



# City of Grand Island

Tuesday, June 08, 2010

Council Session

## Item G9

### **#2010-154 - Approving Contract with Center for Municipal Solutions Regarding Communications Towers**

*This item relates to the aforementioned Public Hearing Item E-8.*

Staff Contact: Chad Nabity

## AGREEMENT

This agreement made and entered into this 8th day of June 2010 by and between RICHARD A. COMI d/b/a THE CENTER FOR MUNICIPAL SOLUTIONS (herein after referred to as Consultant) (mailing address: 70 Cambridge Drive, Glenmont, New York 12077) party of the first part, and the City of Grand Island (hereinafter referred to as Client) (mailing address; P.O. Box 1968 Grand Island, NE 68802) party of the second part.

Consultant and Client, for the consideration named, hereby agree as follows:

### 1. PURPOSE

Client hereby retains Consultant for the purpose of assisting, advising and representing Client on matters relating to the preparation of a Wireless Telecommunications Facilities Local Ordinance for Client, and reviewing and analyzing applications received by Client for Wireless Telecommunications Facilities. The consultant is not a real estate broker or agent. All real estate brokerage services, if any, shall be performed by the Client or the Client's attorney.

### 2. SPECIFIC SERVICES: LOCAL ORDINANCE

As soon as possible after the execution of this agreement, Consultant shall prepare and deliver to Client for use by Client a comprehensive Wireless Telecommunications Facilities Local Ordinance (hereinafter referred to as Ordinance). Subsequently, in consultation with designated officials of Client, Consultant shall devote up to five (5) hours to draft and deliver to Client, as may be requested, legally permissible revisions to the Ordinance, prior to the public hearing relating to the adoption of the Ordinance. Consultant shall attend one meeting with Client, which Client will schedule in connection with the adoption of the Ordinance.

### 3. SPECIFIC SERVICES: SERVICES DURING PROCESSING OF APPLICATIONS

The Consultant shall furnish appropriate Wireless Telecommunications Facilities siting assistance and advice to Client and Client officials involved in the processing of applications for Wireless Telecommunications Facilities, and, in connection therewith, shall:

- (a) Review all applications filed with Client for Wireless Telecommunications Facilities;
- (b) Assist and advise Client as regards all applications, to include attending meetings with the Applicants and/or Client's staff and/or officials as required;
- (c) Recommend in writing to Client whether a particular application should be approved or disapproved, and set forth in writing the reasons for such approval or disapproval; and,
- (d) Inspections of the construction of the facility and in writing recommend when/if the certificate of compliance should be issued.
- (e) Consultant shall, in conjunction with the Client's Municipal Attorney, assist in the negotiation of all leases for the use of Client-owned property or facilities by wireless communications entities or persons at its normal hourly rate, with such cost to be paid out of the Applicant's escrow deposit or a written commitment by the potential lessee to reimburse the Client for the cost reasonably incurred on behalf of Client.

### 4. TIMES AND ATTENDANCE: COOPERATION BY CLIENT

Consultant shall perform the services described herein in as expeditious a manner as is reasonably possible and with due consideration of the time requirements of Client. Client recognizes that the timing of the performance of Consultant's services may be affected by previous commitments to other clients (including the delivery of promised services and work product and previously scheduled meetings), and situations normally and traditionally deemed to be matters of a force majeure nature, including those influenced by the weather, strikes, or power outages.

Client agrees to cooperate with Consultant, as needed, and to provide Consultant with copies of any records, documents and other information needed for the fulfillment of this agreement on a timely basis. Client further agrees to provide Consultant with access to appropriate officials and/or employees of Client, as may be needed in the fulfillment of the agreement. Moreover, both parties understand and agree that mutual accountability and responsiveness is critical to the successful completion of the project, and therefore both shall always make their best faith efforts to be accountable and promptly responsive to each other.

### 5. COMPENSATION

In payment for the services to be performed hereunder by Consultant, Client shall make payments to the Consultant as follows:

- (a) For the services to be performed by the Consultant pursuant to paragraph 2 hereof, there shall be no hourly charge. Time beyond five hours customizing the draft ordinance or attendance at more than one meeting related to the customization, consideration or adoption of the Ordinance shall be billed at the Consultant's normal hourly rate. Based on prior experience, Consultant feels that this should be sufficient time to prepare an Ordinance that will meet Client's needs. Therefore, Consultant anticipates that, absent extraordinary circumstances, there will be no charge to Client for the preparation of the Ordinance.
- (b) For the services to be performed by the Consultant pursuant to paragraph 3 hereof, Client shall pay Consultant its normal published hourly rate (which at the date of this agreement is \$200.00 per hour, but is subject to reasonable change over time) for each hour of time devoted by Consultant to the performance of such services, provided, however, that for time traveling by Consultant in conjunction with the performance of such services Client shall pay Consultant only 50% of the Consultant's normal published rate. (The draft Ordinance as initially provided to Client shall require an applicant to pay, in advance of any work related to the application or the application process, a sum to be put into an escrow account to assure that Client is reimbursed by the applicant for the amounts payable by Client hereunder to the Consultant.)
- (c) Consultant shall invoice Client regularly, but no less frequently than monthly, after services have been performed, for any compensation payable pursuant to paragraph 5(b) of this agreement. Such invoices shall be due and payable upon receipt, but in no case later than thirty (30) days.

6. REIMBURSEMENT FOR EXPENSES

For services performed hereunder, Client shall reimburse Consultant, for out-of-pocket expenses for the following items:

- (a) Travel-related costs such as airfare, car rental, night lodging accommodations and meals consumed while on-site or enroute;
- (b) Expedited or overnight delivery service;
- (c) Any other reasonably necessary expenses directly related and attributable to the fulfillment of this agreement.

Consultant's requests for expense reimbursement shall be included in Consultant's invoice at actual cost, with no markup.

7. TERM OF AGREEMENT; TERMINATION

This agreement shall be for a period of a minimum of one (1) year commencing on the date set forth at the top of page one (1) of this agreement. After the initial one (1) year period, the agreement will continue automatically on an annual basis for two (2) more years, unless terminated in writing by either party with sixty (60) days notices. In the event that the Consultant refuses or fails to provide services hereunder with due diligence, or is guilty of a substantial violation of any provision of this agreement, Client shall send Consultant written notice that the Consultant has thirty (30) days to cure said default; and, if at the end of said thirty (30) day period Consultant has not cured said default, this agreement may be terminated. After the three (3) year period, the agreement will continue automatically on a month-to-month basis, unless terminated in writing by either party with sixty (60) days notices.

8. STATUS OF CONSULTANT

Consultant and Client agree that in the performance of Consultant's services hereunder, Consultant shall not be deemed to be an employee of Client for any purpose whatsoever, nor act under Color of State.

9. NOTICES

Any and all notices, invoices, and payments required hereunder shall be addressed to the parties at their respective addresses set forth in page 1 hereof, or to such other address as may hereafter be designated in writing by either party hereto.

10. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and interpreted in accordance with the Laws of the State of Nebraska.

11. COMPLETE AGREEMENT; MODIFICATION

There are no terms, conditions or obligations other than those contained herein, and there are no written or verbal statements or representations, warranties or agreements with respect to this Agreement that have not been embodied herein.

This agreement constitutes the complete understanding of the parties with respect to the subject matter hereof. No modification or amendment of any provisions of this agreement shall be valid unless in writing and signed by both parties.

IN WITNESS THEREOF, the Consultant and Client by individuals duly authorized to do so, have signed this agreement, the day and year first above written.

CONSULTANT

CLIENT

By: \_\_\_\_\_  
R.A.Comi  
The Center for Municipal Solutions

By: \_\_\_\_\_  
\_\_\_\_\_ (printed)

Title: \_\_\_\_\_

RESOLUTION 2010-154

WHEREAS, the City of Grand Island has entered into an interlocal agreement for the creation of a joint planning commission and joint planning department with Hall County and the municipal entities of Wood River, Alda, Doniphan and Cairo; and

WHEREAS, the Hall County Regional Planning Commission requested proposals from companies willing and able to provide Wireless Telecommunications Tower Consulting Services to the entities served by the Planning Commission, and

WHEREAS, the Center for Municipal Solutions was the only company to submit in response to the Request for Proposals; and

WHEREAS, the Center for Municipal Solutions met the requirements of the Request for Proposals; and

WHEREAS, the City of Grand Island supports the development of Wireless Communication Towers and Facilities to the level and extent that they are necessary for satisfactory wireless service to the citizens of and visitors to Grand Island; and

WHEREAS, an Agreement has been written between the City of Grand Island and the Center for Municipal Solutions.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Agreement between the City of Grand Island and the Center for Municipal Solutions is hereby approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 8, 2010.

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Margaret Hornady, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
June 4, 2010	☐ City Attorney