or other amounts payable by or on behalf of Consultant, sub-consultant, or any sub-contractor and shall survive termination of this Agreement.
- iii. Authority has the discretion and absolute right to choose to enter or not to enter into any new or modified lease agreements. Consultant does not guaranty any future lease revenue amounts, as that is specifically conditioned on the terms of any lease agreements accepted by Authority. Accordingly, this indemnification shall not be construed to include any loss from the decline of lease revenue that may occur in the future.

8. DATA, RECORDS AND INSPECTION.

- a. The Authority agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. Records shall be maintained by Consultant in accordance with requirements prescribed by the Authority 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, 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 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. Consultant shall be responsible for furnishing to the Authority records, data and information as the Authority may require pertaining to matters covered by this Agreement.
- e. Consultant shall ensure that at any time during normal business hours and as often as the Authority may deem necessary, there shall be made available to the Authority for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the Authority 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 Consultant shall remain property of the Authority and shall be returned to the Authority upon the termination of this agreement or upon request.

9. **CONSULTANT REPRESENTATION AND WARRANTIES:** Consultant represents and warrants that:

- a. Consultant 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. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the Authority and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of New York 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 Consultant 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 Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against Consultant 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 Consultant to perform its obligations hereunder.
- f. Consultant will not, without the prior written consent of the Authority, 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. Consultant employees are Independent Contractors to Consultant and are not employees of the Authority's for purposes of any tax withholding requirements.

10. **OTHER CLIENTS:** Consultant 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 Consultant could be engaged to represent a landlord other than Authority in the same geographic area of an Authority location that is listed on Exhibit A. If that were to occur, Consultant will notify Authority of that potential conflict and request the Authority to consent to Consultant's representation of such other landlord unless:

- a. the location for the other landlord is greater than 2 miles from an Authority location listed on Exhibit A; OR

- b. the location for the other landlord is within 2 miles from an Authority location listed on Exhibit A, but the representation agreement between Consultant and such other landlord is executed after Authority's lease for Authority'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 Authority's location(s) listed on Exhibit A.

Consultant and Authority agree that situations covered by subparagraphs (a) and (b) within this section 10 are deemed not to present a conflict of interest.

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

11. **INTEREST OF AUTHORITY AND CONSULTANT:** The Authority and the Consultant agree that no member, officer, or employee of the Authority or Consultant shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for the leases that may result from services rendered pursuant to this Agreement.
12. **PROFESSIONAL ADVICE:** Consultant recommends that Authority obtain legal, tax, or other professional advice relating to this Agreement and the leases that may result from services rendered pursuant to this Agreement.
13. **PROHIBITION AGAINST ASSIGNMENT:** The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute this Agreement to any other person or corporation without the previous written consent of the Authority.
14. **SURVIVAL:** This Agreement is binding upon the parties hereto and their respective successors and assigns.
15. **CONFIDENTIAL & PROPRIETARY INFORMATION:** Consultant 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 Consultant 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 Consultant's unique process. Disclosure of this information by Authority would cause substantial injury to the competitive position of Consultant. Authority acknowledges and agrees that this information in the hands of Authority would be considered to be derived from a commercial enterprise (i.e., Consultant) and which, if disclosed, would cause substantial injury to the competitive position of Consultant. Accordingly, to the extent not prohibited by law, Authority shall not disclose information regarding Consultant's proprietary approach, unique process, factors considered, method of Consultant Fee calculation, or any other information labeled as "CONFIDENTIAL" by Consultant 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 New York State Law. Both Consultant and Authority agree that any final executed lease resulting from the services of Consultant shall not be considered confidential nor is the amount of any fee paid to Consultant considered confidential under the provisions of this paragraph.

16. **MISCELLANEOUS:**

- a. 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.
- b. This Agreement shall be governed by and under the laws of the State of New York. The parties further agree that the Supreme Court of the State of New York, County of Monroe, shall be the forum to resolve disputes arising out of either this Agreement or Work performed according thereto. The parties consent to the jurisdiction of such court and waive all other venue or forum selections. The parties may agree between themselves on alternative forums.
- c. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement shall not act as or be deemed to act as a waiver of modification of this Agreement, nor shall such non-enforcement prevent either party from enforcing each and every term of this Agreement thereafter.
- d. If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York

17. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between Authority and Consultant and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both Authority and Consultant. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties thereto.

18. **NOTICES:** Notices to Authority and Consultant shall be delivered to the addresses noted below.

The Authority hereby designates as its Authorized Agent:

Richard J. Metzger, P.E.,
Executive Engineer
Monroe County Water Authority
475 Norris Drive
Rochester, New York 14610

The Consultant hereby designates as its Authorized Agent:

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

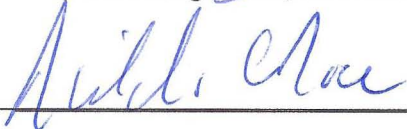
MONROE COUNTY WATER AUTHORITY

Recommended By:



Richard J. Metzger, P.E., Executive Engineer


By:



Nicholas A. Noce, Executive Director

BENCH STRENGTH PARTNERS, INC.

By:



Francis P. Clerkin, Partner

EXHIBIT A – SCHEDULE OF LOCATIONS

This Exhibit A to the Agreement dated the 15th day of October, 2015 (“Agreement”) between the Monroe County Water Authority (“Authority”) and Bench Strength Partners, Inc. (“Consultant”) describes the location(s) for which the Authority has designated Consultant to act as Authority’s Exclusive Representative.

	Site Name	Town
1	Allyen’s Rise	Perinton
2	Boughton Hill Tank ¹	Victor
3	Churchville Tank	Churchville
4	Eastview Tank ¹	Victor
5	Harek Road Tank	Gates
6	Harris Hill Tank	Penfield
7	High Street Tank ¹	Victor
8	Hilton Tank	Parma
9	Lee Rd Tanks	Greece
10	Middle Road Tank	Henrietta
11	North Ave Tank	LeRoy
12	South Ave Tanks ²	Webster
13	Spencerport Tank	Spencerport
14	West Brighton Tank	Brighton

Notes:

1. Subject to Antenna Transition Period included in the Retail Lease Agreement with Town of Victor dated 28 February 2013 and as amended 12 February 2015.
2. Subject to Antenna Transition Period included in the Retail Lease Agreement with Village of Webster dated 21 August 2013.

EXHIBIT B – FEE SCHEDULE

This Exhibit B to the Agreement dated the 15th day of October, 2015 (“Agreement”) between the Monroe County Water Authority (“Authority”) and Bench Strength Partners, Inc. (“Consultant”) describes the conditions upon which a fee will be earned by Consultant and the terms concerning the timing of payment of such fee.

1. **FEE SCHEDULE:** Consultant 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 Authority and a Tenant. Fees are earned only on the Increased Rent to be paid to Authority 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		Consultant Fee
From	Up To	Percentage
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 Consultant would be the sum of (i) the Consultant Fee Percentage (20%) applied to the Increased Rent between 30% and 40%, plus (ii) the Consultant 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, Consultant 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 Consultant according to the payment provisions in paragraph 7. Authority agrees to notify Consultant of any decision by a Tenant to exercise a renewal option.

3. **REPLACEMENT TENANTS:** In the event that Consultant 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, Consultant 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 Consultant negotiates a lease with a Tenant not currently leasing space on a particular Authority property or is on the Authority property but not currently paying any rent and such Tenant is in addition to and not in replacement of an existing Tenant, Consultant 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 Consultant 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 Consultant shall be used in calculating such Average Annual Rent. (b) In the event Consultant is asked by Authority to negotiate a new agreement with a Tenant at a location which is not currently listed on Exhibit A, Consultant 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 Consultant 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 Consultant shall be used in calculating such Average Annual Rent. (c) In the event Authority does not currently have any leases nor has Authority had any leases in the previous 3 years then the Baseline Rent shall be based upon the average of leases in the Consultant 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 Consultant shall be excluded from this average computation. If the Consultant database contains no leases as the radius is expanded up to 25 miles then Consultant will proceed to obtain such leases from municipalities within such area and upon obtaining a total of 6 leases, Consultant will use those leases average as the Baseline Rent.
5. **CANCELLATION CLAUSES:** In the event that Authority has the right to cancel a lease at a time subsequent to the execution of the lease, Consultant 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 Authority 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 Consultant'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 Authority, which have not been paid in the previous 3 months Consultant shall be entitled to 25% of all such unpaid or underpaid rents which Consultant collects on behalf of the Authority. 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 Authority
7. **TIME OF PAYMENT:** Fees earned by Consultant 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, Authority shall pay Consultant its fee by allocating seventy five percent (75%) of the enhanced revenues scheduled to be received by Authority 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 date of Lease Execution until the total fee earned by Consultant 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 Authority 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 Consultant 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 Consultant fee due for such renewal will also be due as of the effective date of any such assignment. Such renewal fee payment due Consultant will be subject to the same discount rate utilized in arriving at the discounted rents.