PUBLIC WORKS AND UTILITIES COMMITTEE

12-0418R

RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH TENASKA MARKETING VENTURES FOR ASSET MANAGEMENT SERVICES.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter in an agreement, a substantially the same as that on file in the office of the city clerk as Public Document No. __________________, with Tenaska Marketing Ventures for professional services relating to asset management of the city's underutilized gas pipeline and gas storage capacity with receipts therefrom to be paid to the gas utility fund.

Approved:

Department Director

Approved as to form:

Attorney

PW&U/ATTY GBJ:cjk 8/8/2012

Approved for presentation to council:

Chief Administrative Officer

Approved:

Auditor

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into an agreement with Tenaska Marketing Ventures to assist the city in managing its natural gas transportation and storage capacity to the best advantage of the city and its natural gas customers.

The city's major demand for natural gas service is as fuel for furnaces and hot water heaters during the colder months of the year. This makes the city's demand for natural gas both cyclical, with a higher demand in the winter, and also highly speculative, depending on when the heating season begins, how long it is and how cold the winter is. This variable demand situation is industry-wide. In order to insure that it has sufficient gas to meet the demands of a long and severe winter, the city purchases supplies in excess of normal anticipated demand.

However, the rate of production of natural gas is relatively constant. This requires that the city secure capacity in storage facilities, usually underground storage in the southern part of the country, to accumulate natural gas against the demands of winter. It also requires that the city purchase pipeline capacity (essentially the right to use existing pipelines for specific times) so that it can transport its gas from its storage facilities to a point from which the city can distribute it to its customers.

Because the city must purchase both natural gas and storage and transportation facilities based on a "worst case scenario," a normal or mild winter will leave the city with excess capacity including storage and pipeline capacity that would go to waste if not used.

The purpose of this agreement is to use Tenaska to market the unused portion of the city's storage and pipelines capacity. Under the agreement the city would transfer its entire capacity to Tenaska. Tenaska would commit to transfer back to the city that portion of the capacity that the city should prove to actually need and would market the remaining capacity to the larger market with the proceeds to be split between the parties, retaining 30 percent of the net proceeds and paying 70 percent of the net proceeds to the city.

PROFESSIONAL ASSET MANAGEMENT AGREEMENT

This Professional Asset Management Agreement ("Agreement") is entered into this ____ day of August, 2012 by and among Tenaska Marketing Ventures, a Nebraska partnership ("TMV") and Tenaska Gas Storage, LLC, a Delaware limited liability company ("TGS"), and the City of Duluth, a municipal corporation ("Duluth"). TMV and TGS may be collectively referred to herein as "Tenaska".

WITNESSETH

WHEREAS, Duluth has certain storage and/or pipeline transportation agreements more fully described on Exhibit "A" hereto ("Contracts").

WHEREAS, Duluth wishes to have Tenaska professionally manage the Contracts; and

WHEREAS, Tenaska provides professional services, including nomination, consultation and accounting services, to help its asset management agreement customers capture underutilized value from assets and to provide Duluth a seamless and reliable supply of gas at the City's gate; and

WHEREAS, Tenaska provides its asset management agreement customers flexible and reliable gas services, experienced, creative and innovative staff, and dependable, accurate and experienced gas control and accounting support; and

WHEREAS, Tenaska is willing to provide such professional service to Duluth as further provided herein; and

WHEREAS, Duluth, TMV and TGS wish to further define their rights and obligations with respect to such management services.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Asset Management Arrangement.

   (a) Capacity Release. Duluth shall release the transportation-related Contracts to TMV and the storage-related Contracts to TGS. Such releases shall be conditioned such that Duluth may call upon Tenaska to deliver to Duluth an amount of natural gas at its city gate, as provided in the Contracts, up to 100% of the daily contract demand of the released capacity on any day during a minimum of five (5) months out of each twelve (12) consecutive month period during the Term of this Agreement. Any tax liability under the storage contracts shall be and remain the liability of Duluth.

The demand charge for all releases will be $0.00. The commodity, fuel and all other variable costs of all pipeline transportation and storage optimized by Tenaska will be accounted for in the net value of sharing described in Section 1(c) below.

The term of such releases shall be from November 1, 2012 through the last day of the Initial Term of this Agreement and any subsequent one year terms.

(b) Sale and Delivery of Gas. Duluth will notify Tenaska of its gas requirements pursuant to Section 5 (Nominations) below; provided, however, that such nominations shall not exceed the maximum firm delivery quantity specified in any of the Contracts. Duluth shall sell such nominated quantities of gas to Tenaska for a contract price of $0.00 per MMBtu. The delivery point for such sales shall be the primary receipt point(s) specified in the relevant Contracts. Such gas will be sourced from the gas supply portfolio previously secured by Duluth, the components of which are listed and identified as Exhibit "B" hereto (the "Gas Supply Contracts"). To effectuate gas deliveries to Duluth, Tenaska shall re-sell such nominated quantities of gas to Duluth for a contract price of $0.00 per MMBtu plus all associated commodity and fuel charges. The delivery point for such sales shall be the City of Duluth city gate. Tenaska shall also be able to purchase quantities of gas from Duluth under the Gas Supply Contracts, in excess of the quantity nominated by Duluth, in order to enter into optimization transactions. Tenaska shall be permitted to sell such quantities at any location in Tenaska's discretion. In addition to gas sourced from the Gas Supply Contracts, Tenaska may sell gas to Duluth from any other source available to Tenaska, provided that such sales will be priced as negotiated by Tenaska and Duluth from time to time. All such sale and purchase transactions between Tenaska and Duluth shall be documented under the Base Contract for Sale and Purchase of Natural Gas between TMV and Duluth dated November 1, 2004 (the "NAESB").

(c) Sharing. The parties agree that the net value of any funds received through optimization of the Contracts as described in Sections 1(a) and (b) above shall be shared on a 70/30 basis with Duluth receiving 70% and Tenaska receiving 30%.

(d) Billing and Monthly Optimization Reporting. With respect to the Contracts, Duluth will continue to receive the invoices for the monthly demand charges and shall pay directly to the relevant counterparties to such Contracts such monthly demand charges due thereunder. All purchases and sales of gas under Section 1(b) above will be subject to the billing and payment provisions of the NAESB. Separately, Tenaska will prepare a monthly statement, in a form and detail reasonably satisfactory to Duluth, setting out the sharing calculation described in Section 1(c) above. Duluth shall provide to Tenaska the relevant bank account information and payment instructions that Tenaska is to follow with respect to payments to be made to Duluth hereunder. Payments shall be made by wire transfer.

Subject to Section 1(f) below, amounts due from Duluth to Tenaska for gas purchases under the NAESB shall not be netted against any sharing percentage owed to Duluth hereunder, but shall be paid separately therefrom.

(e) Amendments. Any modification or alteration made with respect to the accounting practices or the billing and payment arrangement under this Agreement must be mutually acceptable to Duluth, TMV and TGS.

(f) Default. To the extent an Event of Default (as defined in the NAESB) occurs with respect to either Duluth or TMV pursuant to the NAESB, then in such case, the parties agree (i) that such event shall constitute a default under this Agreement; and (ii) upon such default, the parties shall cooperate to arrange for the release of the Contracts back to Duluth; provided, however, that such release back to Duluth shall not become effective until such time that any and all optimization transactions utilizing such Contracts that have been entered into by Tenaska as contemplated herein have been fully and finally performed. In the event there occurs an Event of Default under the NAESB and a corresponding default under this Agreement, and as a result thereof, there remain any unpaid amounts that are due and owing between Duluth and Tenaska, then in such case, the parties shall net such amounts such that the party (either Duluth or Tenaska) owing the greater amount shall make a single payment of the net amount to the other party.

2. Services. Tenaska will provide nominating, accounting and consultative services to Duluth in association with the supply of gas to Duluth.

3. Indemnification. Tenaska will defend and indemnify Duluth from any and all liability, claims, penalties, charges and costs levied against Duluth by any third party arising from any act or omission by Tenaska in administering the Contracts.

4. Order 712 AMA. This Agreement is intended to be an asset management arrangement and shall comply with the Federal Energy Regulatory Commission's rules governing such arrangements at 18 CFR §284.8(h)(3) or any successor rule thereto.

5. Nominations.

(a) Duluth will provide to Tenaska its nomination of Duluth's total gas requirements for a particular day or days of gas flow by 8:00 a.m. CCT ("CCT" or "Central Clock Time" means Central Standard Time or Central Daylight Savings Time, as applicable), on the Business Day (as such term is defined in the NAESB) immediately preceding the relevant gas flow day(s).

(b) Increases or decreases in the initially submitted nomination or any initial nomination made after the 8:00 a.m. CCT deadline will be considered intra day, and will accommodated by sales by Tenaska to Duluth or purchases by Tenaska from Duluth at a fixed price quoted by Tenaska and accepted by Duluth. Intra day nomination notification must be made to Tenaska at least 1 hour prior to each relevant GISB deadline, and on any weekend day or day that is a holiday, at least three (3) hours prior notice.

(c) For NNG's non-grid Final AM storage true-up nomination cycle, notification must be made to Tenaska by 7:30 a.m. CCT during the day of gas flow (NNG deadline is 8:00 a.m. CCT during the day of gas flow). Nomination increases or decreases would be accommodated by sales by Tenaska to Duluth or purchases by Tenaska from Duluth utilizing NNG storage assets and would be nominated on a best efforts basis (due to NNG's storage injection/withdrawal allocation).

6. Additional Assets. Tenaska shall have no obligation to purchase any additional assets or natural gas for Duluth or to transport such gas to Duluth other than as described in Sections 1(b) and 5 (a), (b) and (c) above.

7. Term. This Agreement shall be effective on the date set forth above and shall continue in full force and effect for an initial term from November 1, 2012 through October 31, 2013 (the "Initial Term"); provided, however, that the parties may, by mutual agreement, agree to extend the term of this Agreement for one or more subsequent periods of one year. In the event the parties agree to extend the term in such manner, then to the extent either Duluth or Tenaska desires to terminate this Agreement at the end of such extended term, such party may only do so if it provides notice to the other party thereof at least ninety (90) days prior to the end of such extended term. In all circumstances, the parties shall work together to ensure that the releases of the Contracts as contemplated in Section 1(a) coincide with the term of this Agreement. Termination of this Agreement shall not affect any liability of any party in any way resulting from transactions initiated prior to such termination.

8. Assignment. This Agreement may not be assigned by any party without the prior written consent of the other parties.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER DULUTH OR TENASKA BE LIABLE TO THE OTHER UNDER ANY PROVISION OF THIS AGREEMENT, FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

10. Waiver and Amendment. Except as expressly provided in this Agreement, neither the failure nor the delay on the part of any party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy. Nor shall any single or partial exercise of any right, power or remedy preclude any further or other exercise thereof or the exercise of any other right, power or remedy. Except as expressly provided herein, no waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. No amendment of any of the provisions of this Agreement shall be valid unless in writing and signed by the parties.

11. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the balance of this Agreement shall remain in full force and effect and this Agreement shall be construed in all respects as if such invalid, illegal or unenforceable provision were omitted. If any provision is inapplicable to any person or circumstance, it shall, nevertheless, remain applicable to all other persons and circumstances.

12. Records. Tenaska will maintain all records in relation to this Agreement for a period of three years after the termination of the Agreement.

13. Reports. Subject to Section 14, Tenaska shall be responsible for furnishing to Duluth records, data and information as Duluth may reasonably require pertaining to matters covered by this Agreement.

14. Audits. Tenaska shall ensure that at reasonable times during normal business hours and as often as Duluth may deem necessary, there shall be made available to Duluth for examination, the relevant portion of its books and records with respect to matters covered under this Agreement. Tenaska will also permit Duluth to audit, examine and make excerpts or transcripts from such records. To the extent allowed by law, such right to access, audit and copy such records shall not be available with respect to proprietary information not directly relevant to the transactions entered into under to this Agreement.

15. Confidentiality. All reports, data, information, documentation and material given or prepared by Tenaska pursuant to this Agreement will be confidential and will not be released by Tenaska without prior authorization from Duluth except as required for the performance of Tenaska's services or as required by law. Pursuant to Minnesota Statutes, Chapter 13 (Minnesota Government Data Practices Act), Tenaska agrees to maintain and protect data on individuals received, or to which Tenaska has access, according to the statutory provisions applicable to the data.

16. Rules and Regulations. Tenaska agrees to observe and comply with all applicable laws, ordinances, rules and regulations which are applicable to its activities under this Agreement.

17. No Partnership. The parties agree that no joint venture, partnership, or other fiduciary relationship shall be deemed to exist or arise between them or their affiliates with respect to, or as a result of, the terms of this Agreement and/or the transactions contemplated hereby.

18. Counterparts. This Agreement may be executed in counterparts, all of which will be considered one original.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

20. Non-Exclusivity. Duluth acknowledges that Tenaska may be providing services to third parties during the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF DULUTH

____
Mayor

ATTEST:

____
City Clerk

APPROVED:

____
City Auditor

APPROVED AS TO FORM:

____
City Attorney

TENASKA MARKETING VENTURES
By: TMV Holdings, LLC,
Its Managing Partner

By:_____________________________
John Obermiller
Senior Vice President, Finance

TENASKA GAS STORAGE, LLC

By:_____________________________
John Obermiller
Senior Vice President Finance

EXHIBIT "A"

[To Be Completed Prior to Implementation]

Transportation					
Summer					
Pipeline	**Receipt Point**	**Delivery Point**	**Volume / d (Mmbtu)**	**Term**	**Notes / Comments**
Winter					
Pipeline	**Receipt Point**	**Delivery Point**	**Volume / d (Mmbtu)**	**Term**	**Notes / Comments**

EXHIBIT "A"
continued

Storage					
Pipeline	Injection / Withdraw Point	Summer/Winter Injections Volume/d(Mmbtu)	Summer/Winter Withdraw Volume/d(Mmbtu)	MSQ	Term

EXHIBIT "B"

2012 – 2013 Winter Gas Supply - City of Duluth
[To Be Completed Prior to Implementation]

NNG Supply Packages-Volume	Term	Price	Delivery Location	Supplier

GLGC Supply Package-Volumes	Term	Price	Delivery Location	Supplier