



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, February 17, 2021

Agenda Item

Item 4. H. - Authorize execution of Intergovernmental Services Agreement between the Metropolitan Council and the LMRWD and authorize execution of Pass-through Funding Agreement

Prepared By

Linda Loomis, Administrator

Summary

Since December of 2018, the US Fish & Wildlife Services (USFWS) and the LMRWD have been monitoring Chloride levels in Ike's Creek. Monitoring has been done informally; USFWS collected samples and delivered them to a lab for analysis. The LMRWD paid for analyzing the samples. USFWS staff collected samples as they were able; testing was not done on a regular schedule.

USFWS and the LMRWD discussed conducting sampling on a regular basis. The Metropolitan Council collects samples and analyzes the samples from others streams and creeks in the Metro-area. Both USFWS and the LMRWD contacted the Met Council about adding Ike's Creek to the list of waters they sample. The Met Council agreed and an agreement was drafted that details the services Met Council will provide. USFWS recommended that they not be a party to the monitoring agreement and that only the Met Council and the LMRWD be parties to the agreement. That agreement is attached and the Board should make a motion to authorize execution of the agreement. The agreement is currently under review by legal counsel.

There is a non-profit organization affiliated with the MN Valley Wildlife Refuge, Friends of the Refuge that accepts donations on behalf of the Refuge. Friends of the Refuge has received a donation from Cargill to fund the collection and analysis of water samples from Ike's Creek for Chloride. The LMRWD and Friends of the Refuge will enter into a pass through funding agreement to pay the LMRWD for the cost of services to be provided by the Met Council. That agreement is attached and a motion should be made to authorize execution of the agreement. The agreement is also being reviewed by legal counsel.

Attachments

Intergovernmental Services Agreement between the Metropolitan Council and the LMRWD
Agreement for Passthrough Funding for Monitoring Ike's Creek

Recommended Action

Motion to authorize execution of both the Intergovernmental Services Agreement between the Metropolitan Council and the LMRWD and the Agreement for Passthrough Funding for Monitoring Ike's Creek

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE METROPOLITAN COUNCIL AND
THE LOWER MINNESOTA WATERSHED DISTRICT**

THIS AGREEMENT is made and entered into by and between the Metropolitan Council (“Council”) and the Lower Minnesota Watershed District (“District”), each acting by and through its duly authorized officers.

THE ABOVE-NAMED PARTIES hereby agree as follows:

I. GENERAL SCOPE OF AGREEMENT

The Council and the District agree to undertake a professional water chemistry monitoring program to characterize chloride pollution in Ike’s Creek, including sample collection, laboratory analysis and data review and validation. The Council will collect water samples and analyze samples for chloride, temperature, specific conductance, calcium, magnesium, hardness, sulfate, and alkalinity. The Council will review the analytical data for validity and provide the reviewed data to the District.

II. SPECIFIC SCOPE OF SERVICES

2.01 Monitoring Program. The District and the Council agree to partner in a study to characterize chloride pollution in Ike’s Creek.

a. General Purposes of Program

The Council will collect water samples from two locations on Ike’s Creek and analyze samples for chloride, temperature, specific conductance, calcium, magnesium, hardness, sulfate, and alkalinity. The Council will review the analytical data for validity and provide the reviewed data to the District.

b. Specific Lake/Stream/River and Location Involved:

| Lake/River/Stream | County | Monitoring Location |
|-------------------|----------|---------------------|
| Ike’s Creek | Hennepin | Site A Upstream |
| Ike’s Creek | Hennepin | Site B Downstream |

c. Monitoring Program Plan

The Council will collect approximately 42 samples between the commencement of this agreement through June 29, 2021, including bi-weekly (once every two weeks) routine grab samples and Thaw-Event Samples (“Thaw-Even Samples” are samples collected after two days with daily temperatures above 32 degrees Fahrenheit) as conditions permit. The parties understand that the actual number of Thaw-Event Samples is contingent on weather.

The Council will analyze samples for temperature and specific conductance in situ and chloride, calcium, magnesium, hardness, sulfate and alkalinity in the laboratory.

The Council will review and validate the data, publish the data on Environmental Information Management System (“EIMS”) website and provide a spreadsheet of final data to the District.

d. Program Costs

- i. Labor. Council Water Resources staff labor will be billed at Council’s cost for the services in this Section II with a not to exceed amount of \$5,040.00 for sample collection and delivery and not to exceed \$1,200.00 for data review and validation.
- ii. Samples. All samples will be analyzed by Council Laboratory Services for \$55.00 per sample.

| Analyte | Analysis Code | Cost per Analysis |
|------------------|---------------|-------------------|
| Chloride | CL-AV | \$15.75 |
| Ca, Mg, Hardness | HARD-OESV | \$12.00 |
| Sulfate | SO4-ICV | \$13.50 |
| Alkalinity | ALK-AV | \$13.50 |

Total program costs will not exceed \$8,460.00 for labor and sample analysis for services expressly stated this Section II. The parties by written amendment, signed by authorized representatives, may amend this agreement to add or change services.

2.02 District Responsibilities. The District agrees that it will:

- a. provide online orientation to Council Water Resources staff before sampling begins to address questions of creek access and monitoring locations,
- b. provide in-person orientation to Council Water Resources primary sampling crew to address questions of creek access and monitoring locations, and
- c. provide letters or other written agreement granting permission for site access from City of Bloomington, US Fish and Wildlife Service and additional parties as needed for the Council to perform its obligations under this Agreement.

2.03 Council Responsibilities. The Council agrees that it will:

- a. provide all sampling equipment, collect all samples according to the sampling schedule, measure temperature and specific conductance of the sample and deliver all samples to Council Laboratory Services for analysis,
- b. analyze all samples for chloride, calcium, magnesium, hardness, sulfate, alkalinity,
- c. store, review and validate data and publish validated data on EIMS website,
- d. collect final sample on or about 6/29/2021, and
- e. provide reviewed and validated data on or about 9/30/2021.

III. COMPENSATION; METHOD OF PAYMENT

3.01 Payment to Council. For all labor performed and reimbursable expenses incurred by the Council under this agreement during the Period of Performance, the District agrees to pay the Council for services provided at the rates listed in Section II., subsection 2.01.

3.02 Payment Schedule. Payment of the total amount owing to the Council by the District shall be made within 30 days of the date of the invoice. The District will be invoiced quarterly.

Invoices are to be sent to:

Attention: Linda Loomis
Department: Lower Minnesota River Watershed District Naiad Consulting, LLC
Email: naiadconsulting@gmail.com
Phone: 763-568-9522 Cell
763-545-4659 Home/Office

IV. GENERAL CONDITIONS

4.01 Period of Performance. The services of the Council will commence on 01/19/2021, and will terminate on 9/30/2021, or following work completion and payment, whichever occurs first.

4.02 Amendments. The terms of this agreement may be changed only by mutual agreement of the parties. Such changes will be effective only on the execution of written amendment(s) signed by duly authorized officers of the parties to this agreement.

4.03 District Personnel. Linda Loomis, or such other person as may be designated in writing by the District, will serve as the District's representative and will assume primary responsibility for coordinating all services with the Council.

Name: Linda Loomis
Title: Administrator, Lower Minnesota River Watershed District
Naiad Consulting, LLC
Party: Lower Minnesota Watershed District
Address: 6677 Olson Memorial Highway Golden Valley, MN 55427
Email: naiadconsulting@gmail.com
Phone: 763-568-9522 Cell
763-545-4659 Home/Office

4.04 Council's Contract Manager. The Council's Contract Manager for purposes of administration of this agreement is Casandra Champion, Program Manager, or such other person as may be designated in writing by the Council's Regional Administrator. The Council's Contract Manager will be responsible for coordinating services under this agreement. However, nothing in this agreement will be deemed to authorize the Contract Manager to execute amendments to this agreement on behalf of the Council.

Name: Casandra Champion
Title: Principal Environmental Scientist
Party: Metropolitan Council Environmental Services

Address: 2400 Childs Rd Saint Paul, MN 55106
Email: Casandra.champion@metc.state.mn.us
Phone: 651-602-8745

4.05 Equal Employment Opportunity; Affirmative Action. The Council and the District agree to comply with all applicable laws relating to nondiscrimination and affirmative action. In particular, the Council and the District agree not to discriminate against any employee, applicant for employment, or participant in this study because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age; and further agree to take action to assure that applicants and employees are treated equally with respect to all aspects of employment, including rates of pay, selection for training, and other forms of compensation.

4.06 Liability. Each party to this agreement shall be liable for the acts and omissions of itself and its officers, employees, and agents, to the extent authorized by law. Neither party shall be liable for the acts or omissions of the other party or the other party's officers, employees or agents. Nothing in this agreement shall be deemed to be a waiver by either party of any applicable immunities or limits of liability including, without limitation, Minnesota Statutes, sections 3.736 (State Tort Claims) and chapter 466 (Municipal Tort Claims).

4.07 Copyright. No reports or documents produced in whole or in part under this agreement will be the subject of an application for copyright by or on behalf of the Council or District.

4.08 Termination of Agreement. The Council and the District will both have the right to terminate this agreement at any time and for any reason by submitting written notice of the intention to do so to the other party at least thirty (30) days prior to the specified effective date of such termination. In the event of such termination, the Council will invoice and be paid for products and/or services rendered and/or in process before the effective date of termination.

4.09 Force Majeure. The Council and the District agree that the District shall not be liable for any delay or inability to perform this agreement, directly or indirectly caused by, or resulting from, strikes, labor troubles, accidents, fire, flood, breakdowns, war, riot, civil commotion, lack of material, delays of transportation, acts of God or other cause beyond reasonable control of Council and the District.

4.10 Audits. Pursuant to Minn. Stat. Section 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices relative to this agreement shall be subject to examination, including by the parties, legislative auditor and/or state auditor. Complete and accurate records of the work performed pursuant to this agreement shall be kept for a minimum of six (6) years following termination of this agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the District notifies Provider in writing that the records need no longer be kept.

4.11 Relationship of Parties and Their Employees. Nothing contained in this agreement is intended, or should be construed, to create the relationship of co-partners or a joint venture between the Council and the District. No tenure or any employment rights including worker's compensation, unemployment insurance, medical care, sick leave, vacation leave, severance pay, retirement, or other benefits available to the employees of one of the parties, including indemnification for third party personal injury/property damage claims, shall accrue to employees of the other party solely by the fact that an employee performs services under this agreement.

4.12 Applicable Law; Compliance with Law. The laws of the state of Minnesota shall govern this agreement. In the performance of its obligations pursuant to this agreement, the parties agree to comply with all applicable provisions of federal, state, and local laws, regulations, and directives, and agrees that the most recent of such provisions will govern this contract at any particular time, including but not limited to Minnesota Statutes Chapter 13.

4.13 Severability. If any part of this agreement is rendered void, invalid or unenforceable such rendering shall not affect the remainder of this agreement unless it shall substantially impair the value of the entire agreement with respect to either party. The parties agree to substitute for the invalid provision a valid provision that most closely approximates the intent of the invalid provision.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on the dates set forth below. This agreement is effective upon final execution by, and delivery to, both parties.

METROPOLITAN COUNCIL

LOWER MINNESOTA WATERSHED DISTRICT

Signed: _____

Signed: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

AGREEMENT FOR PASSTHROUGH FUNDING FOR MONITORING IKE'S CREEK

This agreement, made and entered into this ____ day of _____ 2021, by and between the Lower Minnesota River Watershed District, a public body with purposes and powers set forth in Minnesota Statutes Chapters 103B and 103D, hereafter referred to as the "LMRWD" and the Minnesota Valley Refuge Friends, a 501c3 non-profit organization committed to the Minnesota Valley National Wildlife Refuge, hereinafter referred to as the "Friends".

RECITALS:

WHEREAS, the Friends and the LMRWD desire to undertake regular professional water chemistry monitoring program to characterize chloride pollution in Ike's Creek, including sample collection, laboratory analysis and data review and validation; and

WHEREAS, the Metropolitan Council has agreed to provide program services as described in an Intergovernmental Agreement Between the Metropolitan Council and the LMRWD (Attachment 1); and

WHEREAS, the Friends agrees to pay for program services as described in the Intergovernmental Agreement Between the Metropolitan Council and the LMRWD, hereinafter referred to as the "Program".

NOW, THEREFORE, IT IS HEREBY AGREED:

1. The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein; and
2. The Program as described in the Intergovernmental Agreement Between the Metropolitan Council and the LMRWD consists of collecting water samples and analyzing samples for chloride, temperature, specific conductance, calcium, magnesium, hardness, sulfate and alkalinity; and
3. Program activities are set forth in Attachment 1. Milestones include: 1) execution of an agreement between the LMRWD and the Friends for pass through funding to pay for the Program; 2) starting the Program in 2021; and 3) completing the Program on 9/30/2021, or following work completion and payment, whichever occurs first; and
4. The Program will be completed by the Metropolitan Council; and
5. The LMRWD will comply with all of the terms and conditions of the Intergovernmental Agreement Between the Metropolitan Council and the LMRWD as Attachment 1; and
6. The Friends shall reimburse the MRWD actual allowed costs related to the Program, not to exceed \$8,460.00. Reimbursements shall be made within thirty (30) days after receipt of invoices documenting incurred expenses; and
7. Neither party, its officers, agents or employees, either in their individual or official capacity, shall be responsible or liable in any manner to the other party for any claim, demand, action or cause of action of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of the described work by the other party, or arising out of the negligence of any contractor under any contract let by the other party for the performance of said work; and each party agrees to defend, save, keep and hold harmless the other,

its officers, agents and employees from all claims, demands, actions or causes of actions arising out of the negligent performance by its officers agents or employees; and

8. It is further agreed that neither party to this Agreement shall be responsible or liable to the other or to any other person or entity for any claims, damages, actions, or causes of actions of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of any work or part hereof by the other as provided herein; and each party further agrees to defend at its sole cost and expense and indemnify the other party for any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising in connection with or by virtue of performance of its own work as provided herein. Each party's obligation to indemnify the other under this clause shall be limited in accordance with the statutory tort liability limitation as set forth in Minnesota Statutes Chapter 466 to limit each party's total liability for all claims arising from a single occurrence, include the other party's claim for indemnification, to the limits prescribed under section 466.04. It is further understood and agreed that the Parties' total liability shall be limited by Minnesota Statutes Chapter 471.59, Subdivision 1a, as a single governmental unit; and
9. It is further agreed that any and all employees of each party and all other person engaged by a party in the performance of any work or service required or provided herein to be performed by the party shall not be considered employees, agents or independent contractors of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensations Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged shall be the sole responsibility of the employing party and shall not be the obligation or responsibility of the other party; and
10. The provisions of Minnesota Statute Chapter 181.59 and of any applicable local ordinance relating to Civil Rights and discrimination shall be considered a part of this Agreement as though fully set forth herein, including Exhibit B, which is attached and hereby incorporated; and
11. Pursuant to Minnesota Statutes Chapter 16C.05, Subdivision 5, the books, records, documents and accounting procedures and practices of the LMRWD and the City pursuant to the Agreement shall be subject to examination by the LMRWD, the City and the State Auditor. Complete and accurate records of the work performed pursuant to this Agreement shall be kept by the LMRWD and the City for a minimum of six (6) years following termination of this Agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action involving the LMRWD or the City regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the LMRWD or the City notifies each party in writing that the records no longer need to be kept; and
12. The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder shall be those courts located within the County of Scott, State of Minnesota. Litigation, however, in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota; and

13. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Agreement to fail its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party; and
14. Any notice or demand, authorized or required under this Agreement shall be in writing and shall be sent by certified mail to the other party as follows:

To the LMRWD: Lower Minnesota River Watershed District
 Linda Loomis, Administrator, her/his successors or assigns
 112 East Fifth Street, Suite #102
 Chaska, MN 55318

To the Friends: Minnesota Valley Refuge Friends
 Sara N. Blood, Executive Director, her/his successors or assigns
 3815 American Boulevard East
 Bloomington, MN 55425

IN TESTIMONY WHEREOF, The parties hereto have caused this Agreement to be executed by their respective authorized officers as of this day and year first above written.

LOWER MINNESOTA RIVER WATERSHED DISTRICT:

MINNESOTA VALLEY REFUGE FRIENDS:

By: Jesse Hartmann, President

By: _____, President

Date: _____

Date: _____

Approved as to form & execution:

District counsel

By: _____, Executive Director

Date: _____

Approved as to form & execution:

Friends counsel