



# 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. E. - Authorize Agreement between the LMRWD and the Dakota County SWCD for 2019 monitoring**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

The Dakota County Soil and Water Conservation District conducts monitoring of water levels in the Fens in Dakota County. Every year the agreement is updated. The agreement for 2019 is attached. Participation in the SWCD's Landscaping for Clean Water and technical assistance for residents of the LMRWD are included in the agreement this year. All services are invoiced based on a time and material basis.

The SWCD began providing technical assistance and cost share this year. Four projects were completed under the Landscaping for Clean Water Program in 2018 and technical assistance was provided to several homeowners. The LMRWD paid \$5,850 for monitoring in 2017 and \$10,130 for monitoring, technical assistance and cost share in 2018.

The county attorney has drafted an agreement for 2019 services. The work plan upon which the agreement will be based 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 2019 TECHNICAL ASSISTANCE SERVICES

### **Recommended Action**

Approve and authorize Agreement between the Dakota County Soil and Water Conservation District and the LMRWD for 2019 Technical Assistance Services

**JOINT POWERS AGREEMENT BETWEEN  
THE DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT AND  
THE LOWER MINNESOTA RIVER WATERSHED DISTRICT  
FOR 2019 TECHNICAL ASSISTANCE SERVICES**

**THE PARTIES TO THIS AGREEMENT** are the Dakota County Soil and Water Conservation District (SWCD) and the Lower Minnesota River Watershed District (LMRWD), both political subdivisions of the State of Minnesota and "governmental units" as that term is defined in Minn. Stat. § 471.59. 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 technical assistance services to be provided by the SWCD to the LMRWD as more fully described herein.
2. **TERM.** This Agreement shall be in effect as of March 1, 2019, notwithstanding the dates of the signatures of the parties, and shall remain in effect until December 31, 2019, or until completion by the parties of their respective obligations under this Agreement, 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: Fen well monitoring services from March 1, 2019, until December 31, 2019, as expressed in the *2019 Dakota County Soil and Water Conservation District Work Plan* 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. **TOTAL COST.** The total amount to be paid by the LMRWD for all services provided pursuant to this Agreement shall not exceed \$19,960.00. The LMRWD shall pay SWCD for purchased services at the rates set out in *2019 Dakota County Soil and Water Conservation District Work Plan*.
5. **TIME OF PAYMENT.** The LMRWD shall make payment to the SWCD within 35 days of the date on which an itemized invoice is received. If an invoice is incorrect, defective, or otherwise improper, the LMRWD shall notify the SWCD within 10 days of receiving the incorrect invoice. Upon receiving the corrected invoice, the LMRWD shall make payment within 35 days.
6. **PAYMENT FOR UNAUTHORIZED CLAIMS.** The LMRWD may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude the LMRWD from questioning the propriety of the claim. The LMRWD 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 2 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.** SWCD 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 SWCD 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 and/or agents 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 and/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, District Administrator  
 Lower Minnesota River Watershed District  
 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: Lindsey Albright, Water Resource Specialist  
 Telephone: (651) 480-7783  
 Email: lindsey.albright@co.dakota.mn.us

LMRWD Liaison: Linda Loomis, District Administrator  
 Telephone: (763) 545-4659  
 Email: [niadconsulting@gmail.com](mailto:niadconsulting@gmail.com)

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 SWCD uses LMRWD's copyrighted material in performing work for this Agreement, SWCD will protect LMRWD's right, title and interest in the copyrighted material. Before using a third party's copyrighted material SWCD will get permission from the third-party. Where applicable, work products created by SWCD under this Agreement are "works made for hire" as defined in the U.S. Copyright Act. LMRWD owns the copyright interests in the work product. LMRWD may use, copy and make derivative works of the same, with no duty for an accounting to SWCD. SWCD may use portions or excerpts from the materials prepared under this Agreement.
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. DISPOSITION OF PROPERTY. Any property purchased with LMRWD money to perform services under this Agreement is owned by LMRWD and will be returned by the SWCD to LMRWD at the termination of this Agreement.

- 23. 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.
- 24. 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), 20 (Minnesota Law to Govern), and 22 (Disposition of Property).

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

**LOWER MINNESOTA RIVER WATERSHED DISTRICT**

By \_\_\_\_\_  
 Jesse Hartmann, 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/Helen R. Brosnahan 3/12/19  
 Helen R. Brosnahan  
 Assistant Dakota County Attorney/Date

SWCD Board Motion No.19.026  
 KS-19-116 (EF)

2019 Dakota County SWCD Work Plan and Budget  
**Prepared for the**  
**Lower Minnesota River Watershed District**

<b>TASK – FEN WELL MONITORING (March – December)</b>	<b>COST ESTIMATE</b>
Fen Well Monitoring	10 monitoring trips x 5 hrs/trip 50 hours @ \$80/hour = \$4,000
Data Management, Reporting and Administration	40 hours @ \$80/hour = \$3,200
Site Maintenance	10 hours @ \$80/hour = \$800
Supplies	Chalk, rags, batteries, tools = \$500
<b>Subtotal</b>	<b>\$8,500</b>

<b>TASK – EDUCATION AND COMMUNITY ENGAGEMENT</b>	<b>COST ESTIMATE</b>
Landscaping for Clean Water Workshops <ul style="list-style-type: none"> <li>• Conduct 1 Landscaping for Clean Water Introduction Presentation (one evening).</li> <li>• Conduct 1 Landscaping for Clean Water Design Workshop (two evenings).</li> </ul>	Introduction Presentation = \$0  Design Workshop = \$0
<ul style="list-style-type: none"> <li>• Create promotional materials for classes in partnership with Dakota County Cities and Watershed Orgs, organize course materials, and coordinate with partners.</li> <li>• Push social media posts to promote classes, attend community events to promote classes.</li> </ul>	12 hours @ \$80/hour = \$960
<b>Subtotal</b>	<b>\$960</b>

<b>TASK - TECHNICAL ASSISTANCE &amp; PROJECT IMPLEMENTATION</b>	<b>COST ESTIMATE</b>
<b>Cost Share Program – Landscaping for Clean Water</b> <ul style="list-style-type: none"> <li>• SWCD staff time for technical assistance for participants</li> <li>• Provide cost share to landowners for up to 6 Landscaping for Clean Water projects including raingardens, native plantings and shoreline stabilization projects consistent with SWCD cost share policies.</li> </ul>	Technical Assistance = \$3,000  Landowner Incentives: \$250/project x 6 projects = \$1,500

<b>Technical Assistance As Requested</b> <ul style="list-style-type: none"> <li>SWCD staff time for technical assistance for projects <i>Only as requested by Lower Minnesota River WD</i></li> </ul>	100 hours @\$80/hour = \$8,000
<b>Subtotal</b>	<b>\$10,500</b>

**TOTAL AGREEMENT NOT TO EXCEED \$19,960**

**GENERAL INFORMATION REGARDING THE FEN WELL MONITORING PLAN**

The Dakota County Soil and Water Conservation District (SWCD) shall conduct well monitoring activities at various fens located within the Lower Minnesota River Watershed District (LMRWD) from March 1, 2019 through December 31, 2019.

**Well Monitoring Activities**

Twenty eight piezometers of interest are located within the LMRWD (Table 1). The SWCD shall take water level measurements at each of the piezometers described in this project. Measurements will be made using a hand-cranked steel tape graduated in feet, tenths of feet, and hundredths of feet or an electronic water level meter. The equipment for measuring water level will be provided by the SWCD. Results shall be recorded manually and transferred to the Minnesota Department of Natural Resources (MN DNR) well monitoring database following all in-field measurements.

All piezometers will be monitored on a monthly basis, beginning March 2019 through December 2019.

Table 1. Fen Monitoring Locations

Location	Total Number of Piezometers to be Monitored
Fort Snelling Fen	13
Quarry Island Fen	2
Nicols Fen	13
Total	28

**Data Analysis and Project Reporting**

At the conclusion of the annual well monitoring effort, the SWCD shall provide the LMRWD District Administrator a report summarizing the findings resulting from annual monitoring activities. Monitoring data will be made available on the MN DNR Groundwater Level Data website

[http://www.dnr.state.mn.us/waters/groundwater\\_section/obwell/waterleveldata.html](http://www.dnr.state.mn.us/waters/groundwater_section/obwell/waterleveldata.html)