



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday April 17, 2019

### **Agenda Item**

**Item 4. D. - Authorize Agreement between the LMRWD and the Dakota County SWCD for Metro-area Watershed Based Funding**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

The Dakota County Fen project that the LMRWD is planning using its Dakota County Watershed Based Funding Grant will be administered by the Dakota County SWCD. The county attorney has drafted an agreement between the LMRWD and the SWCD. The agreement is attached, but has not yet been reviewed by legal counsel for the District. The workplan is part of the agreement

### **Attachments**

JOINT POWERS AGREEMENT BETWEEN THE DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT AND THE LOWER MINNESOTA RIVER WATERSHED DISTRICT FOR WATERSHED BASED FUNDING GRANT ADMINISTRATION

### **Recommended Action**

Approve and authorize FY19 Agreement between the LMRWD and Dakota County SWCD

**JOINT POWERS AGREEMENT BETWEEN  
THE DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT AND  
THE LOWER MINNESOTA RIVER WATERSHED DISTRICT  
FOR WATERSHED BASED FUNDING GRANT ADMINISTRATION**

**THE PARTIES TO THIS AGREEMENT** are the Dakota County Soil and Water Conservation District (SWCD) and the Lower Minnesota River Watershed District (LMRWD). This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. § 471.59.

**NOW THEREFORE**, the parties, in joint and mutual exercise of their powers, agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to define the responsibilities and obligations of the SWCD and the LMRWD for grant administration services and disbursement of Board of Water and Soil Resources (BWSR) Watershed Based Funding Grant monies to be provided by the SWCD to the LMRWD as more fully described herein.
2. **TERM.** Notwithstanding the dates of signatures of the parties, this Agreement shall be in effect as of March 1, 2019, and shall remain in effect until December 31, 2021, or until all obligations by the parties of their respective obligations under this Agreement have been fulfilled, whichever occurs first, unless earlier terminated by law or according to the provisions of this Agreement.
3. **SCOPE OF SERVICES.** SWCD agrees to provide LMRWD with the following services:  
  
Grant Administration for Implementation of Board of Water and Soil Resources (BWSR) Watershed Based Funding Grant from March 1, 2019, until December 31, 2021, as expressed in the *2019-2021 Grant Work Plan and Budget* attached and incorporated into this Agreement as Exhibit 1. In the event of a conflict between the terms of this Agreement and Exhibit 1, the terms of this Agreement shall govern.
4. **PAYMENT.**
  - 4.1 The LMRWD shall pay to the SWCD an amount not to exceed \$3,600 for grant administration at the rates set forth and more fully described in Exhibit 1. In the event of a conflict between the terms of this Agreement and Exhibit 1, the terms of this Agreement shall govern.
  - 4.2 The SWCD shall pay on a reimbursement basis to the LMRWD an amount not to exceed \$65,450 to complete the LMRWD Tasks more fully described in Exhibit 1. In the event of a conflict between the terms of this Agreement and Exhibit 1, the terms of this Agreement shall govern.
  - 4.3 The LMRWD shall also contribute a local match as required by the BWSR grant policy in an amount not to exceed \$6,545. The LMRWD shall document and account for monies to satisfy the local match requirement.
5. **TIME OF PAYMENT.** The parties shall make payments within 35 days of the date on which an itemized invoice is received. If an invoice is incorrect, defective, or otherwise improper, the receiving party shall notify the other party within 10 days of receiving the incorrect invoice. Upon receiving the corrected invoice, the receiving party shall make payment within 35 days.
6. **PAYMENT FOR UNAUTHORIZED CLAIMS.** The parties may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude either party from questioning the propriety of the claim. Each party reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
7. **PAYMENT UPON EARLY TERMINATION.** In the event this Agreement is terminated before the completion of services, the LMRWD shall pay the SWCD for services provided in a satisfactory manner, in a pro-rated sum of the rates set forth in Exhibit 1 based upon actual time spent. In no case shall such payments exceed the LMRWD's total cost under this Agreement.
8. **COMPLIANCE WITH LAWS/STANDARDS.** The parties shall abide by all federal, state or local statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs and staff for which each party is responsible.

9. INDEPENDENT CONTRACTOR STATUS. Nothing in this Agreement is intended or should be construed as creating the relationship of a partnership, joint venture or employer-employee relationship between the parties. Officers, employees or agents of one party shall not be considered officers, employees or agents of the other party.
10. SUBCONTRACTING/ASSIGNMENT. A party shall not enter into any subcontract for the performance of the services contemplated under this Agreement nor assign any interest in this Agreement without prior written consent of the other party and subject to such conditions and provisions as are deemed necessary. The subcontracting or assigning party shall be responsible for the performance of its subcontractors or assignees unless otherwise agreed.
11. LIABLE FOR OWN ACTS. Each party to this Agreement shall be liable for the acts of their own officers, employees, agents, all of the forgoing and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees, or agents. It is understood and agreed that the provisions of the Municipal Tort Claims Act, Minn. Stat. ch. 466, and other applicable laws govern liability arising from a party's acts or omissions. In the event of any claims or actions asserted or filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties. Each party warrants that it has an insurance or self-insurance program and that it has minimum coverage consistent with the liability limits contained in Minn. Stat. ch. 466.
12. AUTHORIZED REPRESENTATIVES. The following named persons are designated the authorized representatives of parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, the authorized representatives shall have only the authority specifically or generally granted by its respective Board. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

To SWCD:

Brian Watson, Director  
 Dakota County SWCD  
 4100 220<sup>th</sup> Street West, Suite 102  
 Farmington, MN 55024  
 Telephone: (651) 480-7778

To LMRWD:

Linda Loomis, or successor  
 LMRWD District Administrator  
 112 E 5<sup>th</sup> St.  
 Chaska, MN 55318  
 Telephone: (763) 545-4659

13. LIAISONS. To assist the parties in the day-to-day performance of this Agreement and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by SWCD and the LMRWD. The parties shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

SWCD Liaison:	Curt Coudron
Telephone:	(651) 480-7774
Email:	curt.coudron@co.dakota.mn.us

LMRWD Liaison:	Linda Loomis
Telephone:	(763) 545-4659
Email:	niadconsulting@gmail.com

In addition, notification to the SWCD or the LMRWD regarding termination of this Agreement by the other party shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, MN 55033.

14. DEFAULT: FORCE MAJEURE. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.
15. DATA PRIVACY. All data created, collected, received, stored, used, maintained, or disseminated in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the federal laws on data privacy.
16. OWNERSHIP OF WORK PRODUCT. If either party uses the copyrighted material of the other party in performing work for this Agreement, it will protect the right, title and interest in the copyrighted material of the other party. Before using a third party's copyrighted material each party will obtain permission from the third-party.
17. RECORDS DISCLOSURE/RETENTION. Bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Agreement are subject to the examination, duplication, transcription and audit by each party to this Agreement and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, Subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. Each governmental unit agrees to maintain such evidences for a period of six years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.
18. TERMINATION. Either party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving 30 days' written notice, of its intent to terminate, to the other party. Such notice to terminate for cause shall specify the circumstances warranting termination of this Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. Termination of this Agreement shall not discharge any liability, responsibility or other right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.

Notwithstanding any provision of this Agreement to the contrary, either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement.

19. MODIFICATIONS. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the parties.
20. MINNESOTA LAW TO GOVERN. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the County of Dakota, State of Minnesota.
21. SEVERABILITY. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.
22. FINAL AGREEMENT. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not contained in this Agreement.
23. SURVIVORSHIP. The following provisions under this Agreement survive after the termination date of this Agreement: Sections 11 (Liable for Own Acts), 14 (Force Majeure), 15 (Data Privacy), 16 (Ownership of Work Product), 17 (Records Disclosure/Retention), and 20 (Minnesota Law to Govern).

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date(s) indicated below.

**LOWER MINNESOTA RIVER WATERSHED DISTRICT**

By \_\_\_\_\_  
Jesse Hartman, President, or successor  
Date of Signature \_\_\_\_\_

**DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT**

By \_\_\_\_\_  
Laura Zanmiller, Chair, or successor  
Date of Signature \_\_\_\_\_

Approved as to Form:

/s/Margaret M. Horsch                      3/18/19  
Helen R. Brosnahan  
Assistant Dakota County Attorney/Date

SWCD Board Motion No.19.027  
KS-19-128

**EXHIBIT 1**  
**FY19 Metro Watershed Based Funding**  
**Work Plan and Budget**  
*Prepared for the*  
**Lower Minnesota River Watershed District**

**DAKOTA COUNTY FEN STUDY – SWCD TASKS**  
**(Payable to SWCD)**

<b>COST ESTIMATE</b>	
<p><b>Grant Administration</b></p> <ul style="list-style-type: none"> <li>• Manage the grant and provide overall administration of funds, match requirements, and grant reporting.</li> <li>• Coordinate with State Agency contacts regarding aspects of the grant.</li> <li>• Maintain program and project files to include appropriate documents as reference. Maintain financial records to include all revenue and expenses associated with this grant, as well as expenditures on projects.</li> <li>• Provide entries and status reporting into the eLINK system. Provide website support to follow BWSR website grant reporting requirements.</li> </ul>	<p>BWSR billable rate or contractor rate</p> <p style="text-align: right;">\$3,600</p>
<b><u>Total LMRWD Amount Payable to the SWCD</u></b>	<b>\$3,600</b>

**DAKOTA COUNTY FEN STUDY – LMRWD TASKS**  
**(Grant Funds held by SWCD and Payable to LMRWD)**

<b>COST ESTIMATE</b>	
<p><b>LMRWD Dakota County Fen Study/Management Plan – Contract Management</b></p> <ul style="list-style-type: none"> <li>• Execute and manage contract for services</li> <li>• Ensure deliverables according to approved BWSR work plan.</li> </ul>	<p>BWSR billable rate or contractor rate</p> <p style="text-align: right;">\$1,358*</p>
<p><b>County Fen Study</b></p> <ul style="list-style-type: none"> <li>• Complete a comprehensive review of available information on the fens within the Lower Minnesota River Watershed District, specifically the fens in Dakota County according to the approved BWSR work plan.</li> <li>• Provide Fen Study final report.</li> <li>• Provide documentation of actual expenses associated with this grant, as well as expenditures on projects (receipts, invoices, and/or hours with billable wage)</li> </ul>	<p>BWSR billable rate or contractor rate</p> <p style="text-align: right;">\$64,092* (grant amount)</p> <p style="text-align: right;">\$6,545* (local match requirement)</p>
<b><u>Total SWCD Amount Payable to the LMRWD</u></b>	<b>\$65,450</b>

Notes:

\*The SWCD will reimburse the LMRWD upon receipt of invoices not to occur more frequently than quarterly. Receipt of invoices will require verification of work completed and acceptance by the State agencies overseeing the grant and the Fen Study. For this reason, not all payments to LMRWD will occur within 30 days.

Total payment to the LMRWD will not exceed the grant amount of \$65,450. An additional 10% match is required on the grant per BWSR policy, which will be documented and covered by the LMRWD.

Additional items pertaining to the grant may be required of the SWCD during the grant period and individual grant budget amounts may change as the grant progresses. If proposed changes are to exceed the total agreed amount, this work plan will then be amended and re-executed by the LMRWD and SWCD.