

EXHIBIT A

Draft 5-15-2018

**UNIVERSITY OF MINNESOTA  
SERVICES AGREEMENT  
DULUTH STREAMS PROJECT**

**THIS AGREEMENT** entered into this 1<sup>st</sup> day of June, 2018 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: T. Carlson, 411 W 1<sup>st</sup> St. Room 211, 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 June 1, 2018 and shall run for thirty-one (31) months. Unless terminated earlier as provided in Section 4, the term of this Agreement shall terminate on December 31, 2020.
3. **Compensation.** For the services rendered under Section 1, the City shall pay the University a total amount not to exceed Sixty-Four Thousand Dollars and Eight Hundred and Ten and 69/100s Dollars (\$64,810.69). Said sum shall be payable as of the dates and the in the amounts set forth in Attachment B hereto. 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, University shall provide to City documentation reasonably satisfactory to the City’s Finance Director setting forth the value of all salaries and wages, fringe benefits, supplies, analytical services and travel incurred by University under Agreement since the payment date most recent preceding the date of the termination, as set forth in attachment B. University shall immediately refund to City the amount paid to University on said payment date less the amount of such expenses incurred by University as approved by said Finance Director. 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 indemnify 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**

**CITY OF DULUTH**

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

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

Its \_\_\_\_\_

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 – 2018 -2020.***

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**, 2001-2017; Principal Investigator- Todd Carlson (previously Chris Kleist, and originally Marnie 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) have been co- Principal Investigators on this project since its inception . This project originated via a Partnership and Memorandum of Understanding between the City, NRRI, MN Sea Grant, MPCA-Duluth, WLSSD, and the Lake Superior Zoo in 2001 in response to a U.S. EPA program to stimulate the creation of long-term partnerships to improve environmental literacy, stewardship of natural resources and environmental decision-making. In particular, the program aimed to engage, inform, and educate the public about stormwater issues via the creation of both a website and a network of real-time water quality sensor data from area water resources, together with ancillary data, on-line interactive data visualization tools, and interpretive information. As intended by the enabling federal funding program, the Partnership 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://www.duluthstreams.org>) to include new educational materials, data, curriculum, and other activities in support of the City of Duluth's Stormwater MS4 General Permit requirements for Minimum Control Measures 1 and 2 described in MPCA's Minnesota Stormwater Manual (<https://www.pca.state.mn.us/water/minnesotas-stormwater-manual>) and listed below:

**MS4 General Permit requirements for MCM 1**

The MS4 General Permit requires MS4 permittees to:

- Distribute educational materials focused on high priority, stormwater specific issues and illicit discharge recognition and reporting;
  
- Develop an implementation plan that includes target audiences; activities and schedules; measurable goals for each audience; the staff in charge of implementing the plan; coordination with any outside organizations (if any); and an evaluation to measure whether the goals are being, or on track to be, met;

- Document activities.

**MS4 General Permit requirements for MCM 2**

The MS4 General Permit requires MS4 permittees to keep their community members in the loop, permittees must:

- Provide at least one opportunity for the public to provide input on the stormwater pollution prevention program (SWPPP);
- Provide access to the public to view the SWPPP document, Annual Reports, and other documentation related to the SWPPP;
- Consider public input;
- Document activities.

NRRI staff will be directed by Drs. Axler and Host (NRRI) in collaboration with Todd Carlson (City of Duluth Public Works), and Cynthia Hagley and Jesse Schomberg of the University of Minnesota’s Sea Grant College (Sea Grant) 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.

NRRI Duluthstreams.org	Budget 2018-2020 City of Duluth		
	2018	2019	2020
Salary+Wages	\$16,748	\$17,156	\$17,631
Fringe Benefits	\$5,255	\$5,380	\$5,538
Equipment	0	0	\$0
Supplies	\$1,000	\$1,025	\$950
Analytical	\$600	\$600	\$600
Travel	\$837	\$837	\$837
<b>Direct Costs</b> (no indirect)	<b>\$24,440</b>	<b>\$24,998</b>	<b>\$25,556</b>
<b>Total 3 yr project:</b>	<b>\$74,994</b>		

**Duluth/LakeSuperiorstreams.org:  
Watershed and Stormwater Protection, Restoration, Education**

Project Manager: Richard Axler, NRRI-UMD (Partnership with 26 agencies and organizations comprising the LakeSuperiorStreams.org project and the Regional Stormwater Protection Team)

Index of additional Performance Metrics (see attached pdf):

1. Collaboration and project impact related references
2. Summary of outcomes related to City of Duluth, and RSPT member stormwater permit requirements
3. Duluthstreams/Lakesuperiorstreams.org project related recognition (i.e. Awards)
4. Duluthstreams.org website usage 2002 – 2017
5. Website Usage Handout prepared for Western L. Superior RSPT Annual MS4 Reports Jan 1, 2017 – Dec 31, 2017 (Page Requests: 1,851,995 Total Requests (visits): 4,562,289)
6. Duluthstreams.org grant tracking summary, December 2017. Tabulation of all (known) grant proposals submitted by NRRI, MN Sea Grant, or their collaborators from featuring the Duluthstream.org website and/or real-time data network as identified elements of the proposal. Total Requested funds = \$15,995,472 of which \$5,859,194 was funded together with \$1,618,396 in associated in-kind Match.

**ATTACHMENT B**  
**SCHEDULE OF PAYMENTS**

<u>Payment Date:</u>	<u>Amount:</u>
June 1, 2018	\$8,146.68
October 1, 2018	\$6,110.01
January 2, 2019	\$6,249.50
April 1, 2019	\$6,249.50
July 1, 2019	\$6,249.50
October 1, 2019	\$6,249.50
January 2, 2020	\$6,389.00
April 1, 2020	\$6,389.00
July 1, 2020	\$6,389.00
October 1, 2020	<u>\$6,389.00</u>
	\$64,810.69