



Please note the meeting will be held 7:00pm, Wednesday, December 19, 2018 in the County Board Room at the Carver County Government Center, 602 East 4th Street, Chaska, MN.

# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting  
Wednesday, December 19, 2018

### **Agenda Item**

#### **Item 6. A. - Administrative Services**

#### **Prepared By**

Linda Loomis, Administrator

#### **Summary**

Since November 2013, Naiad Consulting, LLC has provided administrative services to the LMRWD. The original agreement between Naiad and the LMRWD stipulated that Naiad provide 125 hours of service monthly at a rate of \$65.00 per hour.

In July, 2015, the Board increased the number of hours per month to 150 hours and authorized legal counsel to review the agreement and prepare an amendment. An amendment to the Administrative Services Agreement was approved by the Board at the October 21, 2015 meeting.

Naiad Consulting is proposing an increase in the hourly rate to \$75.00 beginning January 1, 2019. If the Board authorizes the increase, an amendment to the Administrative Services Agreement will be prepared and presented to the Board at the January meeting for approval.

#### **Attachments**

Administrative Services Agreement as amended

#### **Recommended Action**

Motion to authorize rate increase and direct preparation of amendment to the Administrative Services Agreement

**AMENDMENT TO  
ADMINISTRATOR AGREEMENT**

THIS AMENDMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Lower Minnesota River Watershed District, a Minnesota Watershed District established in accordance with the Minnesota Watershed Act (“LMRWD”) and Naiad Consulting, LLC, a Minnesota limited liability company (the “Contractor”).

**RECITALS**

WHEREAS, LMRWD and Contractor entered into that certain Administrator Agreement dated November 25, 2013, and attached as **Exhibit 1** (“Agreement”); and

WHEREAS, LMRWD and Contractor wish to continue the Agreement with the amendments specified below:

NOW, THEREFORE, the parties agree as follows:

1. Section 11, Insurance, of the Agreement shall be replaced with the following:

“INSURANCE: Contractor shall, at all times during the Agreement and at its sole cost and expense, carry and maintain Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the performance of this Agreement, including coverage for independent contractor’s protection (required if any work will be subcontracted), premises-operations, and contractual liability with respect to the liability assumed by Contractor hereunder. The limits of insurance shall not be less than:

Each Occurrence	\$ 1,000,000
General Aggregate Limit	\$ 1,000,000
Broad Form Property Damage	\$ 1,000,000

LMRWD shall be listed as an additional insured on each insurance policy required hereunder. Each insurance policy shall provide that it will not be canceled or amended except after thirty (30) days advance written notice to the additional insured parties. Contractor shall provide evidence of such insurance policies (certificates of insurance) to LMRWD upon execution of this Agreement and when requested by LMRWD in the future.

2. Section 14, Notices, of the Agreement shall be replaced with the following:

“NOTICES: 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 Contractor: Naiad Consulting, LLC  
c/o Linda Loomis  
6677 Olson Highway  
Golden Valley, MN 55427

To the LMRWD: President  
Lower Minnesota River Watershed District  
112 East Fifth Street, Suite 102  
Chaska, MN 55318

With a copy to: The current President of the LMRWD  
Len Kremer currently is the President and  
his address is:  
  
Len Kremer  
\_\_\_\_\_  
\_\_\_\_\_

And to: The current attorney for the LMRWD  
John C. Kolb currently is the attorney  
and his address is:  
  
John C. Kolb  
Rinke Noonan  
P.O. Box 1497  
St. Cloud, MN 56302-1497

3. In all other respects, the provisions set forth in the Agreement shall remain unchanged.

WHEREUPON, the undersigned hereunder set their hands to this Amendment as of the day first above written.

NAIAD CONSULTING, LLC

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

LOWER MINNESOTA RIVER  
WATERSHED DISTRICT

By \_\_\_\_\_  
Len Kremer  
Its: President

# EXHIBIT 1

## ADMINISTRATOR AGREEMENT

THIS AGREEMENT is made as of this 25<sup>th</sup> day of November, 2013, by and between the Lower Minnesota River Watershed District, a Minnesota Watershed District established in accordance with the Minnesota Watershed Act ("LMRWD") and, Naiad Consulting, LLC, a Minnesota limited liability company (the "Contractor").

1. SCOPE OF SERVICES: Contractor will perform the following services as prioritized and assigned by the LMRWD Board of Managers ("Board") under this Agreement, together with such other administrative services as may be assigned from time to time:

- Facilitate the implementation of the updated LMRWD's Watershed Management Plan that sets strategic direction, goals, policies and work plans for the next 10 years.
- Establish processes to increase the organization's efficiency and to reduce duplication of effort.
- Serve as the primary point of contact for LMRWD's business and coordinate activities among consultants.
- Provide coordination with representatives of City, County, State and Federal agencies and other stakeholder groups.
- Coordinate consultants' projects and activities; review invoices and recommend payment.
- Identify opportunities to secure grant funding and develop partnerships to accomplish the LMRWD's Watershed Management Plan.
- Track implementation of watershed-funded annual water quality projects and activities to ensure that established objectives, project budgets, and schedules are met.
- Develop an operation and capital budget on an annual basis for consideration by the Board.
- Develop an annual work plan and reporting system in consultation with the Board.
- Develop agendas for meetings; attend the monthly Board meetings, special TAC meetings and others as necessary.
- Maintain a list of items that need to be completed by the Consultant, Managers and other consultants and the expected completion date for each item.
- Prepare a monthly summary of work completed and time expended by work task and budget item.
- Perform other duties or activities as may be directed by the Board.

(hereinafter "Services").

For the remainder of 2013 the LMRWD sets aside \$8,500 for time and expenses related to the Contractor's position. Contractor will prepare and maintain a work plan and schedule of priorities, in consultation with the Board or its authorized

representatives, to facilitate determining and achieving the LMRWD's highest priority goals within its budget.

2. **COMPENSATION:** Contractor will be paid for the Services at the rate of \$ 65<sup>00</sup> per hour. Contractor will be reimbursed for actual, reasonable and necessary out-of-pocket expenses including postage, photocopies, audiotapes, and printing. Mileage and time will be reimbursed for travel within the Minneapolis/St. Paul seven-county metropolitan area. Travel outside of the seven-county metropolitan area including mileage (State of Minnesota rate), meals and overnight accommodations must have the prior approval of the Board or its designee. The Board may specify vendors to be used by Contractor for reimbursable expenses, which vendors may include existing LMRWD consultants, member cities, or other entities

Contractor's billable hours will not exceed 125 hours per month, without, the prior written approval of the Board or its authorized officers.

3. **PAYMENT:** Contractor may not incur reimbursable expenses prior to the date of this Agreement without permission from the Board. The Contractor will submit monthly invoices for services providing detailed time records of services provided and time spent and receipts for reimbursable expenses.

Invoices and records, together with supporting information, shall be submitted in a form acceptable to the LMRWD. The LMRWD will pay invoices within 45 days of receipt thereof. Invoices received by the first Wednesday of the month will ordinarily be authorized for payment at that month's regular Board meeting.

4. **TERM AND TERMINATION:** This Agreement shall continue in effect indefinitely unless terminated in accordance with this Agreement. Notwithstanding any language in this Agreement to the contrary, this Agreement may be terminated by either party at any time, and for any reason, on 30 days' written notice. Within 90 days of the date of this Agreement and annually thereafter, the LMRWD will review this Agreement. Contractor reserves the right to renegotiate the Agreement at the time of the review.
5. **SUBSTITUTION AND ASSIGNMENT:** Services provided by Contractor will generally be performed by Linda Loomis, who is an employee of Contractor. Upon approval by the LMRWD, the Contractor may substitute other persons to perform the services set forth in this Agreement. No assignment of this Agreement shall be permitted without a prior written amendment signed by the LMRWD and the Contractor.
6. **AMENDMENTS:** No amendments to this Agreement may be made except in writing signed by both parties.
7. **INDEPENDENT CONTRACTOR:** The Contractor (including the Contractor's employees, if any) is not an employee of the LMRWD. Contractor (and any person working for or employed by Contractor) will act as independent contractor and acquire no rights to tenure, workers' compensation benefits, unemployment compensation

benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the LMRWD. Contractor (and any person working for or employed by Contractor) shall not be considered an employee of the LMRWD for any purpose including, but not limited to income tax withholding; workers' compensation; unemployment compensation; FICA taxes; liability for torts; and eligibility for benefits.

Contractor will not be provided with a place of business and will retain control over the manner and means of the services provided by Contractor as an independent contractor. Contractor will provide, at Contractor's expense, necessary office space, transportation, computer capability, an internet email address and incidental office supplies needed to provide the Services.

This Agreement is non-exclusive. Contractor may take other employment or contracts that do not interfere with Contractor's duties hereunder.

8. **DATA PRACTICES AND RECORDS:** All records, information, materials and other work product, in written, electronic, or any other form, developed in connection with providing services under this Agreement shall be the exclusive property of the LMRWD. All such records shall be maintained with the records of the LMRWD and in accordance with the instructions of the Board. When operating under standard business practices, the Contractor will not be held liable for the loss of LMRWD's records which may be held by Contractor outside of the LMRWD's offices. The Contractor will comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. If Contractor receives a request for data pursuant to the Data Practices Act, Minnesota Statutes Chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) Contractor possesses or has created as a result of this Agreement, it will inform the LMRWD immediately and transmit a copy of the request to the Board. If the request is addressed to the LMRWD, Contractor will not provide any information or documents, but will direct the inquiry to the Board. If the request is addressed to Contractor, Contractor will notify and consult with the Board and its legal counsel before replying. Nothing in the preceding sentence supersedes Contractor's obligations under this Agreement with respect to protection of LMRWD's data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Contractor is performing a governmental function within the meaning of Minnesota Statutes Section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.
9. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations or ordinances in performance of Contractor's duties hereunder, such laws including but not limited to those relating to non-discrimination in hiring or labor practices.
10. **AUDIT:** The Contractor agrees that the LMRWD, the State Auditor, or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary shall have access to and the right to examine, audit, except

and transcribe any books, documents, papers, and records that are relevant to and involve transactions relating to this Agreement.

11. **INSURANCE:** Contractor shall maintain insurance providing coverage for general and professional liability in the amounts and providing the coverage generally described in Exhibit A attached to this Agreement. Contractor can rely on work provided by the LMRWD's other contractors. *Exhibit A not attached -*
12. **APPLICABLE LAW:** The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within the County of Carver, State of Minnesota, regardless of the place of business, residence, or incorporation of Contractor.
13. **NO AGENCY:** Contractor is an independent contractor and shall not be considered to be the agent or servant of the LMRWD for any purpose and shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of the LMRWD unless specifically given such authority in writing or by motion of the Board.
14. **NOTICES:** 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 Contractor: Naiad Consulting, LLC  
c/o Linda Loomis  
6677 Olson Highway  
Golden Valley, MN 55427

To the LMRWD: President  
Lower Minnesota River Watershed District  
112 East Fifth Street, Suite 102  
Chaska, MN 55318

With a copy to: Whoever is the President of the LMRWD.  
Kent Francis currently is the President and  
his address is:

Kent Francis  
623 Griffin Street  
Carver, MN 55315

And to: Whoever is the attorney for the LMRWD.  
Bruce Malkerson currently is the attorney  
and his address is:

Bruce D. Malkerson  
Malkerson Gunn Martin LLP  
220 South Sixth Street, Suite 1900  
Minneapolis, MN 55402

WHEREUPON, the undersigned hereunder set their hands to this Agreement as of the day first above written.

NAIAD CONSULTING, LLC

By: Linda Loomis  
Its: President

LOWER MINNESOTA RIVER WATERSHED  
DISTRICT

By: Kent Francis  
Its: President



**J. Bluff Creek Cooperative Project**

Administrator Loomis said Riley/Purgatory/Bluff Creek Watershed District is working to get the necessary easements. She explained this project for the benefit of new Managers.

**K. 2015 Legislative Action**

**i. Minnesota River Congress**

Administrator Loomis reported she and Manager Shirk attended the Minnesota River Congress in New Ulm, which went well. Attendees were not provided with the copy of the legislation that the LMRWD had introduced in the 2015 session, so the group did not vote on supporting the legislation, it was tabled until the next MN River Congress which is planned for November.

President Kremer said Scott Sparlin and other should be invited on the LMRWD MN River Tour.

**L. Watershed Management Plan Amendment**

Administrator Loomis said she provided a copy. The plan amendment was approved by BWSR, without condition, so now the amended plan needs to be adopted and direct staff to get the plan to the agencies.

President Kremer explained the original plan was amended because, in 2011 when the plan was updated and submitted the Board of Water and Soil Resources (BWSR) for approval, there were project items that needed to be more defined.

**Manager Shirk made a motion to adopt Resolution No. 15-07 adopting the Watershed Management Plan Amendment. The motion was seconded by Manager Murphy. The motion carried unanimously.**

**M. Report from TAC meeting**

Administrator Loomis reported on the July 15<sup>th</sup> TAC meeting. She reported on one conversation with Paul Nelson of the Scott Water Management Organization, in which he asked whatever happened with the Governance Study. Administrator Loomis told him it was her understanding that letters were sent to LMRWD stakeholders and there is no record of any responses. Mr. Nelson said Scott County responded and he sent Administrator Loomis a copy of the letter that was sent. President Kremer asked that TAC items be placed on the August meeting agenda for further discussion. Administrator Loomis noted she will separate it out by issue.

**N. Administrative Services Review**

Manager Shirk said there was a meeting prior to this meeting and they reviewed the results from the survey that was sent out. She said there were significant responses. With some minor exceptions the responses were all very positive. Manager Shirk said they talked about a master schedule for visiting cities within the Watershed District annually and timing of those visits, improving communication and a master list of action items. They also talked about increasing the hours the Administrator is authorized to work from 140 hours to 150 hours per month. The Board agreed with the 150 hours. Managers directed that the Agreement for Administrative Services be sent to the Attorney for review.

**Manager Shirk made a motion to review the Administrator's contract and authorize up to 150 hours. The motion was seconded by Manager Raby. The motion carried unanimously.**

**O. MPCA Soil Reference Values - verbal update**

**ii. Project Reviews**

This was included in the above explanation.

**iii. Monitoring Plan**

No report

**iv. Bluff and gully**

No report

**Q. Administrative Services Review**

Administrator Loomis said this was on the agenda last month and was tabled. An addendum was prepared and just needs to be signed. President Shirk corrected the document to state her as president, not Manager Kremer.

**Manager Murphy made a motion to authorize execution to the addendum to the administrative services agreement. The motion was seconded by Manager Kremer. The motion carried unanimously**

**R. MPCA Soil Reference Values - verbal update**

Administrator Loomis said she has nothing to report

**7. COMMUNICATIONS**

**A. Administrator Report** - written report provided was provided to the Managers prior to the meeting.

Administrator Loomis commented on LPG tanks made in New Prague that will be shipped on barge slips

Administrator Loomis said she contacted Excel Energy to speak to the Managers about changes at the Black Dog plant and hasn't heard back. She did however report on a conversation she had with Jennie Skancke, Area Hydrologist with the DNR about work that has been permitted at the plant/

**B. President** - No report

**C. Commissioners** - No report

**D. Committees** - No report

**E. Legal Counsel** - No report

**F. Engineer** – No report

**9. ADJOURN**

**It was moved and seconded to adjourn 8:36 PM. Motion carried unanimously.**

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Len Kremer, Secretary

Attest:

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Linda Loomis, Administrator