



**CITY OF DULUTH**

**REQUEST FOR PROPOSALS FOR**

**PUBLIC AWARENESS INFORMATION & MEDIA PURCHASING SERVICES**

**RFP NUMBER 17-0030**

**ISSUED NOVEMBER 18, 2016**

**PROPOSALS DUE THURSDAY, DECEMBER 8, 2016 BY 2:00 PM**

**SUBMIT TO**

**CITY OF DULUTH  
ATTN: PURCHASING DIVISION  
CITY HALL, ROOM 100  
411 WEST 1ST STREET  
DULUTH, MN 55802**

## PART I - GENERAL INFORMATION

**I-1. Project Overview.** The City of Duluth Public Works & Utilities Department is searching for an agency/collaborative team to provide public awareness information and media purchasing services for its account. Additional detail is provided in Part IV of this RFP.

**Please note that, in order for an agency's proposal to be considered, it must meet the following criteria:**

1. Agency/Team must be located within 25 miles of Duluth, MN.
2. Agency/Team must be a full service agency. A full service agency provides services to include media strategy and buying, art and creative direction, design services, copy writing, web site promotions, digital campaign services, illustration, budgeting and reporting with its staff.
3. Agency/Team shall not handle any accounts for a competitor that directly competes for gas utility customers of Duluth Public Works and Utilities Department.
4. Agency/Team must have strong capabilities in direct marketing, digital media, web site promotions, launching new services, design, media placement, and formulation of marketing strategies.
5. Agency/Team must have worked together serving full service accounts for a minimum of 3 years.
6. Agency/Team shall have a minimum of four staff or team members including owners and executives.

Proposals must clearly address each of these qualifications.

**I-2. Calendar of Events.** The City will make every effort to adhere to the following schedule:

Activity	Date
Deadline to submit Questions via email to <a href="mailto:purchasing@duluthmn.gov">purchasing@duluthmn.gov</a>	November 23, 2016
Answers to questions will be posted to the City website no later than this date.	November 29, 2016
Proposals must be received in the Purchasing Office by 2:00 PM on this date.	December 8, 2016

**I-3. Rejection of Proposals.** The City reserves the right, in its sole and complete discretion, to reject any and all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in its best interests. The City is not liable for any costs the Proposer incurs in the preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-4. Questions & Answers.** Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at [purchasing@duluthmn.gov](mailto:purchasing@duluthmn.gov) **no later than** the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

**I-5. Addenda to the RFP.** If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <http://www.duluthmn.gov/purchasing/bids-request-for-proposals/> . Although an e-mail notification will be sent, it is the Proposer's responsibility to periodically check the website for any new information

**I-6. Proposals.** To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will not accept proposals via email or facsimile transmission. The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an official authorized to bind the Proposer to its provisions. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met. Proposals must remain valid for 60 days or until a contract is fully executed.

Please submit five (5) paper copies of your complete proposal. In addition, submit one copy of the entire proposal, including any required appendices, on CD-ROM or Flash drive in Microsoft Office-compatible or pdf format.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

**I-7. Small Diverse Business Information.** The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnuccp.metc.state.mn.us/> .

**I-8. Term of Contract.** It is anticipated that this will be a three (3) year contract, beginning January 1, 2017 (or once fully executed) through December 31, 2019. A copy of the City's standard professional services agreement is attached as Appendix B. Please note the indemnification and insurance requirements on page 5.

The selected Proposer shall not start the performance of any work nor shall the City be liable to pay the selected Proposer for any service or work performed or expenses incurred before the contract is executed.

**I-9. Mandatory Disclosures.** By submitting a proposal, each Proposer understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Proposer independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer.

- B. There is no conflict of interest. A conflict of interest exists if a Proposer has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.
- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.

**I-10. Notification of Selection.** Proposers whose proposals are not selected will be notified in writing when contract negotiations have been successfully completed and the City has received the final negotiated contract signed by the selected Proposer.

**PART II - PROPOSAL REQUIREMENTS**

Proposals must include the following:

1. Name, address, telephone and fax number of the agency. Provide the name, telephone number and e-mail address of a primary point of contact on Appendix A.
2. Complete answers to the Agency Questionnaire, which is attached as Appendix C. A fillable version of Appendix C is available on the City website for your convenience.
3. References. Please provide the names of at least three (3) of your current clients with whom we may speak regarding the effectiveness of your creative product and the excellence of your account service. Also, please provide the names and contact information for at least two (2) of the media organizations that you purchase media from with whom we may speak regarding their experience scheduling messages and your payment history.
4. A current rate sheet, including all rates, fees and commissions to provide the services requested for the life of the agreement (2017 through 2019). Break out hourly rates by type of service provided and position of staff providing service.
5. Completed “Cost Projections for a Hypothetical Year of Agency Service”, which is attached as Appendix D. An Excel spreadsheet version of Appendix D is available on the City website for your convenience.

Do not submit speculative or creative materials at this time.

**PART III - CRITERIA FOR SELECTION**

Proposals will be reviewed by City Staff. A 77-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

Organization Ownership and Key Employees	10
Agency Organization and Service	12
Top Management Participation	5
Account Gain Loss History	5
Financial Standing & Policies	5
View and Effective Communications	10

Agency Experience	10
References	10
Qualification Statement (Grammar/Spelling/Presentation)	10

Qualified organizations may be contacted to arrange for an informal visit by utility staff to learn about their capabilities, past work and personnel. A 25-point scale will be used to score the agency visit if visits are conducted.

Agency visits (if applicable) will be judged on:

Reputation	10
Quality of Work	5
Sales Success	5
Problem Solving	5

## **PART IV – PROJECT DETAIL**

### **1. Background**

The Public Works and Utilities Department was formed in 1999 by combining two city departments, Public Works and Water and Gas. The department selected a brand name, “ComfortSystems”, to promote product safety, natural gas, and associated utility services. ComfortSystems’ communication needs consist of four key components:

1. Publicizing safety and conservation messages,
2. Promoting utility billing and credit services,
3. Promoting utility services, with a special focus on natural gas services,
4. Outreach to low income customers.

The Federal Energy Regulatory Commission and the Minnesota Office of Pipeline Safety mandate that certain public awareness communications be promoted to the public and certain stakeholder groups, such as emergency responders and local government officials.

The Public Works and Utilities Department has provided natural gas service to Duluth for several decades through its predecessor the Water and Gas Department. It promotes 32 existing products and services to residents and businesses located in Duluth. New products and services will be launched in the future.

### **2. Budget**

Agency budgets to develop and deliver public information to customers and residents are expected to remain steady at approximately \$70,000 per year. Most of the agency budget is spent on media for messages.

### **3. Product**

Natural gas is a clean, efficient, convenient, worry free, and economical source of energy for heating homes and water, drying clothes, cooking food, fireplaces, etc. Prospective customers have some need for natural gas but it is not necessary because

of readily available substitutes. Natural gas competes against firewood, fuel oil, propane, and electricity, and district steam as an energy source. It has a price advantage over electricity, fuel oil, propane, and steam.

Natural gas is the cleanest burning of the fossil fuels. In 2016 air emissions from burning natural gas for energy by our customers in Duluth are lower than energy from firewood, fuel oil, propane, electricity (generation source emissions), and steam (Duluth Energy, steam cooperative).

We are the only organization offering natural gas service to residential customers in the City of Duluth. In the past we have had direct competition from COMO Natural Gas, Inc. and Texas El Paso Gas for commercial customers. Today we face direct competition from US Energy Services to purchase natural gas for commercial customers. We are the market leader selling natural gas in Duluth. Any increase in the size of the gas market in Duluth will benefit ComfortSystems and its customers.

Minnesota Power has a similar dominance in selling electric power to customers in our service territory. It is a much larger company than Public Works & Utilities. Electric appliances often have a lower initial cost. Minnesota Power has programs in place to entice customers to go electric. There are many propane and fuel oil companies in the area which also offer incentives to customers to install propane and oil fueled appliances. Many residents have purchased appliances that operate on fuels other than natural gas.

Natural gas appliances are clean burning and convenient to use. Natural gas is the environmentally responsible choice, since it produces the least amount of greenhouse gases out of any of the major energy sources that scientists cite as causing global warming.

Since there is no storage needed with natural gas, customers can get rid of storage tanks. Natural gas gives customers peace of mind because they do not worry about running out of fuel before the next delivery. Natural gas has a good reputation in Duluth.

#### **4. Services**

The Department provides:

- credit and billing services which are promoted to make customers aware and enroll. These services are similar to what other businesses offer customers.
- budget billing
- direct pay
- pay boxes
- service applications/changes
- credit card transactions
- natural gas appliance services are distinguished by low prices, quality work, and a high credibility level with the customer
- furnace and boiler cleaning
- furnace and boiler repair & service
- hot water heater repair & service
- fireplaces, ranges, ovens.

## **5. Safety**

Safety is critical to our customers, employees and the general public. These services are generally unique to natural gas suppliers

- natural gas leak detection and repair service
- water leak detection and repair service
- carbon monoxide testing
- regulator & meter snow removal
- pipeline safety
- 24-hour emergency service
- construction zone driving

## **6. Residential.**

- New customer converting to natural gas
- Home Energy Loan Program provides low interest loans. It is very popular with customers wanting to improve the energy efficiency of their homes.
- Advanced Home Energy Analysis Program provides use of diagnostic tools during initial energy surveys to identify more comprehensive efficiency and conservation measures. It is provided in partnership with Minnesota Power.
- Home Energy Analysis is a free home energy survey for energy conscious customers. This program is provided in partnership with Minnesota Power.
- Low Income New Construction program provides grants to builders and developers to make new construction low income housing more efficient from the start.
- High Efficiency Boiler and Furnace rebate program provides rebates to customers installing high efficiency boilers and furnaces.
- High Efficiency Furnace with ECM rebate program is marketed jointly by ComfortSystems and Minnesota Power through ComfortSystems.
- Heat Share helps needy customers pay heating bills during the winter. The Salvation Army administers this program. ComfortSystems solicits donations and refers clients.
- Application for Service & Rates makes customers aware of choices available to them and how to make changes.
- Natural gas services are provided to new customers by extending mains into areas where no mains exist, and putting in gas services from mains to new customers.
- The benefits of natural gas are promoted to potential and existing customers.

## **7. Commercial & Industrial.**

- Gas transport gives customers choice about who supplies their natural gas
- Application for service and rates makes customers aware of choices available to them and how to make changes.
- Promotion of Commercial & Industrial conservation programs.

## **8. List of Agency Services Desired:**

1. Account Administration
2. Media/Vendor Strategy and Supervision

3. Purchasing Media and Materials
4. Client Consultation
5. Project Coordination
6. Art Direction/Creative Direction
7. Design Services and Layout
8. Digital Advertising
9. Copywriting
10. Web Site Promotion
11. Illustration

### **9. Typical Media Program**

Messages are placed in various media year around, but some services are limited to the construction season (May-October). Message placement for this account will primarily be in the Twin Ports region of Minnesota. The agency will be expected to participate in the development and launch of new products and services. Some advertising will be produced jointly with other companies which will require ad agencies to work together to complete the assignment.

**APPENDIX A - PROPOSAL COVER SHEET  
CITY OF DULUTH  
RFP# 16-20AA**

<b>Proposer Information:</b>	
Proposer Name	
Mailing Address	
Website	
Contact Person	
Contact Person's Phone Number	
Contact Person's Fax Number	
Contact Person's E-Mail Address	
Federal ID Number	
Authorized Signature	
Title	

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN**

**CONSULTANT'S NAME  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the City of Duluth, hereinafter referred to as City, and [insert consultant's name] located at [insert consultant's address], hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for [insert a description of the project and project number if applicable], (the "Services"); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a Proposal to provide services for the Project (the "Proposal"). A copy of the Proposal is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant's professional services for the Project; NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide the following services related to the Project as described in Consultant's Proposal (the "Services"). Consultant agrees that it will provide its services at the direction of the [insert the title of the City Staff – such as "Director of Public Works"] ("Director"). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees

It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of [insert written dollar amount of contract and 00/100th dollars (\$0.00)] inclusive of all travel and other expenses associated with the Project, payable from Fund \_\_\_\_ - \_\_\_\_ - \_\_\_\_; Resolution No. passed on date. All invoices for services rendered shall be submitted monthly to the attention of Director. Payment of expenses is subject the City's receipt of reasonable substantiation/back-up supporting such expenses.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be [insert key consultant's name or names] (the "Primary Consultant"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant's obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City 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. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared

by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- d. 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 Agreement.
- e. 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.
- f. 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.
- g. 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, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. 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 City 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 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 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 the 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. The Consultant will not, without the prior written consent of the City, 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.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by **Insert date**, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of

copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no 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 of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Consultant shall defend, indemnify and hold City 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 Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section

shall survive the termination of this Agreement for any reason.

8. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. 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 state 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.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**City:** City of Duluth  
411 W First Street  
City Hall Room #  
Duluth MN 55802  
Attn: Director

**Consultant:** Vendor  
Address  
City State Zip  
Attn:

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, 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 with respect to their respective agencies which are applicable to its activities under this Agreement.

12. 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.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. 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.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

**CITY OF DULUTH**

**[NAME OF CONSULTANT]**

By:

By:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Company Representative

Attest:

Its:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Title of Representative

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

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

Countersigned:

\_\_\_\_\_  
City Auditor

Date

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

Date

**APPENDIX C**  
**AGENCY QUESTIONNAIRE**

1. Organization Ownership and Key Employees
  - (a) When was your agency founded?
  - (b) Who owns your agency?
  - (c) Who controls the management of your agency?
  - (d) Please identify the most important executives in your agency, and provide a short one-paragraph description of each of their careers. What do they do now in your agency?
  - (e) Is there anything else you would like to tell us about the ownership of your agency or its key employees?
2. Agency Organization and Service
  - (a) Provide a functional organization chart for your agency. (It is not necessary to indicate names)
  - (b) How many staff including owners and executives does your agency have?
  - (c) Please describe how your agency provides service to a typical client. If possible, provide a functional account organization chart indicating contact points between agency and client.
  - (d) Is your organization a full service agency? What services does your agency provide? What services does your agency rely on individuals or firms outside of it to perform?
  - (e) Please describe the function of your account management. How does it interact with a typical client? What are its specific responsibilities within the agency?
  - (f) Please describe your creative department. How would you characterize its strengths? To what extent and under what circumstances are representatives of the creative department in direct contact with your clients?
  - (g) Please describe your media department. How would you characterize its strengths? To what extent and under what circumstances are representatives of your media department in direct contact with your clients?
  - (h) Please describe your research department. How would you characterize its strengths? To what extent and under what circumstances are representatives of your research department in direct contact with your clients?
  - (i) What capabilities does your agency have in direct marketing, web site development and promotion, digital ads, launching new services, media placement, and the formulation of marketing strategies?
  - (j) When your agency is awarded a new account, does it typically staff it from within, or do you also augment internal staffing with professional people newly hired from outside the agency?

**APPENDIX C**  
**AGENCY QUESTIONNAIRE**

- (k) Which staff members would handle our accounts?
  - (l) Would any tasks or activities for Public Works and Utilities be subcontracted to individuals or companies outside the agency? If so which ones, and who would do the work?
  - (m) Please provide any additional information you wish to include regarding your agency's organization and how it serves its clients.
3. Top Management Participation
- (a) How does the owner or chief executive officer maintain contact with your clients?
  - (b) Does the owner or chief executive officer participate directly in the professional conduct of any client advertising programs? Which clients?
  - (c) Who (by title) is the senior agency executive responsible for the professional conduct of other agency accounts?
  - (d) Please provide any additional information you wish to include regarding the participation of your top management in account services.
4. Account Gain and Loss History
- (a) What accounts has your agency lost in the past two years?
  - (b) If you have lost accounts within the past two years, why they were lost?
  - (c) What accounts has your agency gained in the past two years?
  - (d) If you have gained accounts within the past two years, why do you believe your agency was chosen to service these new accounts?
  - (e) Please provide a list of your accounts as of November 1, 2011 and as of November 1, 2015.
  - (f) Does your agency handle any accounts for companies that directly compete for energy customers of the Duluth Public Works and Utilities Department? If so, please provide a list of those clients. What is the nature of those accounts and what services do you provide?
  - (g) Please provide any additional information you wish to include regarding your account gain and loss history.
5. Agency Financial Standing and Policies
- (a) How would you characterize your balance sheet?
  - (b) How do you usually charge your clients for your services? Please include an explanation of your compensation philosophy, a schedule of hourly rates, your mark-up structure and fee/commission structures.
  - (c) Do you have an internal time-cost accounting system? If so, what has been your experience with the system?

**APPENDIX C**  
**AGENCY QUESTIONNAIRE**

- (d) Approximately what proportion of agency internal time is charged against client accounts and what proportion is charged against general management, general overhead, and/or unallocated direct salary expense?
  - (e) We would be interested in any comments that you wish to make about your credit rating, your media payment policies, whether you consistently earn cash discounts, etc.
  - (f) About how many days on average do client media bills remain outstanding after the media invoice is issued? 30 days, 60 days, 90 days, over 90 days?
  - (g) What was the approximate value of all media purchased for clients in 2015? Please provide a breakdown by the type of media purchased in 2015 (e.g. TV 20%, Print 15%, Digital 15%, Radio 30%, Bill Boards 10%, Special Events 10%, etc.).
  - (h) Please provide any additional information you wish to include regarding your agency's financial standing and policies.
6. Agency Views about Effective Advertising
- (a) How would you describe effective advertising?
  - (b) Does your agency have any specific philosophy or practices that you believe consistently produce effective advertising?
  - (c) Does your agency follow any procedures to maintain the effectiveness of the advertising you produce on an account-by-account basis?
  - (d) Please provide any additional information you wish to include regarding your agency's views about effective public information communications and how it might best be obtained.
7. Agency Experience
- (a) In general, how would you characterize the experience of your agency? With what kinds of accounts do you believe your agency has special expertise?
  - (b) What agency experience, if any, is directly related to the products or services which we are now searching for an agency?
  - (c) What other agency experience, although not directly relevant, do you believe might provide useful background if you were to be awarded the public awareness agency account for ComfortSystems?
  - (d) What advantage would your firm provide to Public Works and Utilities versus other firms?
  - (e) Does your agency as a whole, or any of the individual staff, have any experience in developing public awareness strategy and tactics for firms in recently deregulated industries such as trucking, banking, airline, telephone, or energy? If so, please describe the nature of that experience.

**APPENDIX C**  
**AGENCY QUESTIONNAIRE**

- (f) Please provide any additional information you wish to include regarding your agency experience.

**APPENDIX D  
COST PROJECTIONS FOR A HYPOTHETICAL YEAR OF AGENCY SERVICE**

The billable hours for a hypothetical year of public awareness media services are projected below. The hours listed represent the estimated amount of billable hours and production time an agency might spend providing various services in a year. Please complete the following sections, listing the type of services provided and the rates where indicated. This information will be used to compare agencies during the evaluation process. The estimates provided by the City and the costs submitted by the proposing agencies are not the final contract amount. If your agency charges additional fees or rates other than those listed below, please list them in section 10.

**1. ACCOUNT ADMINISTRATION - 103 hours total**

All aspects of responsive client servicing, including: budget preparation, budget tracking and budget planning, documentation and facilitation, assembling monthly reports to ensure budget is on-target at end of each month; City and Inter-office reports; invoice and contract reviews; daily account supervision; budget forecasting; determining ways to make the most of PR opportunities and coordinating attendance at community/cultural events thereby helping to strengthen ComfortSystems public profile.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			103	

**2. MEDIA/VENDOR STRATEGY & SUPERVISION - 22 hours total**

Strategizing, determining media tactics and message placement, developing and maintaining a detailed marketing/media plan as per a predetermined annual budget; researching opportunities to maximize most effective use of media placement by pinpointing specific messages to demographic audience; contact with media representatives; planning media schedules, and coordinating project traffic; purchasing media of all types, following up on billing discrepancies and makegoods; maintaining internal media spreadsheets; preparation of materials for City officials to substantiate marketing strategies.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			22	

**3. CLIENT CONSULTATION & CONTACT - 40 hours total**

All discussions, meetings, and phone conversations between agency staff and ComfortSystems personnel, including: formulation of strategy and tactics, campaign planning, media and design recommendations; following up on client's questions and concerns; deliberation and conception of ideas with client, meeting with client project development teams, meet with marketing manager at least monthly, summarize and issue meeting minutes.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			40	

**APPENDIX D  
COST PROJECTIONS FOR A HYPOTHETICAL YEAR OF AGENCY SERVICE**

**4. PROJECT COORDINATION - 35 hours total**

Supervision and management of specific approved projects, including: brochures, inserts, direct mail, handouts, apparel, radio scripts, digital ads, television, newspaper and magazine advertisements, outdoor advertising, special events, etc.; securing estimates and comparing costs; researching vendor capabilities and fair market price in regard to specific projects; preparing specs; all press checks; monitoring vendor invoices, supervision of production, printing and outside vendors in regard to a specific project to ensure price, quality control and timely delivery.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			35	

**5. ART DIRECTION/CREATIVE DIRECTION - 9 hours total**

Management and supervision on a per-project basis, which includes: guidance of the conceptual direction of fresh, effective, consistent, on-message creative; supervising photography sessions, editing sessions, selecting sound effects for TV and radio, coordinating voice talent, music, etc.; as well as ensuring all production is both on-time and on-budget, and to client's specifications.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			9	

**6. DESIGN SERVICES - 34 hours total**

All design and layout of collateral materials; brainstorming and conceptual strategy; development of innovative, effective, strategically sound design solutions; creation of digital ads, print ads, brochures, direct mail pieces, outdoor advertising, Powerpoint presentations; scanning of photographs and/or artwork; photo retouching, etc.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			34	

**7. COPYWRITING - 20 hours total**

All copy writing, proofing, editing, research and revisions for print, Web site and broadcast media.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			20	

**APPENDIX D  
COST PROJECTIONS FOR A HYPOTHETICAL YEAR OF AGENCY SERVICE**

**8. INTERACTIVE - DIGITAL AND WEBSITE DEVELOPMENT - 31 hours total**

Creation and development of an expansive internet visibility and web presence; implementation of search engine placement; shaping the framework and layout of site, completing all production work–in-house to ensure it remains consistent with marketing strategy; ascertain that ComfortSystems’ digital ads and web site performs smoothly over all formats, remains up-to-date and functions efficiently and effectively.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			31	

**9. ILLUSTRATION - 9 hours total**

Illustration includes the creation of original artwork for use in collateral, digital ads, web site, etc., according to criteria pre-determined by agency design team and ComfortSystems, with the intent to coincide with and create an association between a symbol/object and ComfortSystems with the goal of building awareness and association.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			9	

**10. ADDITIONAL SERVICES/RATES/FEES NOT LISTED ABOVE**

Please list any services that you would expect to bill for in a typical year of servicing our account, the applicable rate(s), and estimated number of hours for each.

TYPE OF SERVICE	RATE (\$/HOUR)	X	# OF HOURS	COST
		X		
		X		
		X		
		X		
<b>SUBTOTAL</b>			0	

**11. MEDIA COMMISSIONS & VENDOR MARKUPS EARNED BY AGENCY**

Standard industry media commissions and vendor mark-ups are calculated at 15% of gross. If this is not your agency policy, please explain below. (Please use back of sheet or additional page if more space is needed.)

Please calculate the amount of vendor commissions and vendor mark-ups agency would receive, assuming that \$52,800 is spent by the agency on media and materials on behalf of Public Works and Utilities. (For example, if media and vendor mark-ups were 15% then the agency would receive \$7,920.)

- 1 Cost of media & materials \$52,800.00
- 2 Cost for billable agency hours
- 3 Cost for media commissions/vendor markups

Total