

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

12-0274R

RESOLUTION AUTHORIZING AN AGREEMENT WITH THE STATE OF MINNESOTA THROUGH ITS MINNESOTA OFFICE OF HIGHER EDUCATION RELATED TO THE MINNESOTA LIBRARY INFORMATION NETWORK.

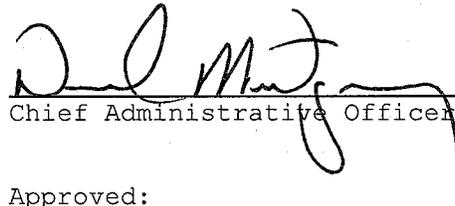
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a five-year agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the state of Minnesota through the Minnesota office of higher education (the "State") related to Minnesota Library Information Network ("MnLINK"), payments to the city payable into Fund No. 110-121-1218-4220-02 (General, Public Administration, Library Services, State of Minnesota Operating).

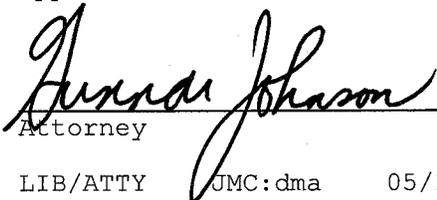
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

LIB/ATTY UMC:dma 05/18/2012

STATEMENT OF PURPOSE: The purpose of this Resolution is to authorize a five-year agreement with the State related to MnLINK. The current five-year contract expires at the end of June. MnLINK is the statewide interlibrary loan network that links academic libraries, government libraries, public libraries and school libraries throughout the state of Minnesota. For being part of the network, the City receives a varying annual payment which is typically in the range of \$4,500 per year.

GATEWAY SERVER SITE AGREEMENT
July 1, 2012 through June 30, 2017

This agreement is by and between the state of Minnesota, acting through its Minnesota Office of Higher Education (OHE) and the City of Duluth (Organization) through its Duluth Public Library. This agreement is a state contract within the meaning of Minnesota Statutes, Section 16C.05, subd. 2 and the effective date shall occur July 1, 2012 or when all of the applicable statutory requirements have been met, whichever is later.

WITNESSETH that:

WHEREAS, pursuant to the Laws of the State of Minnesota for 1997, Chapter 183, Article 1, Sec. 2, subd. 8, OHE is empowered to implement the Minnesota Library Information Network (MnLINK); and

WHEREAS, OHE will provide certain MnLINK services to the Organization via designated MnLINK Gateway Server Sites; and

WHEREAS, Organization is willing to manage and operate a designated MnLINK Gateway Server Site.

NOW THEREFORE, the parties hereby agree as follows:

Section 1. EXHIBITS

Exhibit A, MnLINK Gateway Server Site Requirements, is hereby incorporated in and made a part of this agreement.

Section 2. DEFINITIONS

Capitalized terms used in this agreement and not otherwise defined within the agreement have the following meanings:

Effective Date. *Effective Date* means the latest date of signature by an authorized signatory of both parties.

Minnesota Library Information Network. *Minnesota Library Information Network* means a statewide information center that links academic libraries, government libraries, public libraries and school libraries throughout the state of Minnesota so that they will appear to the user to be a single resource.

MnLINK Gateway Server Site. *MnLINK Gateway Server Site* means Organization automation systems, which meet criteria, established by MnLINK and allow their records to be reached through the MnLINK Gateway.

MnLINK Gateway. *MnLINK Gateway* means an integrated network which allows a user to simultaneously search multiple databases and Minnesota Organization catalogs and which connects MnLINK Gateway Server Sites to each other.

Organization. *Organization* means the organization, city, county or other entity that is a party to this agreement and operates the designated MnLINK Gateway Server Site, which is the subject of this agreement.

Section 3. SCOPE OF WORK

- A. Organization Obligations. Organization shall operate and manage a designated MnLINK Gateway Server Site and provide for the following:
1. Allow searches of its automated catalogue of Organization resources via MnLINK Gateway.
 2. Electronic placement of Interlibrary Loan requests for materials and items included on the Organization's automated catalogue database by users authenticated by MnLINK subject to:
 - a) statewide interlibrary loan policies and procedures established by Minitex and the Department of Education, Library Services and School Technology; and
 - b) such restrictions as the Organization or its members may place on the loan of materials consistent with 2.a) above.
 3. Conformance to gateway Server Site requirements as listed in Exhibit A and other requirements that may be adopted by MnLINK.
 4. Consideration of libraries outside its primary clientele for participation in its Organization automated system.
 5. Appointment by Organization of a member to the Gateway Operations Committee and any similar groups that may be established.
- B. OHE obligations. OHE shall, either directly or via contracted services administer the MnLINK Gateway for the benefit of all participants and provide for the following:
1. Contract with OCLC for hosting of the MnLINK Gateway ZPORTAL/VDX system.
 2. Organization and authenticated user search of identified Organization catalogue via MnLINK Gateway.
 3. Organization and authenticated user search of identified electronic resources via MnLINK Gateway.
 4. Organization and authenticated user placement of Interlibrary Loan request via MnLINK Gateway for materials of other MnLINK participating libraries subject to :
 - a) statewide interlibrary loan policies and procedures established by Minitex and/or the Department of Education.
 - b) such restrictions as the Organization or its members may place on the loan of materials consistent with 4.a) above.
 5. Establishment of the Gateway Operations Committee and any similar groups that may be required.

6. Consultation with the Gateway Operations Committee prior to adopting any new requirements.

Section 4. PAYMENT

Annual payments will be made to Organization within sixty (60) calendar days after the beginning of each fiscal year subject to the availability of funds. The annual payment will be determined by OHE based on the recommendation from the MnLINK Gateway Operations Committee.

Section 5. DEFAULT

- A. If Organization fails to maintain its MnLINK Gateway Server Site or fails to fulfill any of its obligations under this agreement, OHE may consider Organization to be in default, unless such failure has been caused by an excusable delay. OHE agrees to give Organization written notice of such default. Organization will have ten (10) days from the receipt of such notice to provide a plan of action that is acceptable to OHE to cure the default.
- B. If Organization fails to cure the default, OHE may terminate any unfulfilled portion of this agreement. In the event Organization fails to cure the default and the default is undisputed, Organization will refund to OHE all amounts previously paid during the fiscal year in which the agreement is terminated.

Section 6. DISPUTES

- A. Dispute Resolution. Organization and OHE will attempt to settle any claim or controversy arising from this agreement through consultation and negotiation in good faith and a spirit of cooperation. If those attempts fail, the dispute will be mediated by a mediator chosen jointly by Organization and OHE within thirty (30) calendar days after notice by one of the parties demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. Subject to available funding, Organization and OHE will share the cost of mediation equally. The parties may by mutual agreement complete some specified by limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding Alternate Dispute Resolution (ADR) procedure. Nothing in this section shall prevent OHE from terminating this agreement for a material breach or for convenience.
- B. Unresolved Disputes. Any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation may then be submitted by either party to Minnesota District Court in the Second or Fourth judicial district or to the United States District Court for the District of Minnesota for matters otherwise within its jurisdiction. Each party consents to jurisdiction over it by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver, or estoppels to affect adversely the rights of either party. Either party may resort to the judicial proceedings described in the paragraph prior to the expiration of the two-month ADR period of: (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful or (b)

interim relief from the court is necessary to prevent serious and irreparable injury to such party or any of its affiliates, agents, employees, customers, suppliers, or subcontractors.

- C. Performance While Dispute is Pending. Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this agreement, which are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this agreement, in the accomplishment of all undisputed work, any additional costs incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

Section 7. TERM

The term of this agreement is five (5) years from the effective date or through June 30, 2017, whichever is sooner.

Section 8. AUDIT RIGHTS

As required by Minn. Statutes Section 16.05, Subd. 5, the Organization shall maintain books, records, and documents that are relevant to the performance of this agreement. Such books, records and documents of organization as well as its accounting procedures and practices that are relevant to the performance of this agreement, shall be subject to the examination and audit of OHE, the Commissioner of Administration, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six (6) years from the end of this contract.

Section 9. TERMINATION FOR LACK OF APPROPRIATION OR CONVENIENCE

- A. Termination for Lack of Appropriation. If applicable, OHE shall take all reasonable actions to comply with Minn. Statutes 16A.15 and 16A.057. Section 16A.15 provides that a payment may not be made without prior obligation, and an obligation may not be incurred unless sufficient unencumbered funds exist. Section 16A.057 provides that, unless otherwise expressly provided by law, State money may not be spent or applied without an appropriation, an allotment and an issuance of a warrant or electronic fund transfer. If OHE takes all reasonable actions to comply with these statutes but nevertheless is unable to do so (as determined in good faith by OHE), OHE and Organization will have the right to terminate this agreement to the extent funds are not available without penalty and upon the same terms and conditions as a termination for convenience.
- B. Termination for Convenience.
 - 1. OHE or the Commissioner of Administration may terminate performance of work under this agreement in whole or in part whenever for any reason OHE or the Commissioner of Administration shall determine that such termination is the most appropriate action for OHE or the State. If OHE or the Commissioner of Administration elects to terminate this agreement pursuant to this provision, the Organization shall be notified by mail, return receipt requested, at least thirty (30) calendar days prior to the effective date of such termination. Such notice shall state the extent of such termination, i.e., whether it is in whole or in part, and if in part, the extent of the terminated portion. Termination shall be effective as of the close of business as specified in the notice. After receipt of a notice of

termination for convenience, Organization shall be paid any retention or holdback on payment accounts attributable to work completed before notice of termination.

2. Organization may terminate this agreement whenever for any reason Organization shall determine that such termination is the most appropriate action for the Organization. If Organization elects to terminate this agreement pursuant to this provision, Organization shall notify OHE by mail, return receipt requested, at least thirty (30) calendar days prior to the effective date of such termination. Termination shall be effective as of the close of business on the date specified in the notice. After receipt of notice of termination for convenience, Organization will refund to OHE a prorated amount of the funds paid by OHE during the fiscal year in which the agreement is terminated.
- C. Cooperation During Transition. Organization shall cooperate with and help facilitate any transition for the provision of contract related services by a different MnLINK Gateway Server Site or by OHE at any time during or within thirty (30) calendar days of the termination of this agreement. Failure to cooperate with and/or withholding any information or records requested by OHE or a different vendor that impairs in any way the transition of the provision of contract related services to a different party, shall constitute a material breach of this agreement, subjecting Organization to liability for all damages incurred by OHE because of such failure. Notwithstanding the above, OHE may alternatively choose to consider a breach of this section an event of default, and proceed in accordance with Section 5 above. This provision does not apply in the event of a termination for convenience or lack of appropriation.

Section 10. LIABILITY

The providing Organization and OHE agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. The providing Organization and OHE liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Statutes 3.736, and other applicable law.

Section 11. GENERAL

- A. Data Practices Act. Organization agrees to comply with the Minnesota Data Practices Act as it applies to all data provided by the State in accordance with this contract and as it applies to all data created, gathered, generated or acquired in accordance with this contract.
- B. Assignability. This agreement may not be assigned by either party without the prior written consent of the other party.
- C. Waiver. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this agreement shall be waived except by the written agreement of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the other party shall have the rights to invoke any remedy availability under law or equity, notwithstanding any such forbearance or indulgence. Waiver of any

breach of any provision of this agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this agreement shall be held to be waived, modified, or deleted except by an instrument in writing, signed by the parties hereto.

- D. Severability. If any provision or portion of this agreement, including items incorporated by reference, is held to be illegal, invalid, void or unenforceable, then both OHE and Organization shall be relieved of all obligations arising under such provision, that provision will be considered severable, and the remainder of this agreement (if capable of performance) will remain in full force and effect as if the invalid provision were not part of this agreement.
- E. Headings and Section References. The heading given to the sections of this agreement are inserted only for convenience and are not to be construed as part of this agreement or as a limitation of the scope of the particular section to which the heading refers.
- F. Entire Agreement. This agreement (including Exhibit A) constitutes the entire agreement of the parties regarding the subject matter of this agreement and supersedes all previous negotiations, representations, agreements and understandings, whether written or oral, between the parties relating to such subject matter. This agreement between the parties shall be independent of and have no effect upon any other contracts of either party.
- G. Governing Law. This agreement will be governed by and construed in accordance with the laws of the state of Minnesota. The parties shall bring all legal proceedings arising hereunder in the State of Minnesota, District Court of Ramsey County. The United States District Court for the State of Minnesota shall be the venue of any federal action or proceedings arising hereunder in which OHE is a party.
- H. Sovereign Immunity. OHE does not waive its sovereign immunity by entering into this agreement and fully retains all immunities and defenses provided by law with regard to any action based on this agreement. The State of Minnesota and OHE fully retain all immunities and defenses provided by law with regards to any action based on this agreement.
- I. Conformance with State and Federal Laws and Regulations. Organization and OHE each agree to comply with all Minnesota and Federal laws and regulations that are applicable to this agreement, including those not specifically mentioned in the agreement.
- J. Affirmative Action. Organization certifies pursuant to Minn. Statutes 363A.36 that: (a) Organization has not had more than 40 full-time employees within the State of Minnesota at any time during the twelve months preceding the date it submitted its response to the OHE; or (b) if Organization has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date Organization submitted its response to the OHE, that it has an affirmative action plan pursuant to the requirements of Minn. Statutes 363A.36 for the employment of minority persons, women and qualified disabled individuals approved by the State of Minnesota, Commissioner of Human rights; or (c) if Organization does not have 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date it submitted its response to the OHE, but has had more than 40 full-time employees on a single working day during the previous twelve months

in the state in which it has its primary place of business, the (1) Organization has a current Minnesota certificate of compliance issued by the Minnesota Commissioner of Human Rights, or (2) Organization certifies that it is in compliance with federal Affirmative action requirements.

If Organization has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve (12) months, Organization shall comply with the following Affirmative Action requirements for disabled workers.

Minnesota Rule 5000.3550 DISABLED INDIVIDUALS AFFIRMATIVE ACTION
CLAUSE:

- A. The Organization shall not discriminate against any employees or applicants for employment because of physical or mental disability in regards to any position for which the employee or applicant for employment is qualified. The Organization agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Organization agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- C. In the event of the Organization's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Statutes 363A.36 and the rules and relevant orders of the Minnesota Human Rights Act.
- D. The Organization agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices shall state the Organization's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- E. The Organization shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Organization is bound by the terms of Minn. Statutes 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.
- K. Personnel Requirements. Organization shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, age, (except as provided by law), marital status, political affiliation, status with regard to public assistance, sexual orientation, or disability. Organization shall take affirmative action to ensure that employees as well as applicants for employment are treated without regard to their race, color, creed, religion, sex, national origin, age (except as provided by law), marital status political affiliation, status with regard to public assistance, sexual orientation, or disability. Organization, its officers, employees, subcontractors, or any other agency of Organization performance of the Contract shall act in an independent capacity and not as an

officer or employee of OHE. This agreement shall not be construed as a partnership or joint venture between Organization or any subcontractor and OHE.

- L. Notices. Notices authorized or required under this agreement must be in writing and sent to the following addresses:

OHE: Minnesota Office of Higher Education
ATTN: Chief Financial Officer
1450 Energy Park Drive, Suite 350
St. Paul, MN 55108

ORGANIZATION: **City of Duluth**
ATTN: Carla Powers, Library Manager
520 West Superior Street
Duluth, MN 55802

STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

Organization: City of Duluth

The Organization certifies that the appropriate person(s) has/(have) executed the Agreement on behalf of the Organization as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

Minnesota Office of Higher Education

By: _____
(with delegated authority)

Title: _____

Date: _____

GATEWAY SERVER SITE REQUIREMENTS

1. Z39.50 Server Software
 - a. Operate Z39.50 server software compatible with the version of OCLC VDX and ZPORTAL or other approved MnLINK Gateway software running on the MnLINK Gateway.
 - b. Work toward the goal of operating Z39.50 Version 3 software.
2. Z39.50 Attribute Sets
 - a. As far as possible, fulfill the requirements for minimum support of the Z39.50 use, structure, truncation, and relation attributes recommended in the MINITEX/LDS Report of the Z39.50 Attributes Working Group.
 - b. Work toward the goal of fulfilling all minimum requirements and as many of the desirable attributes of the standard as is feasible.
3. Authentication Software

Operate system software capable of providing patron data to OCLC VDX and ZPORTAL or other approved MnLINK Gateway software for patron authentication.

 - a. Operate system software compliant with the 3M Standard Interchange Protocol version 2 for patron data.
4. Indexing Bibliographic Records
 - a. As far as possible, index bibliographic records according to the MINITEX/LDS Indexing Standards and Guidelines for Bibliographic Records.
 - b. Work toward fully adhering to the MINITEX/LDS Indexing Standards and Guidelines for Bibliographic Records. (*Section F of Standards and Guidelines for Automated Library Systems: <http://www.minitex.umn.edu/Communications/Standards/Authomated/Revision.aspx>*)
5. Provide communication line bandwidth, server capacity, and concurrent session licensing to allow MnLINK Gateway users access through the Organization's server.
6. Designate two (2) people to act as contact with the MnLINK operations staff for technical functional operations, training, maintenance, and support activities.
7. Provide training and support on OCLC VDX and ZPORTAL or other approved MnLINK Gateway software for the libraries affiliated with the Gateway Server Site. These libraries must have PC workstations of sufficient capacity to utilize an accepted Web browser and internet access.

8. Provide configuration information as needed to the MnLINK operations staff.
9. Report changes, Organization closures, and other factors that might affect access to the server, to the MnLINK operations staff in a timely manner.
10. Participate in the MnLINK Gateway Operations Committee and similar groups, which may be established.