PUBLIC WORKS AND UTILITIES COMMITTEE

11-0152R

RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DULUTH AND THE REGENTS OF THE UNIVERSITY OF MINNESOTA FOR THE FURNISHING OF PROFESSIONAL AND TECHNICAL SERVICES IN CONJUNCTION WITH THE DULUTH STREAMS PROJECT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and the Regents of the University of Minnesota for professional and technical services needed in conjunction with the city's stream monitoring program in an amount not to exceed $60,000, to be paid from Fund 535 (Stormwater), Agency 500 (Public Works & Utilities), Organization 1915 (Utility General Expense), Object 5441.

Approved:

for Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

PW&U/ATTY GBJ:cjk 3/17/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the city of Duluth and the Regents of the University of Minnesota for professional and technical services related to stream monitoring as part of the city's municipal separate storm sewer (MS4) permit.

The city holds an MS4 permit because it owns and operates a storm sewer that discharges into waters of the state of Minnesota. The permit is administered through the Minnesota pollution control agency (MPCA) as part of the larger national pollutant discharge elimination system (NPDES) program mandated by the Environmental Protection Agency. The MS4 permit requires six minimum control measures by the permit holder, the first two of which are public education and public involvement. The website, lakesuperiorstreams.org, has been a collaborative project between the city of Duluth, the University of Minnesota and

others to maintain long term data collection, stream monitoring and pollution prevention education targeted at school groups and teachers. The site has had some 16 million hits since it was founded in 2002. This website helps the city meet its MS4 permit requirements.

The term of the agreement is for three years.

UNIVERSITY OF MINNESOTA
SERVICES AGREEMENT
DULUTH STREAMS PROJECT

THIS AGREEMENT entered into this _____day of_____, 2011 is by and between the REGENTS OF THE UNIVERSITY OF MINNESOTA and the CITY OF DULUTH, MINNESOTA.

On the terms, and subject to the conditions, set forth in this Agreement, the parties agree that Regents of the University of Minnesota, whose address for purposes of this Agreement is NRRI, 5013 Miller Trunk Highway, Duluth, MN, 55811 (the "University"), will provide the services described in Section 1 of this Agreement to City of Duluth (the "City"), whose address for purposes of this Agreement is Attn: C. Kleist, 600 Garfield Avenue, Duluth, MN, 55802.

1. **Description of Services**. The University shall render the following services:

   See attached Attachment "A."

2. **Term.** The term of this Agreement shall commence on March 31, 2011 and shall run for thirty-six (36) months. Unless terminated earlier as provided in Section 4, the term of this Agreement shall terminate on March 31, 2014.

3. **Compensation.** For the services rendered under Section 1, the City shall pay the University Twenty Thousand Dollars and No/100's ($20,000) each calendar year for a total amount not to exceed Sixty Thousand Dollars and No/100's ($60,000). The University shall invoice the City for services rendered and City shall make payment within 30 days receipt of such invoice. Compensation shall be paid from Fund 535, Agency 500, Org. 1915, Object 5441 (Stormwater, Public Works & Utilities, Utility General Expense).

4. **Termination.** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Upon termination, the City shall promptly pay to the University for all services rendered up to and including the date of termination. All work product of the University produced under this Agreement shall become property of the City; provided however that City hereby grants University a perpetual, irrevocable royalty free license to use the work product in any manner the University deems appropriate.

5. **LIMITATION OF DAMAGES**. EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL THE UNIVERSITY OR THE CITY BE LIABLE TO THE OTHER PARTY FOR (A) PERSONAL INJURY OR PROPERTY DAMAGES OR (B) LOST PROFITS, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

6. **LIMITATION OF REMEDIES**. IN THE EVENT OF THE UNIVERSITY'S BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS

AGREEMENT, THE UNIVERSITY'S ENTIRE LIABILITY AND THE CITY'S EXCLUSIVE REMEDY SHALL BE, AT THE UNIVERSITY'S OPTION, EITHER (A) RETURN OF THE MONETARY CONSIDERATION PAID TO THE UNIVERSITY UNDER THIS AGREEMENT OR (B) THE UNIVERSITY'S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

7. **DISCLAIMER OF WARRANTIES**. THE UNIVERSITY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT.

8. **No University Endorsements**. In no event shall the City (or its successors, employees, agents, and contractors) state or imply in any publication, advertisement, or other medium that the University has approved, endorsed, or tested any product or service. In no event shall the University's performance of the services described in Section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service. Neither party shall have the right to use, and shall not use, the name of the other (nor the names of any University faculty member, student, employee, or agent) in any publicity, advertising, or news release without the other party's prior written approval.

9. **Indemnification.**

   9.1. The City shall indemnity and hold the University and its regents, faculty members, students, employees, agents, and contractors harmless from all actions, suits, claims, negligent losses, costs, judgments, and expenses, arising out of the City's acts and omissions in performing its duties under this Agreement.

   9.2. Subject to the limitations of damages and remedies set forth in this Agreement, the University shall indemnify and hold the City and its directors, employees, agents, and contractors harmless from all actions, suits, claims, losses, costs, judgments, and expenses, arising out of the University's negligent acts and omissions in performing its duties under this Agreement.

10. **Publications.** Data produced pursuant to this Agreement shall be the property of the City. Notwithstanding the foregoing, the University (and the individual University faculty member, student, employee, or contractor) shall have the right to publish (including, without limitations, presenting papers at symposia or professional meetings and publishing articles in journals, theses, or dissertations) the data gathered, if any, analytical methods, and results and conclusions.

11. **General Provisions**.

   11.1. **Amendment.** This Agreement may not be amended except in a writing duly executed and delivered by both parties.

11.2. **Assignment.** This Agreement may not be assigned by a party without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void.

11.3. **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties as to such subject matter.

11.4. **Force Majeure**. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure, the parties' duty to perform obligations shall be suspended.

11.5. **Governing Law; Consent to Jurisdiction**. The construction, validity, performance, and enforcement of this Agreement shall be governed by the laws of the State of Minnesota (without giving effect to its conflict of laws principles). The City hereby submits to the jurisdiction of the courts of the State of Minnesota and of the federal courts in the District of Minnesota with respect to any proceeding arising out of or relating to this Agreement or any transaction in connection herewith.

11.6. **Independent Contractor**. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint venturers, or employees. Neither party shall have the right to bind the other party and any attempt to enter into an agreement in violation of this Section 11.06 shall be void. Neither party shall take any actions to bind the other party to an agreement. Neither parties' employees shall be deemed to be an employee of the other party for purposes of Workers' Compensation, unemployment insurance, disability or severance pay benefits, or PERA.

11.7. **Notices**. Each notice, request, or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, first class, postage pre-paid, and addressed to the address of the intended recipient set forth above or to such other address as may be specified in writing by the parties.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the date first above written.

REGENTS OF THE UNIVERSITY OF MINNESOTA

By:_____

Its_____

CITY OF DULUTH

By:_____
Its Mayor

Attest:_____
Its City Clerk

Countersigned:

_____
City Auditor

Approved as to Form:

_____
City Attorney

Services Agreement Attachment A
City of Duluth & University of Minnesota -Duluth, Natural Resources Research Institute
Duluth Streams Project – 2011 -2014.

Description of Services The University shall render the following services:

The services described below are entirely in support of the City of Duluth project entitled **Duluth Streams: Community partnerships for understanding urban stormwater and water quality issues at the head of the Great Lakes,** 2001-2011; Principal Investigator- Chris Kleist (previously M. Lonsdale), Dept. of Public Works & Utilities, Duluth, MN); Richard Axler and George Host of the University of Minnesota=s Natural Resources Research Institute (NRRI) and Cynthia Hagley and Jesse Schomberg of the University of Minnesota=s Sea Grant College (Sea Grant) are co- Principal Investigators on this project. This project originated via a Partnership between the City, NRRI, Sea Grant, MPCA-Duluth, and WLSSD which has continued since 2001 via a series of federal grants augmented by local in-kind match, state grants, and private donations.

NRRI staff having the equivalent of a Masters degree in Aquatic Science or equivalent experience that includes post graduate level experience in limnology, stream ecology, hydrology, field sampling, water sample processing, water quality chemical analyses, data base management, data interpretation and graphical presentation, GIS, and web site design and maintenance will coordinate field sampling activities, maintain and calibrate automated stream monitoring units, compile and summarize historical data, assist with data interpretation and presentation, and maintain and expand the DuluthStreams website (http://duluthstreams.org) to include new educational materials, data, and curriculum. They will be directed by Drs. Axler and Host (NRRI) in collaboration with Mr. Kleist (City of Duluth) on technical matters and with other City, WLSSD, MPCA and other agency staff as needed to accomplish the continuing objectives of the *DuluthStreams* project. Note that the website took on the additional name *LakeSuperiorStreams.org* in 2005 to indicate that its materials were broadened to include the wider geographic area represented by the Western Lake Superior Regional Stormwater Protection Team (RSPT: http://www.duluthstreams.org/stormwater/rspt.html). However, the City of Duluth (Public Works/Stormwater Utility) remains the lead agency involved in this project and with the RSPT.