



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, February 19, 2020

### **Agenda Item**

#### **Item 4. D. - Designation of Official Depository and authorize execution of Financial Services Agreement**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

According to MN Statute § 118A.02, the governing body of each government entity shall designate, as a depository of its funds, one or more financial institutions. The LMRWD uses Carver County to provide financial services and therefore LMRWD funds are co-mingled with the County's funds. The LMRWD does not maintain bank accounts of its own.

Carver County is governed by the same statutes and has adopted an investment policy, which is attached. LMRWD funds, held by the County, are governed by the policy, with the provision that there is enough liquidity to pay claims of the LMRWD as necessary.

The Financial Services Agreement with Carver County expired at the end December 2019. A new agreement for two years is attached. The agreement is identical to the previous agreement with the exception of the fees allow for a 3.68% increase in fees each year. If Managers approve of the agreement a motion should be made to accept the agreement and authorize its execution.

### **Attachments**

Carver County - Financial Policy Manual, Investment Policy

Independent Contractor/Professional Service Agreement between the LMRWD and Carver County

Resolution 20-01 - Designating Depository for LMRWD Funds

### **Recommended Action**

Motion to accept the agreement, authorize execution and adopt Resolution 20-01 Designating Depository for LMRWD Funds



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## Carver County – Financial Policy Manual

### Investment Policy

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|-------------------|------------|-------------------|---------|
| <b>SECTION:</b>   | Revenue    | <b>EFFECTIVE:</b> | 3/3/08  |
| <b>AUTHORITY:</b> | Res. 17-08 | <b>REVISED:</b>   | 4/15/14 |

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#### Purpose

To provide clear guidelines as it pertains to investments in order to maximize return while minimizing risk.

#### Policy

Carver County is responsible for receiving and disbursing public funds for many programs and taxing districts within the County's jurisdiction. While the funds are in the custody of the County, pending disbursement, it is the Investment Manager's responsibility to invest the monies as prescribed by Minnesota Statutes, Chapters 118, 471 and 475, which are included in this policy by reference.

#### Investment Program Objectives

Four objectives are taken into consideration for a sound investment program. It is the policy of Carver County when investing public monies to follow these objectives in the order of importance as listed:

1. **Legality** - The County is limited by law as to the type of investments that can be made. The following investment instruments are authorized: All general obligations of the United States Government; indirect government obligations such as Federal Agency notes and bonds excluding mortgage-backed securities that are defined as high risk; certificates of deposit backed by collateral; repurchase agreements; reverse repurchase agreements; bankers acceptance; commercial paper; and Guaranteed Investment Contracts (GICs).
2. **Safety** - Many banks and investment firms are dealers in these authorized investments. It is the policy of Carver County to do business only with those firms that are willing to meet the requirements set forth by state law and the County for the County's protection in regard to safekeeping, delivery and receipt. It is a statutory requirement that all certificates of deposit are to be backed by collateral at 110% of market value. The County reserves the right to require substitute collateral if any collateral subsequently fails to meet the requirements set.
3. **Liquidity** - The cash position of Carver County and its various programs has peaks and valleys during the year which require that a portion of the investment portfolio emphasize

liquidity. It is a policy of the County to consider liquidity as a priority while still recognizing the need to maximize yield.

4. Yield - After the above considerations have been met, it is the practice of the County to maximize its yield while assuring that the maturity dates coincide with expenditure needs.

The Investment Manager has established the following guidelines needed to carry out this policy.

#### **Guidelines**

The County's investment duties require that decisions are made daily concerning the investment of millions of dollars. The investment function operates under state law which establishes restrictions and requirements. Carver County has adopted an Investment Policy which provides more specific program directives.

#### **Authorization & Record Retention**

1. All depositories and investment firms that the County deals with will be approved by the County Investment Manager prior to any transactions. It is further the responsibility of the County Investment Manager to designate depositories as authorized in Minnesota Statute 118A.02, Sub. 1 and by County Board Resolutions.
2. The County Investment Manager will maintain a listing of all institutions designated as depositories.
3. The Investment Manager shall refrain from personal business activity that could conflict with the proper execution and management of the investment program and shall disclose any material interests in financial institutions with which he conducts business. The Investment Manager shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of Carver County.
4. Before engaging in investment transactions with any broker/dealer, the supervising officer at the securities broker/dealer shall submit a certification. The document will state that the officer has reviewed the investment policies and objectives, as well as applicable state law, and agrees to disclose potential conflicts of interest or risk to public funds that might arise out of business transactions between the County and the broker/dealer. All financial institutions shall agree to undertake reasonable efforts to preclude imprudent transactions involving the County's funds.

### **Managing Interest Rate Risk**

The Investment Manager shall minimize the County's exposure to interest rate risk by:

1. Investing in both shorter-term and longer-term investments.
2. Timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturity evenly over time as necessary to provide the cash flow and liquidity needed for operations.
3. Monitoring, on a monthly basis, the expected mark-to-market adjustment if interest rates increase by 100-200 Basis Points. When these reports (commonly referred to as "Shock Reports") show a 5% (\$2.0 million on a \$40 million portfolio) negative mark-to-market adjustment for the current calendar year with an increase of 100 Basis Points, the Investment Manger shall take reasonable and prudent actions to reduce the County's exposure to an increase in interest rates.

### **Investments**

The Investment Manager shall maintain a system of internal controls for investments. The internal controls shall be reviewed by the State Auditor's Office. The controls shall be designed to avoid losses of county funds arising from fraud, employee error, and misrepresentations by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the county. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, considering the probable safety of their capital as well as the probable revenue to be derived. The financial assets of the county may be invested in those securities or other investments permitted pursuant to M.S. 118A. These include:

| <b>Investment Securities</b>   | <b>Total Portfolio Exposure</b> | <b>Exposure per Issuer</b>          | <b>Additional Restrictions</b>                         |
|--|---------------------------------|-------------------------------------|--|
| 1. Direct Obligations of U.S.  | 100%                            | Unlimited                           | No more that 25% in Zero Coupon Investments            |
| 2. Obligation Issued or Guaranteed by an Agency of the U.S.                        | 100%                            | Unlimited                           | None   |
| 3. Agency Mortgage Backed Securities including Collateralized Mortgage Obligations | 75%                             | 10% in any one Mortgage Pool or CMO | No more than 50% in Mortgage pools or sequential CMO's |
| 4. Share of Regulated Investment Companies invested in 1 & 2 above                 | 100%                            | 100%                                | None   |

|   |     |                                |  |
|---|-----|--------------------------------|--|
| 5. Repurchase or Reverse Repurchase Agreements  | 20% | 10%                            | 90 days maturity or less                                 |
| 6. General Obligations of any State of the US which is a general obligation of any state or local government with taxing powers | 50% | 5%                             | "A" or better by at least one major rating agency        |
| 7. Any security which is a revenue obligation of any state or local government with taxing powers                               | 50% | 5%                             | "AA" or better by a National Bond Rating Service         |
| 8. Bankers Acceptance   | 25% | 5%                             | Pursuant to State Statute                                |
| 9. GIC's  | 10% | 5%                             | A+ rated by AM Best                                      |
| 10. Commercial Paper  | 50% | \$5 million for any one issuer | 270 Days or less, highest rating by two rating agencies. |

Investment maturities shall be selected to accommodate forecasted requirements, meet anticipated capital obligations, and optimized investment objectives. Individual securities shall be limited to a maximum maturity/average life of fifteen years. The total portfolio shall be limited to a maximum average maturity/average life of ten years.

Portfolio investments shall not exceed 50% of the County's investment portfolio with any one institution, to avoid concentration of assets.

**Safekeeping and Collateralization**

All investment securities purchased by the county shall be held in accordance with Minnesota statute 118A. All bank deposits will be insured or collateralized in accordance with Minnesota Statutes, Chapter 118.

**Other**

The county Investment Manager shall prepare a quarterly investment report of portfolio

investments and performance (incorporating as appropriate, investment activity, investment allocation, and rates of return).

**LOWER MINNESOTA RIVER WATERSHED DISTRICT  
INDEPENDENT CONTRACTOR/PROFESSIONAL SERVICE AGREEMENT**

This Agreement is entered into by and between the Lower Minnesota River Watershed District, 112 E. 5<sup>th</sup> Street, #102, (hereafter “District”) and Carver County, Financial Services Department, 600 East 4<sup>th</sup> Street, Chaska, Minnesota 55318, (hereafter “County”).

**RECITALS**

WHEREAS, the District, wishes to purchase the services of County for Accounting Services; and

WHEREAS, there are funds available for the purchase of these services;

NOW THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the District, and the County agree as follows:

**1. TERM AND COST OF THE AGREEMENT**

The County agrees to furnish services during the period commencing January 1, 2020 and terminating December 31, 2021.

The cost of this Agreement shall not exceed \$5,191.20 in 2020 and \$5,382 in 2021.

**2. SERVICES TO BE PROVIDED**

Services shall be provided in accordance with the criteria set forth:

Accounting Services that will include invoice processing, disbursements, receipts, payroll (if needed), cash management, monthly reporting, and document imaging for claims, receipts, and journal entries.

**3. PAYMENT FOR SERVICES**

The District shall pay the County on a time and expense basis for the services to be provided herein. The District shall pay the County for each hour, or part thereof, that a County employee works performing services to be provided herein at \$43.26 in 2020 and \$44.85 in 2021, which represents a blended rate for County Financial Services Staff based on budgeted salary projects. The County will bill the District on a quarterly basis for its services. Payments for the services shall be made directly to the County. In the event of termination, the County shall be entitled to payment, determined on a pro rata basis, for services. The total number of hours billed to the District will not exceed 120 hours in a year. Total annual cost for Accounting Services as described above, will not exceed \$5,191.20 in 2020 and \$5,382.00 in 2021.

**4. INDEPENDENT CONTRACTOR**

- A. Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners or joint ventures with the District. No tenure or any rights including worker's compensation, unemployment insurance, medical care, sick leave, vacation leave, severance pay, PERA, or other benefits available to District employees, including indemnification for third party personal injury/property damage claims, shall accrue to the County or employees of the County performing services under this Agreement.
- B. County acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or other, will be made from the payments due County and it is County's sole obligation to comply with all federal and state tax laws.
- C. County shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified in this Agreement.
- D. County is responsible for hiring sufficient workers to perform the services required by this Agreement and withholding taxes and paying all other employment tax obligation on their behalf.

## **5. INDEMNIFICATION AND INSURANCE**

Each party shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the other, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the party, its agents, servants or employees, in the execution or performance or failure to adequately perform its obligations pursuant to this Agreement.

It is understood and agreed that the District's liability shall be limited by the provisions of Minn.Stat.Chap.466 and/or other applicable law.

## **6. DATA PRIVACY/DATA OWNERSHIP**

- A. Minnesota Government Data Practices Act (Minn.Stat.Chap.13 and related statutes).  
All data collected, created, received, maintained, or disseminated, in any form, for any purposes by the activities of Parties because of this Agreement is governed by this Act, as amended, the Minn.Rules implementing such Act, as amended, as well as Federal Regulations on data privacy. The people responsible for release of all data under this Agreement shall be the people identified in provision 9.
- B. Health Insurance Portability and Accountability Act (HIPAA – 45 C.F.R. §§160,162,164)  
If under this Agreement the exchange of Protected Health Information in any form is anticipated the Parties shall comply with all regulatory obligations including



signing any required agreements (e.g., Business Associate Agreement). Such Agreements shall be attached to and incorporated into this Agreement.

- C. Release.  
No data may be released to a third party without the express consent of both parties representative as indicated below – this includes any media relations.

## **7. RECORDS: AVAILABILITY AND RETENTION**

Pursuant to Minn. Stat. §16C.05, subd. 5, the Parties agree that the each party, as well as 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, excerpt, and transcribe any books, documents, papers, records, et., which are pertinent to the accounting practices and procedures of the Parties and involve transactions relating to this Agreement. Parties agrees to maintain these records for a period of six years from the date of termination of this Agreement.

## **8. MERGER AND MODIFICATION**

- A. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are presumed to be incorporated or attached and are deemed to be part of this Agreement. Where the incorporated terms differ with the terms of this Agreement, the terms of this Agreement shall control
- B. Any material alteration, modification, or variation shall be reduced to writing as an amendment and signed by the parties.

## **9. DEFAULT AND CANCELLATION**

- A. If the either party fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute default. Unless the default is excused by the other non-defaulting party, the non-defaulting party may, upon written notice to the defaulting party's representative listed herein, cancel this Agreement in its entirety as indicated in (B.) below.
- B. This Agreement may be cancelled with or without cause by either party upon thirty (30) days written notice.

C. Representatives for each of the parties to this Agreement are as listed below:

**District**

Linda Loomis,  
LMRWD Administrator  
112 E. 5<sup>th</sup> Street, #102  
Chaska, MN 55318  
(763) 545-4659  
[naiadconsulting@gmail.com](mailto:naiadconsulting@gmail.com)

**County/Division**

David Frischmon,  
Property & Finance Director  
600 East 4<sup>th</sup> Street  
Chaska, MN 55318  
(952) 361-1506  
[dfrischmon@co.carver.mn.us](mailto:dfrischmon@co.carver.mn.us)

**10. SUBCONTRACTING AND ASSIGNMENT**

- A. Neither party shall not enter into any subcontract for the performance of any services contemplated under this Agreement without the prior written approval of the other party and subject to such conditions and provisions as the District may deem necessary. The party that engages the subcontractor shall be responsible for the performance of all Subcontractors.
- B. No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other Parties and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors.

**11. NONDISCRIMINATION**

During the performance of this Agreement, the Parties agree to the following:  
No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable Federal and State laws against discrimination.

**12. HEALTH AND SAFETY**

The Parties shall be solely responsible for the health and safety of their own employees and subcontractor's employees in connection with the services performed in accordance with this Agreement. The Parties shall ensure that all employees, including those of all subcontractors, have received training required to properly and safely perform services outlined in this Agreement. Such training is to include, but not be limited to, all applicable sections of the State and Federal Occupation, Safety and Health Administration (OSHA) laws, Superfund Amendments and Reauthorization Act (SARA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Uniform fire Code and/or any other applicable health and safety regulations. Upon the request of the District, the County shall provide copies of any licenses and/or training

records for County and/or County's employees or subcontractor's employees who perform services pursuant to this Agreement.

**13. NONWAIVER, SEVERABILITY & APPLICABLE LAWS**

- A. Nonwaiver.  
Nothing in this Agreement shall constitute a waiver by the District of any statute of limitations or exceptions on liability. If the District fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- B. Severability.  
If any part of this Agreement is rendered void, invalid or unenforceable, by a court of competent jurisdiction, 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.
- C. Applicable Laws.  
The Laws of the State of Minnesota shall apply to this Agreement.

**14. SECTION HEADINGS**

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**15. THIRD PARTIES**

This Agreement does not create any rights, claims or benefits inuring to any person that is not a party hereto nor create or establish any third party beneficiary.

The proper District official(s) having signed this Agreement, and the Carver County Administrator having signed this Agreement with the delegation authority approved by the District Board of Commissioners, the parties hereto agree to be bound by the provisions herein and attached.

COUNTY OF CARVER  
STATE OF MINNESOTA

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County Administrator/Date

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District Administrator/Date

Manager \_\_\_\_\_ introduced the following resolution and moved its adoption:

LOWER MINNESOTA RIVER WATERSHED DISTRICT

RESOLUTION 20-01

RESOLUTION DESIGNATING DEPOSITORY FOR LMRWD FUNDS

WHEREAS, Minnesota Statutes set procedures and require the Board of Managers of the Lower Minnesota River Watershed Shed District (LMRWD) to designate a depository for LMRWD funds; and

WHEREAS, Minnesota Statutes, Section 103D.335 subd. 7 provides that the managers may cooperate or contract with any state or subdivision of a state or federal agency, private corporation, political subdivision, or cooperative association; and

WHEREAS, the LMRWD has entered into an Independent Contractor/Professional Service Agreement (Exhibit A) with Carver County Financial Services Department, Minnesota (the "County"), to provide accounting and fund management services; and

WHEREAS, LMRWD funds are in custody of the County and are managed according to Minnesota Statute and the County's Investment Policy (Exhibit B).

NOW, THEREFORE, BE IT RESOLVED, by the Board of Managers of the Lower Minnesota River Watershed District that in lieu of designating a depository institution, the Board shall, consistent with the Independent Contractor/Professional Service Agreement, authorize the County to deposit and manage the funds of the LMRWD as provided by the Laws of the State of Minnesota, including the furnishing of collateral for funds on deposit;

BE IT FURTHER RESOLVED by the Board of Managers of the LMRWD that the County shall be authorized to make investments of LMRWD funds and shall be authorized to deposit the principal of said investments as necessary and beneficial to the Lower Minnesota River Watershed District.

Adopted by the Board of Managers of the Lower Minnesota River Watershed District this 19th day of February, 2020.

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Jesse Hartmann, President

ATTEST:

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David Raby, Secretary/Treasurer

The motion for the adoption of the foregoing resolution was seconded by Manager \_\_\_\_\_ and upon a vote being taken thereon, the following voted in favor thereof: Hartmann and Frey; and the following voted against the same: None. Whereupon said resolution was declared passed and adopted, this 19th day of January, 2020, signed by the President and his signature attested by the Secretary/Treasurer.