

**AGREEMENT**

**Between**

**LOWER MINNESOTA RIVER WATERSHED DISTRICT**

**and**

**YOUNG ENVIRONMENTAL CONSULTING GROUP, LLC**

**for**

**PROFESSIONAL SERVICES FOR**

**THE LOWER MINNESOTA RIVER WATERSHED DISTRICT**

This is an Agreement between the Lower Minnesota River Watershed District, a public body with powers set forth in chapters 103B and 103D and a drainage authority pursuant to chapter 103E of the laws of the State of Minnesota, and its successors, hereinafter referred to as "DISTRICT," through its Board of Managers,

AND

Young Environmental Consulting Group, LLC, a Minnesota Limited Liability Company, with offices in Brooklyn Park, Minnesota, hereinafter referred to as "DISTRICT ENGINEER" or "CONSULTANT."

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the sufficiency of which is hereby acknowledged, DISTRICT and CONSULTANT agree as follows:

**ARTICLE 1**

- 1.1 The DISTRICT selected the CONSULTANT to act as the DISTRICT ENGINEER by vote of the Board of Managers ("Board") on June 17, 2020, for a two year term commencing August 1, 2020. CONSULTANT has, in its employ, Kathleen Thompson, P.E. (MN License # 52136). MS. Thompson or her successor shall be the designated DISTRICT ENGINEER during the term of this Agreement.
- 1.2 DISTRICT has budgeted funds for the services to be provided by the CONSULTANT described herein.

## ARTICLE 2

### SCOPE OF SERVICES

#### 2.1 DISTRICT ENGINEER SERVICES

The CONSULTANT shall provide the following professional services on a routine basis:

- (a) Represent the DISTRICT as the DISTRICT ENGINEER and attend Board and Committee meetings, and Board workshops.
- (b) Review or investigate specific issues identified by the Board or the District Administrator ("Administrator").
- (c) Review permit applications and/or plans submitted to the DISTRICT by developers, utility companies, municipalities, and others for conformance to the DISTRICT'S rules and prepare an engineer's report which summarizes the review and makes recommendations to the Board. In cooperation with the DISTRICT'S staff, keep necessary technical records to provide technical advice and assist in administration of DISTRICT'S permit program.
- (d) Prepare written or verbal reports to the Board or Administrator including monthly project status and cash flow reports, as requested by the Board or Administrator.
- (e) Conduct engineering studies, scientific investigations and feasibility studies and recommend action to the Board or the Administrator.
- (f) Assist the Administrator in the preparation and review of appropriate portions of the DISTRICT Budget.
- (g) Assist other government agencies, municipalities and citizens with technical issues involving the DISTRICT, as requested by the Board or Administrator.
- (h) Perform any other requested assignments for which CONSULTANT is qualified.
- (i) Meet with officials of federal, state and county agencies, and cities on DISTRICT business.
- (j) Prepare major reports and feasibility studies on proposed projects.
- (k) Perform hydrologic, hydrogeologic and water quality monitoring and analysis.
- (l) Perform hydrologic monitoring and data collection when directed, and coordinate the monitoring activities of other entities in partnership with the DISTRICT.
- (m) Generally assist the Board of Managers and DISTRICT staff in developing efficient practices and procedures for the DISTRICT.

- (n) Perform technical reviews of DISTRICT activities, computer model development and the promulgation of regulatory requirements.

## 2.2 DESIGN ENGINEERING SERVICES

Design Engineering Services shall be provided for construction projects and capital improvements, if requested by the Board or Administrator, including:

- (a) Preparation of detailed survey reports, construction plans and specifications in accordance with law and generally accepted engineering practice, including all contract documents necessary for receiving competitive construction bids.
- (b) Preparation of the estimated total cost of completing the project or improvement, including construction, operation, implementation, supervision, and administrative costs.
- (c) Assistance in obtaining bids, issuing bid document addenda, opening bids and analyzing bids received.
- (d) Assistance in awarding construction contracts.
- (e) The preparation of permit applications and efforts necessary to acquire permits and regulatory approvals for DISTRICT projects.
- (f) The DISTRICT ENGINEER will complete Computer Aided Design (CAD) using commercially available software and make these work products available to the District as allowable under licensing requirements or using readily available freeware or shareware viewers.

## 2.3 SUPPORT SERVICES DURING CONSTRUCTION

Support Services During Construction shall be provided if requested by the Board or Administrator, including:

- (a) Review of shop and working drawings of fabricated and manufactured equipment submitted by the contractor for substantial conformity with the intent of the contract plans and specifications.
- (b) Consultation during construction and interpretation of the plans and specifications.
- (c) Review of construction progress estimates and recommendations for progress and final payments to contractors.
- (d) Assistance in final inspection and materials testing.
- (e) Preparation of as-built design plans to show record conditions, and preparation of operations and maintenance manuals.

- (f) Processing and reviewing change orders.
- (g) Visits to the site of the work to observe general quality and progress of work and its conformity to the contract documents.
- (h) Field surveys to locate property boundaries and existing physical features, and to develop detailed topography and profile data required for design of the proposed facilities.
- (i) Construction staking and construction documentation.

#### 2.4 OVERSIGHT OF CONSTRUCTION CONTRACTS ON BEHALF OF THE DISTRICT

The following services shall be included to oversee Construction Contracts if requested by the Board or Administrator:

- (a) The engineer shall inspect, supervise, and require the work as it is being completed to be done in accordance with the plans, specifications, and contract for construction.
- (b) Meetings and negotiations with the contractors involving changes in the scope or cost of the contracts, or change in the approved designs.
- (c) Additional work resulting from the delinquency or insolvency of the contractors or as a result of damage to the construction project caused by fire, flood, earthquake or other acts of God.
- (d) Additional work resulting from strikes, walkouts, or other acts of trade or labor unions.
- (e) Submittal of necessary contractor and construction data to funding or review agencies.

#### 2.5 OVERSIGHT OF OTHER CONSULTANTS

The DISTRICT may contract specific services with other engineering or technical companies. The DISTRICT ENGINEER may oversee the work on behalf of the DISTRICT, at the request of the Board or Administrator, to monitor and report in a timely fashion on adherence with schedules, design, construction specifications, and contractual requirements, and the scope of work and/or budget, and may perform independent review of technical work products of others in order to provide third party review pursuant to generally accepted industry practice.

#### 2.6 FIELD ENGINEERING SERVICES

The following Field Engineering Services shall be provided if requested by the Board or Administrator:

- (a) Mill and shop inspection of manufactured and fabricated items procured by the DISTRICT.
- (b) Field inspection during construction activity, as necessary to supervise, monitor, evaluate, and report to the Administrator in a timely manner on contractor compliance with construction drawings and specifications when full-time resident inspection is unwarranted or unauthorized.
- (c) Inspection reports to other agencies as required on projects receiving financial aid from outside sources.
- (d) Visits to the site of a project in addition to those described in paragraph 2.3(g) as requested by the Board or Administrator.

## 2.7 SUBCONTRACTED SERVICES

The following subcontracted services shall be provided on an as-needed basis only with prior approval of the Board or Administrator and in accordance with section 6.4 of this Agreement:

- (a) Soils investigations, soil borings, piezometer installation/abandonment and monitoring well installation/abandonment.
- (b) Physical and chemical testing of soil and water samples.
- (c) Aerial photography or other specialized remote sensing surveys.
- (d) Other specialized technical services, including other engineering services as detailed herein.

## 2.8 ADDITIONAL SERVICES

The following Additional Services would be provided if requested by the Board or Administrator:

- (a) Preparation of applications and supporting documents for governmental grants or loans for public projects.
- (b) Design and otherwise administer, following completion of due diligence review, completion of portions of projects that are not otherwise included under sections 2.2 through 2.6 of this Agreement.
- (c) Work resulting from changes in plans or specifications made at the direction of the DISTRICT after acceptance of the preliminary design.
- (d) Preparation of operation and maintenance manuals.
- (e) Testify in litigation or dispute resolution proceedings upon the request and in representation of the DISTRICT.

- (f) Resident daily field inspection to assure contractor compliance with construction drawings and specifications.
- (g) Hydrologic and hydraulic investigations and the use of appropriate computer simulation models.
- (h) Geological and hydrogeological investigations.
- (i) CONSULTANT shall perform all other professional engineering or consulting services the CONSULTANT is qualified to provide and which the DISTRICT authorizes the CONSULTANT to undertake. These services may include, but are not limited to, the planning and design of capital improvement projects or studies, engineering and economic analyses related to project financing and implementation, wetland delineation, preparation of databases and various CAD, GIS and computer/network/webpage services.

### **ARTICLE 3**

#### **AUTHORIZATION OF SERVICES**

- 3.1 Each specific task or project, beyond those activities which constitute the on-going District Engineer services, shall be identified and described by the DISTRICT within the minutes of a meeting of the Board and/or identified and described by a scope of work prepared by the Administrator. The CONSULTANT agrees to develop a task order for such task or project, including an opinion of cost and budget, and to perform such specific tasks to completion, regardless of whether the project schedule extends beyond the terms of this Agreement.
- 3.2 Notwithstanding any other provision of this Agreement, the DISTRICT shall be authorized to solicit proposals for professional engineering services on a project- by- project basis for program implementation and capital improvement projects that it may undertake. The DISTRICT ENGINEER shall have an opportunity to submit a proposal and be given equal consideration on such projects. However, CONSULTANT shall receive no special consideration from the DISTRICT in regard to the awarding of engineering contracts for such projects.

## **ARTICLE 4**

### **RENEWAL/TERMINATION**

- 4.1 This Agreement shall remain in force from the date of execution by designated officer of the DISTRICT and the CONSULTANT, and shall terminate on July 31, 2022. Either party may terminate this Agreement prior to that date for any reason upon providing thirty (30) days written notice to the other party.
- 4.2 The DISTRICT may terminate this Agreement at its convenience, by a written termination notice stating specifically what prior authorized or additional services CONSULTANT is to complete. CONSULTANT will receive full compensation for all authorized work performed, except that CONSULTANT will not be compensated for any part performance of a specified task if termination is due to CONSULTANT'S breach of this Agreement. The CONSULTANT will turn over all working and archived files to the DISTRICT, and agrees to cooperate with the DISTRICT in any transition.
- 4.3 In the event of cancellation of this Agreement by the DISTRICT, the CONSULTANT shall receive full compensation for all services and work performed to the date of cancellation (and all costs in connection therewith). The CONSULTANT shall perform specific tasks ordered by the DISTRICT under Paragraph 3.1 of this Agreement to completion unless specifically instructed otherwise by the DISTRICT. The DISTRICT agrees to pay compensation for all services and work performed, commensurate with work completed including all costs incurred in connection therewith, for the completion of these specific tasks.
- 4.4 In no event shall the amount of money to be paid for partial performance of services authorized under this Agreement exceed the amount which would have been paid CONSULTANT under the applicable provisions of this Agreement for the full performance of such services.

## **ARTICLE 5**

### **INSURANCE, INDEMNIFICATION**

- 5.1 At all times during the term of this Agreement, CONSULTANT will have and keep in force the following insurance coverages:
- (a) General liability and professional liability: \$1 million each occurrence and aggregate for the general liability and \$1 million each claim and aggregate for the professional liability, covering completed operations.
  - (b) Automobile liability: combined single limit each accident coverage for bodily injury and property damage covering all vehicles, \$1 million.
  - (c) Workers' compensation: in accordance with legal requirements applicable to CONSULTANT.

CONSULTANT will not commence work under this Agreement until it has filed with the DISTRICT a certificate of insurance clearly evidencing the required coverages. The certificate will list the DISTRICT as a holder, and state that the DISTRICT will receive 30 days' prior written notice before cancellation or non-renewal, for any described policy. CONSULTANT will not commence work until it has provided the DISTRICT with an endorsement listing the DISTRICT as an additional insured with primary coverage for general and automobile liability.

- 5.2 CONSULTANT asserts that it is skilled in the professional calling necessary to provide the services and duties proposed to be performed, and that it shall perform such services and duties in conformance to and consistent with the standards generally recognized nationally as being employed by professionals of CONSULTANT'S caliber, and to that end CONSULTANT agrees to indemnify and hold harmless DISTRICT, its officers, and employees from and against any and all liability claims, suits, loss, damages, costs, and expenses, including attorney's fees, and shall defend DISTRICT in an action arising out of or resulting from any negligent acts, errors, or omissions of CONSULTANT, its officers, employees, agents or consultants in the performance of its services and duties under this Agreement.
- 5.3 DISTRICT will indemnify, defend and hold harmless CONSULTANT, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any action or inaction by the DISTRICT that is the basis for the DISTRICT'S liability in law or equity.
- 5.4 CONSULTANT and all subcontractors retained under the Agreement shall maintain and provide DISTRICT with proof of professional liability insurance to protect DISTRICT from negligent acts, errors, or omissions on the part of CONSULTANT and all subcontractors, their employees or agents in carrying out their duties under this Agreement in accordance with section 5.1 above.
- 5.5 The DISTRICT acknowledges that the CONSULTANT'S plans and specifications and other work products are instruments of professional services. Nevertheless, in the event of termination of this Agreement or expiration of the CONSULTANT'S appointment, the plans and specifications and other documents such as permit files, engineering reports and other materials connected with CONSULTANT'S past services to the DISTRICT shall become the property of the DISTRICT. The DISTRICT agrees to hold harmless, indemnify and defend the CONSULTANT against all damages, claims, expenses and losses arising out of any reuse of work products without the CONSULTANT'S written authorization.

## **ARTICLE 6**

### **STAFFING**

- 6.1 CONSULTANT shall provide a Primary Contact and Engineer for the duration of this Agreement. The primary contact and engineer shall have immediate responsibility for the performance of the work and for all matters relating to performance under this



Agreement. CONSULTANT shall provide adequate staffing to fully conduct the activities assigned. CONSULTANT shall identify in its monthly invoices all staff involved in performing services to the DISTRICT.

- 6.2 The CONSULTANT shall be responsible for taking, and shall take, all reasonable precautions and measures to ensure industrial safety and to avoid injury or damage to any party while performing the Services hereunder in conformance with current industry and community standards.
- 6.3 The CONSULTANT has requested and the DISTRICT hereby approves subcontracted, other engineering services of Barr Engineering Company, to be coordinated by CONSULTANT.
- 6.4 The CONSULTANT shall not assign, subcontract or transfer any interest in this Agreement, or any of the Services or duties it is obligated to perform hereunder without the prior written consent of the Board or Administrator. Consent to any subcontracting will not relieve CONSULTANT from its responsibility to perform the Services or any part thereof, not in any respect its responsibility to provide services in accordance with the generally accepted professional standards in the industry in the location services are provided, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services. CONSULTANT will incorporate this Agreement in any assignment, subcontract or transfer agreement. All costs for subcontracted services must be itemized and tracked separately in invoices by the CONSULTANT to the DISTRICT.

## ARTICLE 7

### AMENDMENTS

- 7.1 This Agreement may only be amended as agreed to by both the DISTRICT and the CONSULTANT in the form of a written Agreement Amendment executed by both parties. The DISTRICT may amend this Agreement only by action of the Board acting as a body.

## ARTICLE 8

### COMPENSATION AND METHOD OF PAYMENT

- 8.1 During the term of this Agreement, the DISTRICT agrees to pay the CONSULTANT as compensation for services performed under and in accordance with this Agreement and the provisions below if and only if those services are requested by the Board. Authorized services provided by the CONSULTANT under this Agreement will be compensated by the DISTRICT pursuant to the hourly rates and charges in the Fee Schedule attached to CONSULTANT'S June 5, 2020, proposal (**Exhibit 1**), which shall be effective from August 1, 2020, to December 31, 2020. The parties will adjust the hourly rates and charges for the periods of January 1, 2021, to December 31, 2021 and January 1, 2022 to July 31, 2022, by mutual agreement.

8.2 PAYMENT

Payment shall be due 30 days after the date of monthly invoice describing the work performed during the preceding month.

8.3 WATER QUALITY ANALYSIS

With prior written authorization, the DISTRICT agrees to pay the CONSULTANT for collection of samples, managing equipment, data management, laboratory coordination and quality assurance/quality control on an hourly rate basis in accordance with Exhibit 1.

8.4 NON-SALARY EXPENSES

Non-salary expenses directly attributable to hourly professional services such as: (1) living and traveling expenses of employees traveling on business required in connection with an authorized project, (2) identifiable communication expenses, (3) identifiable drafting and stenographic supplies and expenses, (4) identifiable reproduction costs applicable to the work, (5) in-house reproduction of originals up to 11" X 17" in size, (6) mileage for local business related travel, and (7) other indirect costs as identified in Exhibit 1 shall be reimbursed as shown in Exhibit 1. The cost of any items not identified in Exhibit 1 shall only be incurred with the prior authorization of the Administrator and shall be at the cost to the CONSULTANT. All services must be authorized and identified with a specific approved DISTRICT project.

**ARTICLE 9**

**RECORDS**

9.1 All materials obtained or generated by CONSULTANT and its subcontractors in performing the Services, including documents in hard and electronic copy, software, and all other forms in which work as part of the Services is contained, documented or memorialized, will be the property of the DISTRICT. The DISTRICT will have the right to use any or all materials for any public purpose in accordance with applicable laws. The DISTRICT may inspect, copy or take possession of any materials on written request to CONSULTANT. All materials will be delivered to the DISTRICT by CONSULTANT within 30 days of termination of this Agreement. At such time, CONSULTANT may maintain a copy of some or all of the materials except for any material designated by the DISTRICT as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT or a subcontractor only pursuant to written agreement with the DISTRICT specifying terms.

9.2 CONSULTANT considers certain information developed during the execution of services as "not public" and "protected" from public disclosure under the various local, state and federal Data Practices Act requests. The CONSULTANT will be fully compensated for any and all costs by DISTRICT associated with any type of Data Practices Act request.

## **ARTICLE 10**

### **CONFIDENTIAL INFORMATION**

- 10.1 CONSULTANT will not disclose and will hold in confidence any and all proprietary material owned or possessed by the DISTRICT and so denominated by the DISTRICT. CONSULTANT will not use any such material for any purpose other than performance of the Services without DISTRICT written consent. This restriction does not apply to material already possessed by CONSULTANT or that CONSULTANT received on a non-confidential basis from the DISTRICT or another party. Consistent with the terms of this Agreement regarding use and protection of confidential and proprietary information, CONSULTANT may publish or use the materials in its professional activities. Any such use will properly acknowledge the DISTRICT. In addition, CONSULTANT will comply with the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

## **ARTICLE 11**

### **RELATIONSHIP OF THE PARTIES**

- 11.1 The CONSULTANT is engaged only for the purposes and to the extent provided in this Agreement, and the relationship of the CONSULTANT to the DISTRICT during the term of this Agreement shall be that of an independent contractor and consultant. The CONSULTANT shall perform the services as an independent contractor and consultant in accordance with its own methods, the terms of this Agreement, and applicable laws and regulations.

11.2 **CONTINUATION OF OBLIGATIONS**

It is understood and agreed that insurance and surety obligations; warranties and obligations to defend, indemnify and hold harmless; and document retention requirements will survive completion of the Services and the term of this Agreement as provided by law in the state where services were performed, and by the DISTRICT'S Document Retention Schedule.

11.3 **PROPERTY OF THE DISTRICT**

All property furnished to or for the use of CONSULTANT or a subcontractor by the DISTRICT and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials, files, designs, project design documents or other work in progress, research, survey data, models and model input data, and technical data, both hard copy and electronic, remains the property of the DISTRICT and will be returned to the DISTRICT at the conclusion of the performance of the Services, or sooner if requested by the DISTRICT. CONSULTANT further agrees that any proprietary materials of the DISTRICT are the exclusive property of the DISTRICT and will assert no right, title or interest in the materials. CONSULTANT will not disseminate, transfer or dispose of any proprietary data to any other person or entity unless specifically authorized in writing by the DISTRICT. Any property supplied to CONSULTANT by the DISTRICT or deriving from the DISTRICT is supplied to and accepted by

CONSULTANT as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. The DISTRICT assumes all liability and responsibility for reuse of files, designs, project design documents or other work in progress, research, survey data, models and model input data, technical data should the reuse occur without consultation of the CONSULTANT prior to reuse.

## **ARTICLE 12**

### **DISCLOSURES**

#### 12.1 POTENTIAL CONFLICT

The CONSULTANT serves private and public clients. Therefore, the potential exists for an occasional contractual conflict if one of the CONSULTANT'S clients submits an application for permit to the DISTRICT. The CONSULTANT will disclose to the Administrator the existence of contractual arrangements that could appear to conflict with services provided to the DISTRICT under this Agreement as they occur.

## **ARTICLE 13**

### **GENERAL PROVISIONS**

13.1 CONSULTANT will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services, and will procure all licenses, permits and other rights necessary to perform the Services. In performing the Services, CONSULTANT will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

13.2 The failure of either party to insist upon the strict compliance by the other party of the covenants, conditions, or respective obligations and duties set forth in this Agreement, or to exercise any option, remedy or right herein, shall not operate as a waiver of relinquishment of such parties' rights in the future to insist upon the strict compliance with any covenant term or condition of this Agreement or to exercise or act upon any right, remedy or option granted hereunder or otherwise, all of which shall remain in full force and effect. A waiver by either party on any one or more occasion of any covenant, term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other covenant, term or condition and the consent to or approval of by either party any act by the other requiring consent or approval shall not be deemed to render unnecessary such party's consent to or approval of any subsequent similar act by the other.

No covenant term or condition of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing and signed by the waiving party.

13.3 The entire agreement between the two parties is contained herein and this Agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this Agreement is valid only when reduced to writing as an amendment to this Agreement and signed by the parties hereto as provided herein. The DISTRICT may amend this Agreement only by action of the Board acting as a body.

13.4 Choice of Law, Venue and Jurisdiction

This Agreement will be construed under and governed by the laws of the State of Minnesota. Venue and jurisdiction for any action under this Agreement will lie in Carver County.

13.5 Time is of the essence in this Agreement.

13.6 This Agreement shall be binding upon and shall inure to the benefit of the parties' respective heirs, executors, administrators, successors and permitted assigns.

IN WITNESS WHEREOF, the parties below have caused this Agreement to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

**DISTRICT:**

By \_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM and EXECUTION

By \_\_\_\_\_  
Its Attorney

**CONSULTANT:**

By *Jella Lynn Schall*  
Title Principal/owner