

INTERGOVERNMENTAL RELATIONS COMMITTEE

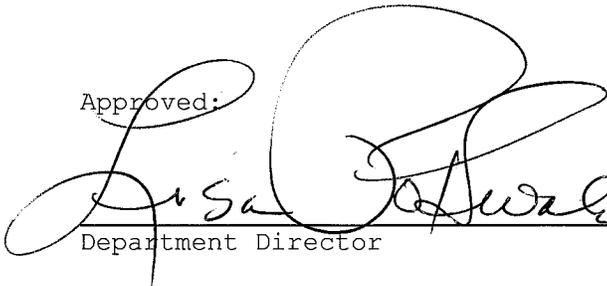
11-0542R

RESOLUTION AUTHORIZING THE EXECUTION OF A 3-YEAR JOINT POWERS AGREEMENT WITH THE STATE OF MINNESOTA, DEPARTMENT OF NATURAL RESOURCES, FOR THE SUMMER MAINTENANCE OF THE CLYDE AVENUE (MUNGER ACCESS) AND RICE'S POINT BOAT LAUNCH SITES.

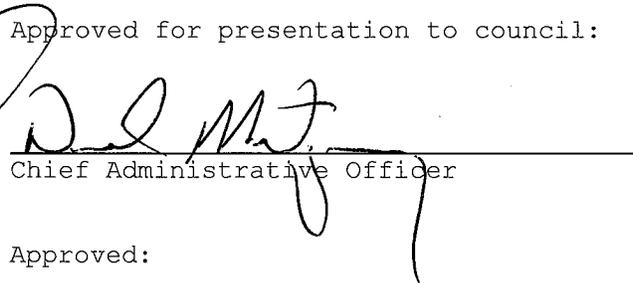
CITY PROPOSAL:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. \_\_\_\_\_, with the state of Minnesota, department of natural resources, authorizing the city to perform certain maintenance for 3 consecutive years at the Clyde Avenue (Munger Access) and Rice's Point boat launch sites, in consideration of \$1,500 per summer for a total agreement amount of \$4,500 to be paid by the department of natural resources to the city. Reimbursements received shall be deposited into public administration department, maintenance operations division, General Fund 110, Department 121, Division 1217-2140, Revenue Source 4654-02.

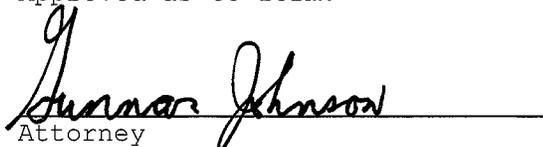
Approved:

  
\_\_\_\_\_  
Department Director

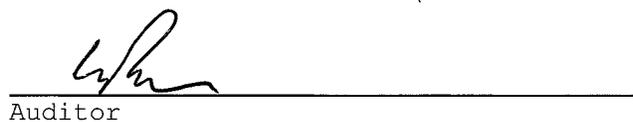
Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

STATEMENT OF PURPOSE: This resolution authorizes a 3 year joint powers agreement between the city and the DNR whereby the city agrees to provide specific maintenance services at Munger boat landing and Rice's Point boat landing. The DNR agrees to reimburse the city for its expenses incurred; \$500 per year for Munger landing and \$1,000 per year for Rice's Point landing for a total agreement amount of \$4,500. This agreement will replace the annual maintenance agreements previously approved in 2008, 2009 and 2010.

**STATE OF MINNESOTA  
JOINT POWERS AGREEMENT**

This agreement is between the State of Minnesota, acting through its DNR Parks & Trails Division ("State") and City of Duluth ("Governmental Unit").

**Recitals**

Under Minn. Stat. §§ 84.026 and 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of Public Water Access Maintenance at the Munger & Rice Point Public Accesses.

**Agreement**

**1 Term of Agreement**

- 1.1 **Effective date:** July 1, 2011, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** June 30, 2014, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

**2 Agreement between the Parties**

**SEE EXHIBIT A, WHICH IS ATTACHED AND INCORPORATED INTO THIS AGREEMENT.**

**3 Payment**

The State of Minnesota Dept. of Natural Resources will pay the City of Duluth as listed in Exhibit A. Billing shall be done after the end date of the agreement.

The total obligation of the State under this agreement will not exceed \$1,500.00 per billing period or \$1,500.00 per year for a total of \$4,500.00 for the term of this agreement.

**4 Authorized Representatives**

The State's Authorized Representative is Joe Russell, Parks & Trails Area Supervisor, 1568 Hwy 2, Two Harbors, MN 55616 218-834-1433, or his/her successor.

The Governmental Unit's Authorized Representative is Tom Kasper, Supervisor Buildings + Grounds, City of Duluth, 110 N. 4<sup>th</sup> Avenue W. Duluth, MN 55807; phone 218-730-4492

**5 Assignment, Amendments, Waiver, and Contract Complete**

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

**6 Liability**

The Governmental Unit will indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this agreement by the Governmental Unit or the Governmental Unit's agents or employees. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligations under this agreement.

**7 State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

**8 Government Data Practices**

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this Clause, the Governmental Unit must immediately notify the State. The State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

**9 Venue**

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**10 Termination**

**10.1 Termination.** The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

**10.2 Termination for Insufficient Funding.** The State may immediately terminate this agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed: Pat Neuman

Date: 9-23-11

Swift Contract No. 34070 3-7697

**2. GOVERNMENTAL UNIT**

By: See attached signature

Title: page

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

By: \_\_\_\_\_

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

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

**3. STATE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)

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

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

**4. COMMISSIONER OF ADMINISTRATION**

delegated to Materials Management Division

By: \_\_\_\_\_

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

Distribution:  
Agency  
Governmental Unit  
State's Authorized Representative - Photo Copy

City of Duluth:

\_\_\_\_\_  
Mayor

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

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

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

Approved this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

## EXHIBIT A

**MAINTENANCE AGREEMENT  
CITY OF DULUTH  
2011-2014**

	Billing Period #1 July 1 thru September 12, 2011	Billing Period #2 May 7 thru June 30, 2012	Billing Period #3 July 1 thru September 10, 2012	Billing Period #4 May 6 thru June 30, 2013	Billing Period #5 July 1 thru September 9, 2013	Billing Period #6 May 6 -June 30, 2014
Munger Access	\$300	\$200	\$300	\$200	\$300	\$200
Rice's Point	\$600	\$400	\$600	\$400	\$600	\$400

The following maintenance will be performed at the public water accesses listed above:

1. Clean up all litter, branches and other debris at least once every 7 days or sooner if needed, around launch and parking areas.
2. Mow site: A total of at least 3 times at intervals as needed during the contract period. Destroy noxious weeds as requested.
3. Assist DNR in removing and installing docks.
4. Report storm damage, other needed repairs and missing signs to the DNR Area Parks & Trails office.
5. Report problems such as vandalism and overnight camping to the DNR Area Parks & Trails office.
6. Grade parking area, remove sand built up on launch ramps as needed throughout the season.