



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, March 17, 2021

### **Agenda Item**

#### **Item 6. B. - City of Carver Levee**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

A cooperative agreement has been drafted and reviewed by the City of Carver. The City Attorney made some revisions to the agreement, which is being reviewed by LMRWD Legal Counsel.

The Cooperative agreement is attached for the Board's review. Attorney John Kolb will be able to provide guidance at the board meeting regarding his review of the cooperative agreement.

The City was advised of the concern of the LMRWD Board for using 75% of the amount the LMRWD committed to the project. The City explained that they think it is appropriate to use this much of the LMRWD commitment for this, as the information will be used to secure state funding for the project, which is the next step in the project. The City hopes the LMRWD Board will reconsider and grant the request.

### **Attachments**

Cooperative agreement between the City of Carver and the Lower Minnesota River Watershed District for Carver Flood Levee Improvement Project.

### **Recommended Action**

Motion to approve Cooperative Agreement and authorize execution

COOPERATIVE AGREEMENT  
BETWEEN THE CITY OF CARVER AND  
THE LOWER MINNESOTA RIVER WATERSHED DISTRICT

**CARVER FLOOD LEVEL IMPROVEMENT PROJECT**

This cooperative agreement is made by and between the City of Carver, a Minnesota municipal corporation (the City), and the Lower Minnesota River Watershed District, a watershed district pursuant to Minnesota Statutes chapters 103B and 103D (the LMRWD), to implement preliminary design and easement determination for the City's flood levee improvement project (the Project). The purpose of the Project is to improve the flood levee in order to qualify for the US Army Corps of Engineers Levee Safety Program and secure FEMA certification.

**Recitals**

**WHEREAS**, LMRWD adopted Resolution 20-10, expressing support for the City's levee improvement project and committed \$100,000 toward the project; and

**WHEREAS**, the City received \$150,000 in funding through the Minnesota Flood Hazard Mitigation Grant Assistance Program (the Grant) to begin the next phase of the Project to further develop the levee conceptual plans to a more detailed level of design; and

**WHEREAS**, the City must provide a match of \$150,000, for a total of \$300,000 for this phase of the Project; and

**WHEREAS**, the City requests that the City and the LMRWD share 50/50 in providing the match to the Grant; and

**WHEREAS**, in January 2021 Bolton & Menk, Inc. provided the City with a scope of services (the Scope), attached hereto and incorporated herein as Exhibit A, which details the scope of services to include Public engagement, stakeholder coordination, funding administration, geotechnical analysis, preliminary design, and survey/easement determination; and

**WHEREAS**, the LMRWD and the City are authorized by Minnesota Statutes Section 471.59 to enter into this cooperative agreement for this phase of the Project.

**Agreement**

**NOW, THEREFORE, THE LMRWD AND THE CITY** enter into this agreement to document their understanding as to the Scope, reaffirm both parties commitment as to the general responsibilities for and tasks to be undertaken by the parties and facilitate communication and cooperation to successfully complete the Scope.

- 1. Scope.** The Scope elements are described in detail in and supported by the Scope (Exhibit A), which serves as the basis for this cooperative agreement.

2. **Costs.** The estimated cost to complete the Scope will be \$300,000.

2.1 The City will be responsible for oversight and management of the Scope.

2.2 The LMRWD will be responsible for \$75,000 of the Scope's costs (to be paid to the City) and technical assistance and information to the City's consultant as requested.

2.3 Upon completion and final acceptance of the Scope and receipt of the accompanying documents, the LMRWD will reimburse the City within thirty (30) days.

2.4 Each party will bear the internal, administrative and incidental costs of fulfilling its responsibilities and obligations under this agreement.

3. **The City's Specific Rights and Duties**

3.1 The City has contracted with Bolton & Menk, Inc. provide the services detailed in Exhibit A. Notwithstanding the foregoing, the City makes no warranty to the LMRWD regarding Bolton & Menk's or a third party's performance.

3.2 The City will contract for Bolton & Menk's services and oversee the Scope. The City may adjust the scope of service in consultation with the LMRWD, as long as the adjustments do not exceed the scope of rights granted under this agreement or create obligations not anticipated hereunder. If the City, in its judgment, should decide that the Scope is infeasible prior to the obligations of any funds for the Scope, the City may at its option declare this agreement rescinded and annulled. If the City so declares, all obligations herein, performed or not, will be voided.

4. **LMRWD Specific Rights and Duties.** On receipt of documentation of costs incurred and paid, LMRWD will reimburse the City as described in Section 2 of this agreement.

5. **General Terms**

5.1 INDEPENDENT RELATIONSHIP; LIABILITY. This agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59, and no party agrees to be responsible for the acts or omission of another pursuant to subdivision 1(a) of the statute. Only contractual remedies are available for the failure of a party to fulfill the terms of this agreement. The City and LMRWD enter this agreement solely for the purposes of improving the ecological health and condition of the Carver Levee. Accordingly, with respect to any and all activity undertaken pursuant to this agreement, the City and LMRWD (each party as an Indemnitor Party) agree to hold each other harmless, and defend and indemnify each other, their officers, employees and agents (individually, an Indemnified Party) from and against any and all liability, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that an Indemnified Party may incur as a result of the Scope due to any negligent or willful act or omission by the Indemnitor Party or the Indemnitor Party's breach of any specific contractual duty. Notwithstanding the

foregoing or any other provision of this agreement, the City's and LMRWD obligations under this paragraph will survive the termination of the agreement.

This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party. As between the parties, only contract remedies are available for a breach of this agreement.

- 5.2 PUBLICITY AND ENDORSEMENT. Any publicity regarding the Scope must identify the City and LMRWD as the sponsoring entities. For purposes of this provision, publicity includes notices, information pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the City or LMRWD individually or jointly with others. Each party at its own cost, may develop, produce and after approval of the other party, distribute educational, outreach and publicity materials related to the Scope.
- 5.3 DATA MANAGEMENT. All designs, written materials, technical data, research or any other work-in-progress will be shared between the parties to this agreement on request, except as prohibited by law. As soon as is practicable, the party preparing plans, specifications, contractual documents, materials for public communication or education will provide them to the other party for recordkeeping and other necessary purposes.
- 5.4 DATA PRACTICES. All data created, collected, received, maintained or disseminated for any purpose in the course of this agreement is governed by the Data Practices Act, Minnesota Statutes chapter 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.
- 5.5 ENTIRE AGREEMENT. This agreement contains the complete and entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters. The recitals stated at the outset are incorporated into and a part of the agreement.
- 5.6 AMENDMENT. This agreement, as it may be amended in writing, constitutes the entire agreement between the City and LMRWD. Any amendment to this agreement will not be effective until it has been executed and approved by the same parties executing and approving the original agreement or their successors in office.
- 5.7 WAIVERS. The Waiver by the City and LMRWD of any breach or failure to comply with any provision of this agreement by the other party will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.
- 5.8 NOTICES, COORDINATION. The City and LMRWD designate the following authorized representatives, each to serve as liaison to the other party for purposes of communication regarding the Scope as provided in this agreement. Any written communication required

under this agreement will be addressed to the other party as follows, except that any party may change its address for notice by so notifying the other party in writing:

**City of Carver**

Brent Mareck  
City Manager  
316 Broadway Street  
Carver, MN 55315  
Phone: (952)448-8737  
Email: bmareck@cityofcarver.com

**Lower Minnesota River Watershed District**

Linda Loomis  
Administrator  
112 East 5th Street, Suite 102  
Chaska, MN 55318  
Phone: (763)545-4659  
Email: admin@lowermnriverwd.org

5.9 TERM; TERMINATION. This agreement is effective on execution by both parties and will terminate once the final report is received or on the written agreement of the City and LMRWD.

**IN WITNESS WHEREOF**, the parties have caused the agreement to be duly executed intending to be bounded thereby.

*(Signature page follows)*

**CITY OF CARVER**

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By: Courtney Johnson

Its: Mayor

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

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By: Vicky Sons-Eiden

Its: City Clerk

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

**LOWER MINNESOTA RIVER  
WATERSHED DISTRICT**

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

Its \_\_\_\_\_

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

**EXHIBIT A**

**Carver Levee Preliminary Design and Easement Determination**



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Bolton-Menk.com

January 27, 2020

Mr. Brent Mareck  
City Manager  
City of Carver

RE: Carver Levee Preliminary Design and Easement Determination

Dear Mr. Mareck,

In accordance with your request, below is a budget summary for the preliminary design costs associated with the Carver Levee Improvements. This scope has been developed to stay within the available budget of \$300,000 for 2021. The \$300,000 budget limit reflects the funds currently made available by the funding partners. This includes: State of Minnesota DNR (\$150,000), LMRWD (\$75,000) and City of Carver (\$75,000).

### **Project Purpose**

The intent of this preliminary design phase is to further develop the previous levee concept plans to a more detailed level of design. The efforts in this phase will generate necessary information that will further position the project for funding, permits, and move the project closer to bid documents. This phase will complete the following tasks:

#### **Task 1 – Communications/Administration**

Communications and administration will be required throughout the levee improvement project. Nicole Schmidt will be the lead on the development of communication effort. This effort is anticipated to include three key areas:

**Public Engagement** – The public will be kept up to date on the progress of the levee improvements. This will be done through presentations to the Council, informational meetings, publications and media releases. We will work with City staff and Council to determine the frequency and content of each public engagement effort. This will assure to the Council and Residents that issues are being heard and responses being provided.

The public engagement effort will include face-to-face meetings on site with property owners who will be directly affected by the levee project. We will walk the site, discuss the construction and easement impacts, and listen to concerns and requests of the property owners. Our team will be available to answer their questions and to listen to



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their concerns through the entire process. We will begin this effort in the spring of 2021 once the snow has melted, so we can understand areas of sensitivity and look for solutions during the development of the preliminary design.

**Stakeholder Coordination** – During the preliminary design we will engage the project stakeholders to coordinate design requirements to meet certification, environmental review considerations, coordination with regulatory agencies, and partners that may be affected by the levee improvements. We anticipate the initial stakeholder list to include:

1. City of Carver
2. Minnesota Department of Natural Resource (MNDNR)
3. U.S. Army Corp. of Engineers (USACE)
4. Federal Emergency Management Agency (FEMA)
5. Lower Minnesota River Watershed District (LMRWD)
6. Carver County
7. Scott County
8. Others as identified

The goal will be to keep stakeholders informed of progress, identify regulatory changes that are occurring, and to receive over the shoulder review of design elements.

**Funding Administration** – The project has received funding from the LMRWD and the MNDNR to date. We will track the matching and reporting requirements for the grant programs and funding partners, prepare the documentation and follow up as necessary to keep the project current with the City's partners.

We also will work with City Council and Staff as necessary to seek additional funds. This may include updating the requested amounts, preparing communications and attending meetings.

## **Task 2 – Geotechnical/Seepage Analysis**

This task will include the geotechnical investigation of the levee. Soil borings will be taken along the levee at regular intervals and in key locations. The purpose will be to provide reasonable understanding of the fill material used to construct the levee and the materials below the levee that may alter stability and drainage.

The geotechnical investigation will include a seepage analysis of the levee and underlying materials along with a recommendation for toe drain design. Levees are not impermeable and do allow water to pass through them and under them at flood stage. This analysis will evaluate the stability of the levee at flood stage and aid in determining

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the quantity of water that will flow through the levee and how that water will be collected and pumped back over the levee.

This task will be completed by a subconsultant and we will solicit quotes from firms who perform these activities.

### **Task 3 – Preliminary Design**

The concept design previously developed will be updated and refined into the preliminary design. This will include incorporating the findings and recommendations of the geotechnical investigations, structural analysis for sheet pile and retaining walls, toe drain design and stable grading slopes for the levee. Dan Lonnes, the City Engineer, will manage the civil design for the levee.

The preliminary design will identify the construction and grading limits of the levee improvements. Impacts to the Floodway of the Minnesota River and Spring Creek will be evaluated and discussed with the State floodplain coordinator at the MNDNR, if necessary, permits will be prepared and submitted to initiate review for conformance with State rules. This will assist in reducing schedule impacts to final design and construction.

Preliminary design will include updating the project cost estimates and communication of these needs to the City's Council, stakeholders, and funding partners.

### **Task 4 – Survey/Easements**

We will review the available survey data of the levee and provide field survey of missing areas and critical features. This will require meeting individually with property owners near the levee that may be affected by improvements and or the requirement for levee easements. Understanding landowner concerns and issues at this phase of the project will assist in securing acquisition and completing final design.

We will identify parcels needing temporary and permanent easements and put together the necessary descriptions and exhibits to facilitate easement acquisition. Acquisition of easements are not intended to occur until the next round of funding is made available to the City. Easement acquisition is part of the critical timeline for the levee construction and this will expedite the appraisal and acquisition process.

Easement costs based on the preliminary design will be estimated and used in the updated project cost.

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### Project Costs

Costs are broken into the major work tasks that are anticipated. The estimated fees for professional services to complete preliminary design and update project costs by the end of 2021:

<b>Task 1 – Communications/Administration</b>	<b>\$40,000.00</b>
<b>Task 2 – Geotechnical/Seepage Analysis</b>	<b>\$80,000.00</b>
<b>Task 3 – Preliminary Design</b>	<b>\$130,000.00</b>
<b>Task 4 – Survey/Easements</b>	<b>\$50,000.00</b>
<b>Estimated Levee Phase 1 Engineering Budget</b>	<b>\$300,00.00*</b>

*\*Work efforts beyond the budget established for this initial design phase will be by approval only.*

### Schedule

The project will proceed on the following general schedule and in accordance with these timeline goals.

➤ Geotechnical	Feb-May, 21
➤ Preliminary design	Mar-Aug, 21
➤ Survey	Mar-May, 21
➤ Easements	Aug-Oct, 21

This phase of work is expected to be completed by the end of 21. Communications, agency coordination, and funding activities will occur throughout the next year and will tie to legislative activities and agency coordination needs.

Additional information is outlined below for the major activities of each task. If you have any questions or comments regarding the above, or if you would like to discuss this information in more detail, please do not hesitate to contact me.

Respectfully Submitted,

**Bolton & Menk, Inc.**



**Todd Hubmer, P.E.**

Senior Project Manager

Cc: Dan Lonnes  
Nicole Schmidt