

**MINNESOTA POLLUTION CONTROL AGENCY  
MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

**IN THE MATTER OF:**

**CITY OF DULUTH  
411 W 1<sup>ST</sup> ST  
DULUTH, MINNESOTA 55802-  
1102**

**NATURAL RESOURCE  
DAMAGES SETTLEMENT  
AGREEMENT**

The Minnesota Pollution Control Agency ("MPCA") and the Minnesota Department of Natural Resources ("DNR"), acting as co-trustees for natural resources of the State of Minnesota pursuant to Executive Orders 11-09 & 19-29 (collectively, the "Trustees"), and City of Duluth voluntarily enter into this Natural Resource Damages Settlement Agreement ("Agreement") as follows:

### RECITALS

A. On July 31 and August 1, 2024, the City of Duluth discharged approximately 1.7 million gallons of chloraminated drinking water from the Woodland Reservoir (referred to as the "Facility") into Tischer Creek located in Duluth, Minnesota ("Release Event"). The release continued over a 15-hour period, with peak flow reaching 4,800 gallons per minute. The discharged water contained free chlorine and monochloramine at levels safe for human consumption but toxic to aquatic life.

B. The City of Duluth, a political subdivision of the State of Minnesota, operates the Facility.

C. Under Minnesota Rules Part 7050.0222, Tischer Creek is classified as a Class 2A water, subject to stringent standards to protect the propagation and maintenance of a healthy community of cold-water aquatic biota and their habitats. This designation is specifically aimed at safeguarding sensitive species, such as brook trout, that require cold, clean, and well-oxygenated water for survival.

D. The MPCA and the DNR documented the extent of the impact through field investigations conducted between August 1, 2024, and September 10, 2024. The release resulted in significant environmental harm, including the estimated death of at least 1,588 brook trout and 760 other fish, as well as extensive harm to other aquatic organisms and the broader ecosystem of Tischer Creek.

E. The City of Duluth Public Works and Utilities Department received notice of the fish kill on August 2, 2024, and performed a field investigation which determined that activities related to maintenance at the Facility likely caused the release. On August 2, 2024, City staff closed and isolated any valves draining potable water to the storm sewer system and discovered that no substantial volume of water remained in the reservoir at the Facility. City staff promptly gathered water samples, filed a report with the Minnesota State Duty Officer, and shared information with the MPCA and DNR to aid in the investigation and determination of cause. The City of Duluth also redirected subsequent discharge on August 13, 2024, from the Facility into the sanitary sewer system. Additionally, the City of Duluth developed and incorporated a Standard Operating Procedure for Potable Water Discharge into its Stormwater Pollution Prevention Program to prevent similar, future impacts from potable water discharge.

F. The Trustees allege that the City of Duluth is liable for Natural Resource Damages arising from or relating to the release of chloraminated water, which originated from the Facility.

G. The Trustees and the City of Duluth desire to settle the claims for Natural Resource Damages through this Agreement.

H. The MPCA and DNR conducted a natural resource Injury Assessment that identified and quantified harm to natural resources and services due to the release of a hazardous substance (surface water quality, biological resources, ecosystem services and recreational fishing losses). The Injury Assessment included monetary estimates of the damages. Specifically, data was available for two categories of natural resource losses: biological resources, which were valued at \$27,721, and recreational fishing losses, which were estimated at \$143,582.

I. The MPCA and DNR will determine the appropriate projects that restore, rehabilitate, replace, or acquire equivalent resources and services. Restoration goals were established for projects that the Trustees will consider for future restoration project selection:

- i. Improving ecological and habitat functions for the benefit of the cold-water trout assemblage;
- ii. Increasing the population of brook trout in the impacted reach and watershed; and
- iii. Angling opportunity enhancements.

J. The Parties have agreed that the settlement will consist of a payment from the City of Duluth for future restoration projects, as determined by the Trustees in the amount of \$121,303, in-kind implementation by the City of Duluth of a recreational fishing project (Project) valued at \$50,000, and a payment of \$18,697 for past assessment costs to the DNR and MPCA, for a total value, both monetary and in-kind projects, of \$190,000.00.

IT IS THEREFORE AGREED BETWEEN THE PARTIES AS FOLLOWS:

**I. DEFINITIONS.**

- A. "Natural Resources" has the meaning set forth in Minn. Stat. § 115B.02, subd. 10.
- B. "Natural Resource Damages" means *all* damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, which are or may be recoverable by the Trustees under Minn. Stat. Ch. 115B or any other law.
- C. "Release" of chloraminated water, chlorine, or monochloramine means a "release" as defined in Minn. Stat. § 115B.02, subd. 15.
- D. The "Site" refers to the two-mile impacted area of Tischer Creek (Wallace Ave and E St. Marie St to Woodland Ave) as shown in Attachment 1.
- E. "Facility" refers to the Woodland Reservoir, owned and operated by the City of Duluth, that is used for potable water storage.
- F. "Restoration Projects" refers to projects that restore, rehabilitate, replace, or acquire equivalent resources and services, as determined by the Trustees. A summary of the Natural Resource Injury Assessment and potential restoration projects presented in Attachment 2.

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G. “Work Plan” outlines the work that the City of Duluth is required to perform under this Agreement. The Work Plan may be revised as project details are determined, subject to Trustee’s designees’ approval.

## II. PAYMENT

A. The Trustees are authorized to collect funds for the NRDA Program and collect reimbursement for reasonable costs incurred by the Trustees for assessing damages to natural resources pursuant to Minn. Stat. sect. 115B.04, subd. 1(3).

B. The City of Duluth shall make a total payment of \$140,000.00 to the Trustees (\$121,303.00 for future restoration projects and \$18,697.00 for past assessment costs), which the Trustees shall deposit into the Natural Resources Damages Account of the Remediation Fund pursuant to Minn. Stat. §§ 115B.17, subd. 7, 115B.172, and 116.155, subd. 5(b). The Trustees will issue an invoice to the City of Duluth for the payment within 30 days of the Effective Date of this Agreement. The City of Duluth will make the payment within 30 days of receipt of the first invoice.

C. The Trustees shall use the payments for administration, planning, and implementation of projects that restore brook trout fisheries, surface water quality improvements, natural resource habitat improvements, and enhance angling access and opportunities. The Trustees shall fund projects located within the Tischer Creek watershed (DuluthStreams - Tischer Creek) and in other locations that the Trustees determine, in their sole discretion, would benefit the impacted area. These projects may include, but are not limited to, shoreline restoration, invasives removal including erosion controls, vegetation enhancements, and nearshore and shoreland protection; fish habitat improvement; fishing access enhancement; and fisheries improvement.

## III. PERFORMANCE OF RESTORATION PROJECT

A. The City of Duluth shall finance and implement the Project in coordination with the

Hartley Nature Center. The outcome of this project is to provide “learn to fish” and other fish and habitat education programming and opportunities (the “Project”). Within 30 days of the Effective Date, the City of Duluth and the Trustees shall notify each other, in writing, of the contact information of their respective designated Project contact. The City of Duluth is not obligated to spend more than \$50,000.00 toward the Project, including employee time to design work and report as described in paragraph B, below.

B. Prior to implementation of the Project, the City of Duluth shall provide the Trustees' designated contact a draft Work Plan for the proposed Project for Trustee approval. The draft Work Plan shall be provided to the Trustees within 120 days of execution of this Agreement. The Work Plan shall describe aspects of Project implementation such as project details, schedule, deliverables, progress reports and Project contacts. The Trustees' designated contact will, in good faith, review the Project details and provide approval or provide parameters to obtain approval. Once approved, the City of Duluth shall implement the Project. Upon completion of the Project, the City of Duluth shall provide a written report to the Trustees' designated contact, which shall sufficiently document City's total costs and expenditures relating to the Project and its completion of all required tasks and deliverables in the Work Plan approved by the Trustees.

#### **IV. RELEASE OF CLAIMS**

A. In consideration of the total payment set forth above in Section II and performance of the Project set forth in Section III, the sufficiency of which is acknowledged, the Trustees hereby releases and waives any and all claims against the City of Duluth for liability for Natural Resource Damages arising out of or relating to the Release Event and any City of Duluth follow up investigations, actions, or work in response to said release (the "Release from Liability").

B. The Release from Liability is conditioned on the satisfactory performance by the City of Duluth of its obligations under this Agreement, including completion of the Project as set

forth in Section III, to the satisfaction of the Trustees, which shall not be unreasonably withheld.

C. The above Release of Liability is limited solely to claims for Natural Resource Damages arising from or relating to the Release Event described herein. Notwithstanding the Release from Liability, the Trustees reserve the right to enforce this Agreement or take any action authorized by law if the City fails to comply with the terms and conditions of this Agreement.

## V. GENERAL TERMS

A. The execution and delivery of this Agreement shall not constitute or be construed as an admission of responsibility, fault, liability, or wrongdoing by any of the Parties, nor does it constitute evidence of liability or wrongful conduct on the part of the Parties, and this Agreement shall not be admissible as evidence of fault or liability in any investigation, claim, action, suit, or proceeding, or federal or state court or arbitration proceeding.

B. The City of Duluth shall execute this Agreement first, then the Trustees. The Effective Date of this Agreement shall be the date it is signed by the Trustees.

C. Nothing in this Agreement shall relieve City of Duluth of its obligation to comply with all applicable Minnesota and federal laws and regulations.

D. Nothing in this Agreement shall limit the Trustees' ability to bring claims against any person or entity not covered by this Agreement.

E. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same Agreement. This Agreement may be executed by facsimile or electronic copy in any image format.

F. The person signing this Agreement for City of Duluth warrants that he or she is authorized to execute this Agreement, that City of Duluth has been fully advised by its counsel before entering into the Agreement, and that they are executing this Agreement in an official capacity that binds City of Duluth. The persons signing this Agreement for the Trustees warrant

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that they have been authorized to do so by the MPCA and the DNR, respectively, and they do so in their official capacities.

G. This Agreement constitutes the full and complete terms of the agreement entered into by the Parties. The terms of this Agreement are not a mere recital.

H. The Parties agree that any dispute arising under the Agreement shall be venued in St. Louis County District Court.

I. The failure of City of Duluth or the Trustees to exercise any rights under this Agreement shall not be deemed a waiver of any right or any future rights.

J. If any part of this Agreement shall be found or held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement.

K. This Agreement may be amended only by written agreement between the Parties.

L. This Agreement, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

M. Each of the Parties is represented by counsel, participated in the drafting of this Agreement, and agrees that the Agreement's terms may not be construed against or in favor of any of the Parties by virtue of draftsmanship.

N. The Parties agree to perform such further acts and to execute and deliver such further documents as may reasonably be necessary to carry out this Agreement.

FOR THE MINNESOTA  
POLLUTION CONTROL AGENCY

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

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KATRINA KESSLER  
Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, MN 55155

FOR THE MINNESOTA DEPARTMENT OF  
NATURAL RESOURCES

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

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SARAH STROMMEN  
Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155

FOR THE CITY OF DULUTH

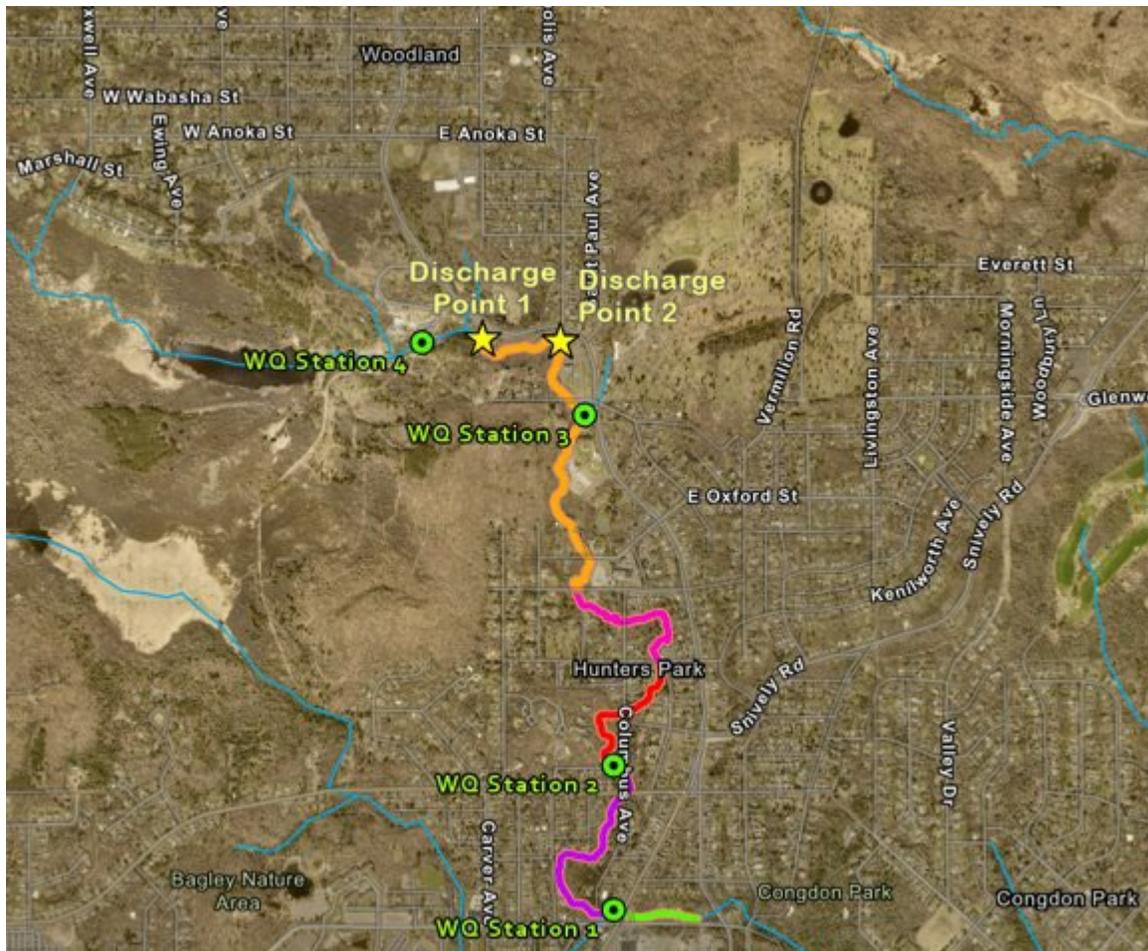
Date:

## Attachment 1. Map of the impacted area of Tischer Creek

- MPCA - Reach 1
- MPCA - Reach 2
- MPCA - Reach 3
- MPCA - Reach 4
- DNR - Reach 5

Designation of reaches are related to the lead state agency for fish counts per reach.

### Water Quality Measurements / Samples



## Attachment 2. Injury Assessment and Settlement Summary

Below is a summary of the natural resource injury assessment and Settlement Agreement for the July 31-August 1, 2024 release to Tischer Creek from the Woodland Reservoir.

### 1. Injury Determination and Quantification

Natural resource were injured due to hazardous substance releases into Tischer Creek. These losses were quantified to determine the extent of environmental and public impact.

- Surface Water Quality (impacted by chloride)
- Biological Resources (e.g., fish populations)
- Ecosystem Services (habitat support for fish)
- Recreational Losses (recreational fishing)

### 2. Estimate of Damages

Using the existing data, the damage estimation was focused was on:

Resource Category	Estimated Damages
Biological Resources (Fish)	\$27,721
Recreational Fishing	\$143,582
<b>Total</b>	<b>\$171,303</b>

### 3. Restoration Goals & Potential Projects

Damages represent the cost to restore, rehabilitate, replace, or acquire equivalent resources and services. The Minnesota Department of Natural Resources (DNR) and Minnesota Pollution Control Agency (MPCA) set three key goals for restoration:

1. Improve ecological and habitat functions for cold-water trout.
2. Increase brook trout populations in the affected area.
3. Fishing opportunity enhancements for the public.

#### Potential Proposed Projects

Project	Benefit	Cost Estimate
Low Head Dam Removal along Tischer Creek (initial scoping)	Improves creek connectivity for fish migration	\$40,000
Hartley Nature Center Fishing Program	Enhances recreational fishing	\$50,000
Other Future Projects	Supports broader restoration goals	\$81,303
<b>Total Project Funding Available</b>		<b>\$171,303</b>
State past assessment costs		\$18,697
<b>Settlement Value</b>		<b>\$190,000.00</b>