

Please note the meeting will be held at the Carver County Government Center on the Wednesday, February 19, 2020



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Lower Minnesota River Watershed District

7:00 PM

Wednesday, February 19, 2020

Carver County Government Center

602 East Fourth Street, Chaska, MN 55318

Agenda Item	Discussion
1. Call to order	A. Roll Call
2. Approval of agenda	
3. Citizen Forum	<p><i>Citizens may address the Board of Managers about any item not contained on the regular agenda. A maximum of 15 minutes is allowed for the Forum. If the full 15 minutes are not needed for the Forum, the Board will continue with the agenda. The Board will take no official action on items discussed at the Forum, with the exception of referral to staff or a Board Committee for a recommendation to be brought back to the Board for discussion or action at a future meeting.</i></p>
4. Consent Agenda	<p><i>All items listed under the consent agenda are considered to be routine by the Board of Managers and will be enacted by one motion and an affirmative vote of a majority of the members present. There will be no separate discussion of these items unless a Board Member or citizen request, in which event, the items will be removed from the consent agenda and considered as a separate item in its normal sequence on the agenda.</i></p> <p>A. Approve Minutes December 18, 2019 and January 1, 2020 Regular Meetings</p> <p>B. Receive and file December 2019 Financial reports</p> <p>C. Approval of Invoices for payment</p> <ul style="list-style-type: none"> i. Manager Frey - for second half 2019 per diem and expenses ii. Daniel Hron - for January 2020 office rent iii. Manager Raby - for second half 2019 per diem and expenses iv. US Bank Equipment Finance - for January & February 2020 copier lease payment v. Braun Intertech Corp. - for Area #3 in Eden Prairie vi. Frenette Legislative Advisors - for January 2020 lobbying services vii. Manager Hartmann - for second half 2019 per diem and expenses viii. Rinke Noonan Attorneys at Law - December 2019 legal services ix. US Bank Equipment Finance - for March 2020 copier lease payment x. Naiad Consulting, LLC - November 2019 administrative services & expenses xi. TimeSaver Off Site Secretarial - for preparation of November meeting minutes xii. Naiad Consulting, LLC - December 2019 administrative services & expenses

	xiii. USGS - Q4 2019 flow & sediment monitoring D. Designation of Official Depository and authorize execution of Financial Services Agreement
5. Public Hearing	A. Regarding Adoption of Rules to Implement the LMRWD Watershed Management Plan
6. New Business/ Presentations	A. City of Carver Levee B. Proposal from Friends of the Minnesota Valley
7. Old Business	A. Remote meeting participation - no new information to report B. Dredge Management <ul style="list-style-type: none"> i. Funding for dredge material management ii. Vernon Avenue Dredge Material Management site iii. Private Dredge Material Placement C. Watershed Management Plan - See Item 5. A. Rule Adoption D. 2020 Legislative Action E. Education & Outreach - no new information to report F. LMRWD Projects - See Administrator Report for project updates <i>(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)</i> <ul style="list-style-type: none"> i. East Chaska Creek Stream Bank Stabilization G. Project Reviews - See Administrator Report for project updates <i>(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)</i> H. MPCA Soil Reference Values - No new information since last update
8. Communications	A. Administrator Report B. President C. Managers D. Committees E. Legal Counsel F. Engineer
9. Adjourn	Next meeting of the LMRWD Board of Managers is 7:00pm Wednesday, March 18, 2020

Upcoming meetings/Events

- Upper Mississippi Waterway Association - Thursday, February 20, 2020, 11:30am-1:30pm, Lilydale Pool & Yacht Club
- [Bloomington Bluff Standards](#) - Bloomington Planning Commission Public Hearing, 6:00pm Thursday, February 20, 2020, Council Chambers, Bloomington City Hall, 1800 W. Old Shakopee Road, Bloomington, MN: Bloomington City Council, 7:00pm, Monday, March 16, 2020 Council Chambers
- Metro MAWD - Tuesday, April 21, 2020, 7:00 - 9:00pm, Capitol Region WD 595 Aldine Street, St. Paul
- [Watershed Specialist Training](#) - Jan 21-May 3 2020, MN Water Resources Center, Online
- [Watershed and Climate Summit 2020](#) - Saturday, March 7, 2020, 8:30am - 4:00pm, Normandale Community College Partnership Center, (sponsored by the Bush Lake Izaak Walton Chapter and the MN Soil Health Coalition)

- [MAWD Legislative Reception & Day at the Capitol](#) - March 18 & 19, 2020, Doubletree Hotel, St. Paul
- [State of Water Conference](#) - April 30-May 1, 2020, Grand Casino Mille Lacs

For Information Only

- WCA Notices
 - City of Chanhassen - Notice of Decision - Hennepin County Regional Rail Authority, applicant; Minnesota River Bluffs LRT slope failure repair
- DNR Public Waters Work permits
 - City of Bloomington - Ford Pond, 111th Street & Nesbitt Avenue, Pond & Storm Sewer Maintenance (the City and the LMRWD did receive an inquiry into this project from the public - see administrator report)
 - Carver County - Request for comments - Bridge replacement Beech Street Chaska
- DNR Water Appropriation permits
 - none

Future Manager Agenda Items list

- Manager appointments

Future TAC Agenda Items List

- LMRWD Vegetation Management Plan
- LMRWD monitoring plan



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Minutes of Regular Meeting

Board of Managers

Wednesday, December 18, 2019

Carver County Government Center, 602 East 4th Street, Chaska, MN 7:00 p.m.

Approved _____, 2019

1. CALL TO ORDER AND ROLL CALL

On Wednesday, December 18, 2019, at 7:00 PM in the Board Room of the Carver County Government Center, 602 East 4th Street, Chaska, Minnesota, President Hartmann called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) and asked for roll call to be taken. The following Managers were present: Managers Adam Frey, David Raby and President Jesse Hartmann. In addition, the following were also present: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Della Schall Young, Young Environmental Consulting Group, LLC, Technical Consultant; and Lisa Frenette, Frenette Legislative Advisors, LMRWD lobbyist.

2. APPROVAL OF THE AGENDA

Administrator Loomis asked that the minutes of the November 20, 2019 Regular meeting of the Board be removed from the agenda.

Manager Raby made a motion to approve the Agenda, with the removal of the November 20, 2019 Regular Meeting minutes. The motion was seconded by President Hartmann. The motion carried unanimously.

3. CITIZEN FORUM

There were no citizens who wished to address the board on non-agenda items.

4. CONSENT AGENDA

President Hartmann introduced the item.

~~A. Approve Minutes – November 20, 2019 Regular Meetings~~

B. Receive and file November 2019 Financial reports

C. Approval of Invoices for payment

- i. Freshwater Society - for 2019 Master Water Steward
- ii. Daniel Hron - for November 2019 office rent
- iii. Braun Intertech Corporation - Area 3 inclinometer readings
- iv. Coalition for a Clean Minnesota - Sponsorship for MN River Congress
- v. Rinke Noonan Attorneys at Law - October 2019 legal services
- vi. Naiad Consulting, LLC - September 2019 administrative services & expenses
- vii. TimeSaver Off Site Secretarial, Inc. - September 2019 meeting minutes preparation
- viii. Young Environmental Consulting Group, LLC - September 2019 technical services

- ix. **Dakota County Soil & Water Conservation District - Q3 monitoring in Dakota County and Cost Share**
 - x. **Redpath and Company Ltd. - Final billing for 2018 financial audit**
 - xi. **Young Environmental Consulting Group, LLC - October 2019 technical services**
- D. Adopting 2020 Budget and Certification of property tax levy for taxes payable 2020**
- E. Approving the transfer of LMRWD funds from General Fund to 9' Channel Fund**

Administrator Loomis commented on the budget. She reminded the Board that an additional \$75,000 was added to the levy in August when the preliminary budget was approved. She noted the bids for construction of the came in significantly lower than expected, so if the Board wished to reduce the levy, the District should still be able to have enough funds to pay for the project.

Manager Raby made a motion to approve the Consent Agenda removing the Item 4.D. - Adopting 2020 Budget and Certification of the Property Tax Levy for taxes payable 2020. The motion was seconded by Manager Frey. The motion carried unanimously.

- D. Adopting 2020 Budget and Certification of property tax levy for taxes payable 2020**
- Manager Raby asked that this item be removed from the consent agenda as suggested by Administrator Loomis. The Board determined to reduce the levy by \$75,000 for a total levy of \$725,000, which is the same as the levy certifiec in 2019.

Manager Raby made a motion to adopt resolution 19-11. The motion was seconded by Manager Frey. The motion carried unanimously.

5. NEW BUSINESS - No new Business

6. OLD BUSINESS

A. 2018 Annual Report

Administrator Loomis said she is looking for a motion to approve and authorize distribution.

Manager Raby asked that someone just review the report before distribution.

President Hartmann made a motion to authorize and distribute the annual report upon proofing. The motion was seconded by Manager Raby. The motion carried unanimously.

B. Remote meeting participation

Administrator Loomis said the county is on board with the addition to its A/V system but there needs to be a written agreement between Carver County and the LMRWD. The board talked about the possibly about what would happen if the District would need to relocate its Board meetings. Manager Raby suggested that any agreement address what would happen if the LMRWD should need to permanently change the location of its meetings

Administrator Loomis presented a policy that had been provided by legal counsel for the Board's approval.

Manager Raby made a motion to approve the remote participation policy. The motion was seconded by President Hartmann. The motion carried unanimously.

C. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

No new information since last update.

ii. Vernon Avenue Dredge Material Management site

Administrator Loomis said since the last Board meeting the LMRWD held a pre-bid meeting for the construction project and that bid opening was held on December 3rd. She noted that a report from staff was provided to the Board in the meeting packet.

President Hartmann asked if all the bidders are aware of the other bids. Administrator Loomis reported that the bid opening was public and bids were posted as they were opened.

President Hartmann asked about the ability of bidders to perform the work adequately. Ms. Young said Barr Engineering has been checking with others that have done work in the past and whether they are qualified. All bidders were also asked to provide references. Ms. Young said that LS Marine will work with the winning bidders once work begins on the site. She noted that construction will be dependent upon the elevation of the River in 2020.

Administrator Loomis said a resolution was prepared for the Board to adopt.

President Hartmann made a motion to approve resolution 19-12. The motion was seconded by Manager Frey. The motion carried unanimously.

Administrator Loomis noted that the Grant Agreement with BWSR has been executed and uploaded to elink.

iii. Private Dredge Material Placement

Administrator Loomis noted that no dredging occurred on the river in 2019, including in the private barge slips. President Hartmann asked if the high water made it easier to load materials into barges. Administrator Loomis noted that once the elevation of the River reaches 702 feet above sea level that all commercial navigation, including dredging, is halted, so that barges are not loaded. She noted that the River was at or above 702 feet for most of the shipping season. She reminded the Board that the LMRWD will not realize any revenue in 2019 for the placement of dredge material from private barge slips.

She also noted that replacement of the culvert under the site access will be looked, as well as access to the site. Staff may have further recommendation for work in the upcoming year.

D. Watershed Management Plan

Administrator Loomis reminded the Board that the proposed draft rules were sent on October 31st to Bowser. She said staff has reminded all the LMRWD stakeholders that comments are due by Friday, December 20, 2019. She said she hopes to have the public hearing at the January meeting. She noted the Board can adopt the rules after the public hearing - at the same meeting. There was some discussion of the timing of responses to comments and the public hearing notice.

E. 2020 Legislative Action

Administrator Loomis asked that this item be delayed until Lisa Frenette arrived. (Ms. Frenette arrived at 7:39pm.)

Administrator Loomis introduced Lisa Frenette, Frenette Legislative Advisors, and lobbyist for the LMRWD. Administrator Loomis reported that Ms. Frenette set up a meeting with State Senator Bill Ingebrigtsen, chair of the Senator Natural Resource and Environment Finance Committee, and that she, Ms. Frenette and Manager Raby were able to meet with Senator Ingebrigtsen during the MAWD conference in Alexandria. Ms. Frenette reported on the discussion with the Senator and that he was supportive of the LMRWD requesting replacement of the grant funding that was denied by BWSR. She said the Senator suggested sending another to the BWSR board asking for review of the request. Ms. Frenette reported that Senator Ingebrigtsen asked that a letter on behalf of the LMRWD be prepared for his signature. Ms. Frenette has been working on that letter and said that she would be happy to have the Board

review the letter before Senator Ingebrigtsen signs it. The Board indicated that they did not believe that was necessary.

Ms. Frenette reported on a conversation held with Representative Rick Hansen earlier in the month. Representative Hansen provided three options for the LMRWD to pursue to replace the funding. She noted there has been some good feedback and conversations. Manager Raby mentioned that Senator Ingebrigtsen suggested that the LMRWD contact Senator Senjem. Ms. Frenette said that Senator Ingebrigtsen said that he would speak to Senator Senjem.

Administrator Loomis reported that a letter to the BWSR Board has been prepared for President Hartmann's signature. Manager Hartmann suggested sending the letter certified mail to make sure it is received. The Board discussed who should receive the letter and who should be copied.

Ms. Frenette commented on a couple other items going on at the Legislature that may be of interest to the LMRWD. The first one is legislation that is being proposed by a group that has been organized by a land developer aimed at Watershed Districts. There is another bill that she is following that is asking for Watershed District Managers be elected because they have taxing authority.

F. Education and Outreach Plan

No information to report since last update.

G. LMRWD Projects

(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)

i. East Chaska Creek Restoration

Administrator Loomis said the same process was followed for this project as for the dredge project. She noted that five bids were received. The low bid was from Blackstone Contracting. Staff is asking the Board to adopt Resolution 19-09.

She noted the City asked the LMRWD to prepare information that they can use to provide to resident about the project. She presented the handout to the Board. She noted the City needs to approve the project.

Manager Raby said the low bid is significantly lower than all the other bidders. He asked about the qualifications of the Blackstone and if staff conducted an investigation into the winning bidder similar to what staff did with the dredge site project. Ms. Young said that the winning bidder was checked out. They also noted that Barr Engineering is familiar with the winning bidder and that the principals formerly worked with Ames prior to forming Blackstone.

Manager Raby made a motion to recommend awarding the contract and have staff negotiate with Blackstone Contracting and authorize Resolution 19-09. The motion was seconded by President Hartmann. The motion carried unanimously.

ii. Seminary Fen Restoration Area C-2

Administrator Loomis said the city is ready to move forward on this project and that the project is in the LMRWD CIP.

Administrator Loomis noted the numbers in the agreement do not add up and that Carver County WMO is providing \$10,000 to the project. The agreement will be revised to reflect that and she recommended that the item be tabled to the January meeting.

Manager Raby said there should be something in the agreement addressing cost over runs because of what happened the last timewith the City of Chaska and the project at Seminary fen.

H. Local Water Management Plan Reviews

i. City of Shakopee

Administrator Loomis said the City of Shakopee has adequately addressed all the comments provided by the LMRWD. She asked the board to adopt 19-03 approving the City of Shakopee's service water management plan.

Manager Raby made a motion to adopt resolution 19-03. The motion was seconded by President Hartmann. The motion carried unanimously.

I. Project/Plan Reviews

(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)

i. Report on Eden Prairie Area #3

Administrator Loomis provided an update on the potential for slope failure. She reported on a meeting that LMRWD staff had with consultants that have been involved with this area over the years. She said that one of the conclusions from the meeting is that the homes up above this area are not in threat of the slope failure. They can't say for sure that it will never affect the homes but there is no immediate danger. She noted that the City of Eden Prairie was not invited to this meeting, but that LMRWD staff is planning to provide a summary of the discussion with the consultants to the City and meeting with them after they have been able to review the summary. Ms. Young provided additional details of the discussion and the recommendations the LMRWD received from the consultants. A regimen for collection of data from the inclinometers was recommended and it was suggested that a field inspection be done once the snow has melted to observe any areas of active erosion that may be contributing to erosion of the slope. Administrator Loomis said they would have a subsequent conversation. She stated a project should be done to stabilize the base of the slope.

J. MPCA Soil Reference Values - no change since last update

No new information since last update.

7. COMMUNICATIONS

A. Administrator Report: no additional information to report other than what was in the Administrator's report

B. President: No report

C. Managers: Manager Raby reported on an item from the MAWD Conference. At the Region 3 meeting there was mention of a report that MAWD wants to prepare to provide Legislators with information about the work of watershed districts. He reported that MAWD is asking each district to prepare a 2-page description on each watershed district and the work that they do. MAWD would provide a template to use. The resulting information would be combined into a book that would given to each legislator. Manager Raby suggested that the LMRWD include its work managing dredge material be highlighted in order to drill home the fact that the LMRWD is different from other districts and that work the LMRWD does to maintain the navigation channel provides benefits to the regional and state economy. Ms. Frenette was doubtful of the benefit of such a book, that it was too much information and legislators are unlikely to look at it. She did think it would be good for the LMRWD to have a one pager to use. The Board agreed that a book is too much information and would get lost.

LOWER MINNESOTA RIVER WATERSHED DISTRICT
BOARD OF MANAGERS
WEDNESDAY, DECEMBER 18, 2019
MEETING MINUTES

Ms. Frenette said that there has been talk about holding a joint meeting of several committees to learn about watershed districts and if that happens she would like to highlight the LMRWD and the work that it does.

- D. **Committees:** No report
- E. **Legal Counsel:** No Report
- F. **Engineer:** No report

8. ADJOURN

President Hartmann made a motion to adjourn. Manager Frey seconded the motion. The meeting was adjourned at 8:15pm. The next meeting of the LMRWD Board of Managers will be 7:00, Wednesday, January 15, 2020 and will be held at the Carver County Government Center, 602 East 4th Street, Chaska, MN.

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Minutes of Regular Meeting

Board of Managers

Wednesday, January 15, 2020

Carver County Government Center, 602 East 4th Street, Chaska, MN 7:00 p.m.

Approved _____, 2019

1. CALL TO ORDER AND ROLL CALL

On Wednesday, January 15, 2020, at 7:00 PM in the Board Room of the Carver County Government Center, 602 East 4th Street, Chaska, Minnesota, President Hartmann called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) and asked for roll call to be taken. The following Managers were present: Managers Adam Frey, and President Jesse Hartmann (Manager Raby's absence was excused). In addition, the following were also present: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Della Schall Young, Young Environmental Consulting Group, LLC, Technical Consultant; Charley Howley, Prior Lake/Spring Lake Watershed District Board of Managers; and Kristopher Guentzel, Hennepin County.

2. APPROVAL OF THE AGENDA

Administrator Loomis asked that an item be added to the agenda under new business. Item 5. A. - USGS Sediment and Flow Monitoring. She also noted that the December 18, 2019 meeting minutes were not complete and should be removed from the agenda.

President Hartmann made a motion to approve the Agenda, with the addition of Item 5. A. - USGS Sediment and Flow Monitoring and removal of the December 18, 2019 Regular Meeting minutes. The motion was seconded by Manager Frey. The motion carried unanimously.

3. CITIZEN FORUM

There were no citizens who wished to address the board on non-agenda items. President Hartmann asked individuals in the audience introduce themselves; Charlie Howley, Manager from Prior Lake/Spring Lake Watershed District and Kris Guentzel, Hennepin County Water Resource Department. President Hartmann welcomed them both.

4. CONSENT AGENDA

President Hartmann introduced the item.

A. Approve Minutes November 20, 2019 and ~~December 18, 2019~~ Regular Meetings

B. Receive and file December 2019 Financial reports

C. Approval of Invoices for payment

- i. Frenette Legislative Advisors - for November 2019 lobbying services
- ii. Daniel Hron - for December 2019 office rent
- iii. Metro Sales, Inc. - for maintenance contract on copier
- iv. Scott County Soil & Water Conservation District - 2nd & 3rd 2019 quarter monitoring expenses

- v. **US Bank Equipment Finance - for December copier lease payment**
 - vi. **Frenette Legislative Advisors - for December 2019 lobbying services**
 - vii. **Rinke Noonan Attorneys at Law - November 2019 legal services**
 - viii. **Naiad Consulting, LLC - October 2019 administrative services & expenses**
 - ix. **Young Environmental Consulting Group, LLC - November 2019 technical services**
- D. **Designation of 2020 official newspaper**
 - E. **Designation of Data Practices Compliance Official**
 - F. **Order Preparation of 2019 Annual Report**
 - G. **Authorize solicitation for proposals for legal, technical and professional consultant services**
 - H. **Authorize execution of agreement with Dakota County SWCD for 2020 monitoring services**

President Hartmann made a motion to approve the Consent Agenda removing the December 18, 2019 Regular meeting minutes. The motion was seconded by Manager Frey. The motion carried unanimously.

5. NEW BUSINESS

A. USGS Sediment and flow monitoring

Administrator Loomis reported on a conversation she had with Joel Groten of the USGS. Mr. Groten informed the LMRWD that the pier where the monitoring equipment was mounted has been destroyed by 2019 flooding and that the Met Council, who owned the pier, does not plan to replace it. She said the USGS requested that the money agreed to in the contract with the USGS be used to prepare a final report on the sediment monitoring.

Ms. Young asked what would be contained in the report and how to quantify some of the sediment. She wondered how the information would be useful to the LMRWD when visiting with legislators.

6. OLD BUSINESS

A. Remote meeting participation

Administrator Loomis said work will not proceed until the LMRWD and Carver County have an agreement.

B. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

No new information since last update.

ii. Vernon Avenue Dredge Material Management site

President Hartmann noted that the link in the on-line agenda is wrong and goes to a different document. Administrator Loomis said the District has received all the contract documents and they are currently being reviewed by legal counsel. Once legal counsel gives the okay, the District will work with the contractor to schedule work.

iii. Private Dredge Material Placement

No new information since last update

C. Watershed Management Plan

Administrator Loomis said the District is planning to hold a public hearing regarding the adoption of rules in February. She noted the comment period ended and that staff has reviewed comments that were received. She said staff plans to hold conversations with the cities that have concerns about the rules. President Hartmann asked that staff try to get ahead of the hearing to know if there will be public concern. Administrator Loomis noted that the city of Bloomington has scheduled a series of public meetings about zoning changes they are planning to make in order to bring its official controls into compliance with the LMRWD Plan and

Rules. She said she is planning to attend those meetings, so she should be able to get a feel for the public sentiment regarding the rules.

President Hartmann made a motion to revise the rules, prepare and distribute comments and call for a public hearing on February 19, 2020. The motion was seconded by Manager Frey. The motion carried unanimously.

D. 2020 Legislative Action

Administrator Loomis reported on a meeting she and Lisa Frenette had with BWSR. She said that BWSR suggested that the LMRWD request legislation to allow the LMRWD to use money it had received for managing dredge material to replace the grant payment that was denied. The Board discussed the pros and cons of such action.

President Hartmann asked if this jeopardizes anything they ask for in the future. Administrator Loomis said she doesn't think it will, but that she would discuss it with Ms. Frenette. She said the legislators that they have spoken to about this issue might view it favorably that the LMRWD and BWSR were able to work out this situation without asking for an additional appropriation.

She noted once the dredge site work is complete the LMRWD would no longer need the entire appropriation that it has been receiving from the state. She noted that BWSR asked what the LMRWD intended in the future. She and Ms. Frenette told BWSR that the Board would likely recommend to the Board that the appropriation end or be reduced. BWSR suggested that they the LMRWD consider continuing to receive the current state appropriation and use the money to address sediment reduction within the Minnesota River Basin. She said BWSR indicated they would support this. She said that she and Ms. Frenette asked BWSR how it envisioned such a program would work .

The board discussed the dollars and possible sediment reducing projects. They also talked about erosion at the dredge site that the City of Savage has expressed concern over.

E. Education and Outreach Plan

No information to report since last update.

F. LMRWD Projects

(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)

i. East Chaska Creek Restoration

Administrator Loomis said they are hoping to get this project done this spring. Staff has been working with the contractor to get the contracts in order.

ii. Seminary Fen Restoration Area C-2

Administrator Loomis said the cooperative agreement was reviewed by legal counsel. She addressed the concern expressed by Manager Raby at the December meeting. She stated the only obligation of the LMRWD in this agreement is to contribute \$20,000. So if there are costs over runs or other funding becomes unavailable, there is no additional responsibility to the LMRWD.

President Hartmann made a motion to authorize execution of the cooperative agreement. The motion was seconded by Manager Frey. The motion carried unanimously.

G. Project/Plan Reviews

(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)

H. MPCA Soil Reference Values - no change since last update

No new information since last update.

7. COMMUNICATIONS

A. Administrator Report: Administrator Loomis said there was no Administrator Report this month. She reported on a meeting she attended in December with the City of Shakopee and work the City is doing to address the stormwater from the Amazon Fulfillment Center and trail improvements in Memorial Park. Both projects have potential to impact burial mounds. She reminded the Board that the LMRWD committed money to the Amazon Fulfillment Center project.

She reported on the most recent inspection of Flying Cloud Drive/CSAH 61. The roadway is completely and the disturbed areas are buttoned-up for the winter. She mentioned the areas where erosion was noted and that the LMRWD plans to investigate those areas once the snow is gone.

She reported on a communication she received from Mr. Dan Callahan about the flow of water in Eagle Creek. Mr. Callahan believes the flow has been reduced because of actions taken by the City of Savage to protect the creek from run-off pollution. He offered to go on a field inspection in the Spring with LMRWD staff.

She reported the meeting with DNR to discuss work the LMRWD has been doing on the fens within the District.

She reported that the draft sustainable lake management plan has been sent to LMRWD partners and that LMRWD staff is planning to schedule meetings to discuss the draft plan.

Administrator Loomis reported on a meeting the MPCA held at Barr Engineering regarding the Freeway Landfill. She explained that there are two areas being addressed by this project. Further she explained the options that the MPCA has looked at to mitigate the pollution from the two areas that were presented at the meeting. She said the MPCA will most likely go with the least expensive option and hopes to begin construction in the summer of 2021. She said more information can be found on the MPCA website.

B. President: No report

C. Managers: No report.

D. Committees: No report

E. Legal Counsel: No Report

F. Engineer: No report

8. ADJOURN

President Hartmann made a motion to adjourn. Manager Frey seconded the motion. The meeting was adjourned at 7:47pm. The next meeting of the LMRWD Board of Managers will be 7:00, Wednesday, February 19, 2020 and will be held at the Carver County Government Center, 602 East 4th Street, Chaska, MN.

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator

Item 4.B.
LMRWD 2-19-20

BEGINNING BALANCE	31-Dec-19	\$ 2,291,909.12
ADD:		
General Fund Revenue:		
Tax receipts Dakota County	\$ 1,974.92	
Tax receipts Hennepin County	\$ 415.46	
Tax receipts Scott County	\$ 1,538.10	
Met Council - final payment of WOMP Grant	\$ 1,000.00	
2019 Accruals*	\$ 45,565.60	
Total Revenue and Transfers In		\$ 50,494.08
DEDUCT:		
Warrants:		
420969 Adam Frey 2nd 1/2 2019 per diem & expenses	\$ 717.16	
420977 Daniel Hron January 2019 office rent	\$ 650.00	
4210004 David Raby 2nd 1/2 2019 per diem & expenses	\$ 1,562.14	
421018 US Bank Equipment Finance Jan. & Feb. 2020 copier lease pmt.	\$ 336.20	
421403 Braun Intertech Corp. Area #3 study area expense	\$ 540.00	
421416 Frenette Legislative Advisors January 2020 lobbying services	\$ 1,666.67	
421420 Jesse Hartmann 2nd 1/2 2019 per diem & expenses	\$ 488.28	
421452 Rinke Noonan Attorneys at Law December 2019 legal fees	\$ 313.50	
421629 US Bank Equipment Finance March 2020 copier lease payment	\$ 168.10	
100011480 Naiad Consulting, LLC Nov. 2019 admin service & expenses	\$ 9,013.08	
100011493 TimeSaver Off Site Secretarial preparation of Nov. 2019 mtg. minutes	\$ 180.00	
100011779 Naiad Consulting, LLC Dec. 2019 admin service & expenses	\$ 10,805.25	
100011788 USGS Q4 2019 sediment & flow monitoring	\$ 5,045.75	
Total Warrants/Reductions		\$ 31,486.13
ENDING BALANCE	31-Jan-20	\$ 2,310,917.07

*Accruals are invoices that were not paid until 2020 but related back to 2019 so Carver County Finance accrued them back as accounts payable. That changed the ending balance on the LMRWD December 2019 financial reports. So the beginning balance of the January financial reports was restated to reflect the accruals.

EXPENDITURES	2019 Budget	January Actual	YTD 2019	Over (Under) Budget
Administrative expenses	\$ 250,000.00	\$ 22,765.91	\$ 242,630.28	\$ (7,369.72)
Cooperative Projects				
Eden Prairie Bank Stabilization Area #3	\$ -	\$ 540.00	\$ 4,566.80	\$ 4,566.80
Gully Erosion Contingency Fund	\$ -	\$ -	\$ -	\$ -
USGS Sediment & Flow Monitoring	\$ 19,700.00	\$ 5,045.75	\$ 24,833.75	\$ 5,133.75
Ravine Stabilization at Seminary Fen in Chaska	\$ -	\$ 313.50	\$ 110,713.50	\$ 110,713.50
509 Plan Budget				
<i>Resource Plan Implementation</i>				
TH 101 Shakopee Ravine	\$ -	\$ -	\$ 402.97	\$ 402.97
Assumption Creek Hydrology Restoration	\$ 30,000.00	\$ -	\$ -	\$ (30,000.00)
Carver Creek Restoration	\$ 80,000.00	\$ -	\$ -	\$ (80,000.00)
Groundwater Screening Tool Model	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Eagle Creek (East Branch) Project	\$ 10,000.00	\$ -	\$ -	\$ (10,000.00)
Minnesota River Floodplain Model Feasibility Study	\$ 30,000.00	\$ -	\$ -	\$ (30,000.00)
Schroeder Acres Park Stormwater Mgmt Project	\$ 39,555.00	\$ -	\$ -	\$ (39,555.00)
PLOC Realignment/Wetland Restoration	\$ 71,727.00	\$ -	\$ -	\$ (71,727.00)
Spring Creek Project	\$ 45,000.00	\$ -	\$ 4,543.78	\$ (40,456.22)
West Chaska Creek	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Sustainable Lakes Management Plan (Trout Lakes)	\$ 50,000.00	\$ -	\$ 22,479.65	\$ (27,520.35)
Geomorphic Assessments (Trout Streams)	\$ -	\$ -	\$ 88,771.08	\$ 88,771.08
Paleolimnology Study (Floodplain Lakes)	\$ -	\$ -	\$ -	\$ -
Fen Stewardship Program	\$ 25,000.00	\$ -	\$ 63,342.00	\$ 38,342.00
District Boundary Modification	\$ -	\$ -	\$ -	\$ -
East Chaska Creek Bank Stabilization Project	\$ 50,000.00	\$ -	\$ 30,970.55	\$ (19,029.45)
East Chaska Creek Treatment Wetland Project	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Minnesota River Sediment Reduction Strategy	\$ 25,000.00	\$ -	\$ -	\$ (25,000.00)
Seminary Fen - gap analysis	\$ -	\$ -	\$ -	\$ -
Data Assessments and Program Review	\$ -	\$ -	\$ -	\$ -
Dakota County groundwater modeling	\$ -	\$ -	\$ -	\$ -
Riley Creek Cooperative Project	\$ -	\$ -	\$ 52,027.65	\$ 52,027.65
Local Water Management Plan reviews	\$ 12,000.00	\$ -	\$ 2,410.70	\$ (9,589.30)
Project Reviews	\$ 20,000.00	\$ -	\$ 52,027.65	\$ 32,027.65
<i>Monitoring</i>	\$ 65,000.00	\$ -	\$ 27,200.25	\$ (37,799.75)
<i>Monitoring Data Analysis</i>			\$ -	
<i>Technical Assistance</i>			\$ -	
<i>Watershed Management Plan</i>			\$ -	
Rule Drafting	\$ 25,000.00	\$ -	\$ 23,622.62	\$ (1,377.38)
Plan Amendment	\$ -	\$ -	\$ -	\$ -
Vegetation Management Standard/Plan	\$ 50,000.00	\$ -	\$ 6,456.10	\$ (43,543.90)
<i>Public Education/CAC/Outreach Program</i>	\$ 30,000.00	\$ -	\$ 4,533.55	\$ (25,466.45)
<i>Cost Share Program</i>	\$ 20,000.00	\$ -	\$ -	\$ (20,000.00)
				\$ -
Nine Foot Channel				\$ -
Transfer from General Fund	\$ 80,000.00	\$ -	\$ 80,000.00	\$ -
Dredge Site Improvements	\$ 240,000.00	\$ -	\$ 144,348.74	\$ (95,651.26)
Total:	\$ 1,417,982.00	\$ 28,665.16	\$ 921,552.81	\$ (416,429.19)

EXPENDITURES	2020 Budget	January Actual	YTD 2020	Over (Under) Budget
Administrative expenses	\$ 250,000.00	\$ 2,820.97	\$ 2,820.97	\$ (247,179.03)
Cooperative Projects				
Eden Prairie Bank Stabilization Area #3	\$ 35,000.00	\$ -	\$ -	\$ (35,000.00)
Gully Erosion Contingency Fund		\$ -	\$ -	\$ -
USGS Sediment & Flow Monitoring	\$ 19,700.00	\$ -	\$ -	\$ (19,700.00)
Ravine Stabilization at Seminary Fen in Chaska	\$ 55,200.00	\$ -	\$ -	\$ (55,200.00)
Riley Creek Cooperative Project with RPBCWD	\$ 74,565.67	\$ -	\$ -	\$ (74,565.67)
509 Plan Budget				
<i>Resource Plan Implementation</i>				
TH 101 Shakopee Ravine	\$ 35,000.00	\$ -	\$ -	\$ (35,000.00)
Assumption Creek Hydrology Restoration		\$ -	\$ -	\$ -
Carver Creek Restoration	\$ 15,000.00	\$ -	\$ -	\$ (15,000.00)
Groundwater Screening Tool Model	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Eagle Creek (East Branch) Project		\$ -	\$ -	\$ -
Minnesota River Floodplain Model Feasibility Study		\$ -	\$ -	\$ -
Schroeder Acres Park Stormwater Mgmt Proj	\$ 181,055.00	\$ -	\$ -	\$ (181,055.00)
PLOC Realignment/Wetland Restoration		\$ -	\$ -	\$ -
Spring Creek Project		\$ -	\$ -	\$ -
West Chaska Creek		\$ -	\$ -	\$ -
Sustainable Lakes Management Plan (Trout L	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Geomorphic Assessments (Trout Streams)	\$ 50,000.00	\$ -	\$ -	\$ (50,000.00)
Paleolimnology Study (Floodplain Lakes)		\$ -	\$ -	\$ -
Fen Stewardship Program		\$ -	\$ -	\$ -
District Boundary Modification		\$ -	\$ -	\$ -
East Chaska Creek Bank Stabilization Project		\$ -	\$ -	\$ -
East Chaska Creek Treatment Wetland Project		\$ -	\$ -	\$ -
Minnesota River Sediment Reduction Strategy		\$ -	\$ -	\$ -
Seminary Fen - gap analysis		\$ -	\$ -	\$ -
Data Assessments and Program Review		\$ -	\$ -	\$ -
Dakota County Fen Management Study	\$ 25,000.00	\$ -	\$ -	\$ (25,000.00)
Riley Creek Cooperative Project		\$ -	\$ -	\$ -
Local Water Management Plan reviews	\$ 8,000.00	\$ -	\$ -	\$ (8,000.00)
Project Reviews	\$ 20,000.00	\$ -	\$ -	\$ (20,000.00)
<i>Monitoring</i>	\$ 65,000.00	\$ -	\$ -	\$ (65,000.00)
<i>Watershed Management Plan</i>	\$ 56,000.00	\$ -	\$ -	\$ (56,000.00)
<i>Public Education/CAC/Outreach Program</i>	\$ 30,000.00	\$ -	\$ -	\$ (30,000.00)
<i>Cost Share Program</i>	\$ 20,000.00	\$ -	\$ -	\$ (20,000.00)
Nine Foot Channel				
Transfer from General Fund	\$ 80,000.00	\$ -	\$ -	\$ (80,000.00)
Dredge Site Improvements	\$ 315,000.00	\$ -	\$ -	\$ (315,000.00)
Total:	\$ 1,184,520.67	\$ 2,820.97	\$ 2,820.97	\$ (1,184,520.67)



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



Carver County – Financial Policy Manual

Investment Policy

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

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:

Investment Securities	Total Portfolio Exposure	Exposure per Issuer	Additional Restrictions
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. 5th Street, #102, (hereafter “District”) and Carver County, Financial Services Department, 600 East 4th 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. 5th Street, #102
Chaska, MN 55318
(763) 545-4659
naiadconsulting@gmail.com

County/Division

David Frischmon,
Property & Finance Director
600 East 4th Street
Chaska, MN 55318
(952) 361-1506
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

County Administrator/Date

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 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.

Jesse Hartmann, President

ATTEST:

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.



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 5. A. - Public Hearing - Adoption of Rules Implementing Watershed Management Plan

Prepared By

Linda Loomis, Administrator

Summary

The Lower Minnesota River Watershed District adopted its current Watershed Management Plan (the Plan) with the adoption of Resolution 18-14 at the October 24, 2018 meeting of the Board of Managers. LMRWD staff then began work on rules to implement the Plan. Several revisions of the rules were presented to LMRWD partners. Two meetings of the Technical Advisory Committee (TAC) were held, one in May and one in August of 2019. LMRWD staff held individual meetings with cities that requested. The final draft proposed rules were submitted to the MN Board of Water and Soil Resources (BWSR) October 31, 2019 for the statutorily required 45-day review. The draft proposed rules were submitted to transportation authorities at the same time. The LMRWD asked that all comments be submitted to the LMRWD by December 20, 2019.

The LMRWD received comments from BWSR, the Metropolitan Council, the MN Department of Transportation, the City of Savage and the City of Shakopee. LMRWD staff reviewed the comments and revised the plan as appropriate. On February 6, 2020 the LMRWD response to the comments was sent to those that commented. In addition, the revised rules were sent, including a red-lined version. On the same date, the final draft proposed rules dated February 2020, a red-lined version of the draft proposed rules and the LMRWD response to comments was posted to the LMRWD website and sent to BWSR, state review agencies, transportation authorities that have jurisdiction within the watershed and all cities, counties and townships within the LMRWD. A notice of the public hearing was also included. The Board Managers was copied on this communication.

Notice of the Public Hearing was posted on the LMRWD website and at the LMRWD office in Chaska. Notice of the hearing was published in the Star Tribune on February 9th and again on February 16th.

The purpose of the public hearing is to allow the public, LMRWD partners and any other interested party an opportunity to provide additional comments and ask questions. Resolution 20-02 - Adopting Watershed District Rules has been prepared which may be adopted by the Board of Managers, after closing the public hearing, if the Board determines it is appropriate to adopt the Rules.

Attachments

[LMRWD Response to comments](#)

[LMRWD Draft Proposed Rules February 2020](#)

[LMRWD Draft Proposed Rules February 2020 Red-liner version](#)

Resolution 20-02 - Adopting Watershed District Rules

Item 5. A. - Public Hearing - Adoption of Rules Implementing Watershed Management Plan

Executive Summary

February 19, 2020

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Recommended Action

Open the public hearing

Motion to close the public hearing or motion to continue the public hearing

Provide Direction staff reagrding additional hearings/meetings

Motion to adopt Resolution 20-02 -

Manager _____ introduced the following resolution and moved its adoption:

LOWER MINNESOTA RIVER WATERSHED DISTRICT

RESOLUTION 20-02

ADOPTING WATERSHED DISTRICT RULES

WHEREAS, pursuant to Minnesota Statutes Chapters 103B and 103D, and Minnesota Rules §8410, the Lower Minnesota River Watershed District (LMRWD) on October 24, 2018 approved and adopted its Board of Water and Soil Resources (BWSR) approved comprehensive Watershed Management Plan ("Plan"); and

WHEREAS, Minnesota Statutes Section 103D.341 states that a watershed district board of managers must adopt rules to accomplish the purposes of Chapter 103D and implement the powers of the Board of Managers as specified by Minnesota Statutes Section 103D.335; and

WHEREAS, the LMRWD engaged its Technical Advisory Committee, consisting of knowledgeable and experienced representatives of government agencies, counties and municipalities, in the development of the Rules and on October 31, 2019 submitted the proposed Rules for review and comment to BWSR, state review agencies, public transportation authorities that have jurisdiction within the watershed and all cities, counties and townships within the watershed; and

WHEREAS, the LMRWD posted the Rules on the LMRWD website for review and comment from other interested parties and provided 45 days for comment in accordance with Minnesota Statutes Section 103D.341. The comment period closing December 20, 2019; and

WHEREAS, the LMRWD Board of Managers has reviewed and given due consideration to all comments received in preparing the final draft of the LMRWD Rules and the responses to comments attached to this resolution; and

WHEREAS, On February 19, 2020, the LMRWD held a public hearing to receive additional comment on the proposed Rules; and

WHEREAS, the LMRWD Board of Managers finds the rules to be in accordance with the requirement of law and in the best interests of the public.

NOW, THEREFORE, BE IT RESOLVED that the Lower Minnesota River Watershed District Board of Managers approves and adopts the LMRWD Rules effective February 19, 2020; and

BE IT FURTHER RESOLVED that the Lower Minnesota River Watershed District Board of Managers directs the LMRWD Administrator to publish notice of the adoption of the Rules, distribute the Rules to the governing body of each city affected by the Rules and public

transportations authorities with jurisdiction in the watershed and file a copy of the Rules in the office of the County Recorder in each County within the LMRWD; and

BE IT FURTHER RESOLVED that the Rules are to be primarily applied by local governmental units, under a Municipal Permit issued by the LMRWD or by the District through an individual permit.

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

Jesse Hartmann, President

ATTEST:

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 February, 2020, signed by the President and his signature attested by the Secretary/Treasurer.



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 6. A. - City of Carver Levee

Prepared By

Linda Loomis, Administrator

Summary

In 2019, the City of Carver informed the LMRWD of its plans to request state funding to help bring the City's levee up the FEMA and Corps of Engineers standards. Heather Nelson of WSB, representing the City of Carver will be at the meeting to make a presentation to the Board regarding the City's plans.

Attachments

None

Recommended Action

No recommended action



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 6. B. - Proposal from Friends of the Minnesota Valley

Prepared By

Linda Loomis, Administrator

Summary

Ted Suss the Executive Director of the Friends of the Minnesota Valley contacted the LMRWD with two proposals. The first one involves a program called River Watch. Friends has organized a River Watch program for the Minnesota River Basin. They are looking for funding for the program and have asked the LMRWD to contribute \$10,000. This program enlists High Schools to have students monitor water quality during the school year. Mr. Suss has been contacting schools to sign up more schools to monitor more locations. I have asked him to put together a proposal for the Board and a report on the program so far. Some information is available on the [Friends website](#) and I have attached a brief summary of the program from the website.

The second proposal is to have a booth at county fairs in the Minnesota River Basin, similar to the project that we did with Friends two summer ago. I have asked Mr. Suss to prepare a proposal for the Board on this project too.

No action is needed, but the Board should provide direction to staff if they are interested in hearing more about both of these proposals

Attachments

Friends of the Minnesota Valley River Watch Program

Recommended Action

Provide direction to staff

Friends of the Minnesota Valley



River Watch Program

River Watch is a high school based student activity through which teams of high school students are trained on basic river water quality data collection and reporting procedures using Minnesota Pollution Control Agency protocols. River Watch teams also perform other monitoring and data collection activities such as macroinvertebrate counts and identifying sources of water pollution and excess sediment. The data the students will collect and submit is the same data the MPCA and others use.

A successful River Watch program is operating in the Red River Valley under the leadership of the International Water Institute. Technical assistance and advice in creating and implementing a Minnesota River Basin River Watch program is being provided by the Red River Watch program managers.

Friends of the Minnesota Valley is establishing a River Watch program in the Minnesota River Basin including the major tributary rivers and streams leading to the main channel of the Minnesota River..

The first operational year of the River Watch project, July 2017-June 2018, goal is the enrolling a minimum of 5 teams and perhaps as many as 20 teams.

River Watch school based teams will inventory and study local pollution and sediment sources, promote river quality activities and Best Management Practices within the community, meet with other teams to share successes and ideas for activities, and participate in a basin wide conference.

In addition to collecting a wide range of valuable and much needed data about river water quality and educating a new generation on the need for taking positive action to preserve and protect the river and lands of the basin, the River Watch program will build a cooperative cadre of persons from across the basin who will be motivated to work cooperatively in future years to preserve the water and other natural resources of the Minnesota River Basin.

Annual end of year conference/forum and team competition

All members of each River Watch team; all adult advisors, and as many concerned citizens as possible, specifically elected officials and Watershed District and Watershed Management Organization board members and staff, will be invited to an annual Conference/Forum. The main purpose of the forum will be to allow each watershed team to present a report on team activities during the previous year. This report presentation will be judged both on extent of team activities and the quality of the presentation.



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 7. B. - Dredge Management

Prepared By

Linda Loomis, Administrator

Summary

i. Funding for dredge material management

The LMRWD has received the award from the State of Minnesota for \$480,000 to be used for the construction project at the dredge site.

ii. Vernon Avenue Dredge Material Management site

The Contractor, Meyer Contracting, Inc. has provided all the documentation required by the LMRWD. The documentation has been reviewed by legal counsel and the contract is ready for signature.

All necessary permits have been received, so everything is in order to proceed with the project in the fall, provided the site is not too wet or flooded. The Board should authorize execution of the contract.

iii. Private Dredge Material Placement

There is no new information to report since last update.

Attachments

Notice of Award

Construction Contract

Attorney Opinion regarding review of Contract Bond and Insurance

Recommended Action

Motion to authorize execution of construction documents

NOTICE OF AWARD

**LMRWD DREDGE SITE PROJECT
LOWER MINNESOTA RIVER WATERSHED DISTRICT
SAVAGE, MINNESOTA**

Dated: January 20, 2020

OWNER: Lower Minnesota River Watershed
District

TO CONTRACTOR: Meyer Contracting, Inc.
11000 93rd Ave N
Maple Grove, MN 55369

CONTRACT FOR: LMRWD Dredge Site Project

Owner has requested that we notify you that your Bid dated December 3, 2019 has been accepted and Meyer Contracting, Inc. has been awarded the contract to perform the Work. The Contract Price is stated in the Agreement.

Meyer Contracting, Inc. must comply with the following conditions precedent within ten (10) days of the date of this Notice of Award, that is by January 30, 2020.

1. Return to Owner three fully executed counterparts of the Agreement (attached).
2. Performance and Payment Bond
3. Certificate of Insurance and all other insurance documentation

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid in default, to annul this Notice of Award and to declare your Bid Security forfeited.

OWNER: _____

By: _____
(AUTHORIZED SIGNATURE)

ACKNOWLEDGEMENT OF NOTICE

Meyer Contracting Inc.
CONTRACTOR

By: Verlyn Schoep
(AUTHORIZED SIGNATURE)

(TITLE) **Verlyn Schoep
President/COO**

(DATE) 1/30/2020

END OF DOCUMENT 00 51 00



SECTION 00 50 00

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between: Lower Minnesota River Watershed District (“Owner”) and Meyer Contracting, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: LMRWD Dredge Site Project

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Barr Engineering Co. (“Engineer”).
- 3.02 The Owner has retained Engineer to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Dates*
- A. The number of calendar days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Instructions to Bidders except as may be stated below:
- No exceptions.
- 4.03 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the



delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$250.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$25,000.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the unit prices stated in Contractor's Bid, attached hereto as an exhibit.
 - B. Quantities shown on the bid form are estimated. Actual quantities are expected to vary and may be adjusted by the Owner in the best interest of the project.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.



6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, then the payments made to Contractor will amount to 95 percent of Work completed (with the balance being retainage).
- b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 98 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- A. All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at one-and-one-half percent (1½%) per month or portion of a month.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.



- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. Modifications (Change Orders, Field Orders and Work Change Directives)
 - 2. Notice to Proceed
 - 3. Agreement
 - 4. Addenda
 - 5. Completed Bid Form
 - 6. Instructions to Bidders
 - 7. Drawings



8. Technical Specifications
9. Appendices
10. Submittals
11. Payment Bond
12. Performance Bond
13. Insurance
14. Supplementary Conditions
15. Standard General Conditions (EJCDC C-700, 2007 Edition)
16. Advertisement for Bids

In the case of a discrepancy between or among any of the terms and conditions set forth in any of the Contract Documents, the order listed above shall be the order of precedence for resolving any such discrepancy in the terms and conditions of the Contract Documents, that is, the governing document shall be the Modifications (starting with the most recently dated first followed in descending chronological order by the remaining Modifications) followed by the Notice, and so on.

- B. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions, as amended by the Supplementary Conditions.
- C. Owner will furnish to the Contractor three copies of the Contract Documents. Additional copies beyond the three furnished sets will be provided at reproduction cost.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.



10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. This Agreement shall be governed by the laws of the State of Minnesota.
- B. There are no other provisions.

10.07 *Records Retention*

- A. Contractor will maintain all records pertaining to the Work for six years from the date of the completion of the Work. Contractor agrees that any authorized representative of the Owner or the State Auditor may examine, audit, and copy any such records during normal business hours.

10.08 *Equal Opportunity*

- A. In its performance of the Work, Contractor will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status of national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination. Contractor will not, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color. The Contract



may be canceled or terminated, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of these terms.

10.09 *Nonresident or foreign contractor*

- A. If Contractor or a subcontractor is a nonresident person or foreign corporation as defined in Minnesota Statutes section 290.01, subdivision 5, Contractor or the subcontractor will be subject to the requirements of Minnesota Statutes section 290.9705.

10.10 *Minnesota Data Practices Act*

- A. 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 Owner immediately and transmit a copy of the request. If the request is addressed to Owner, Contractor will not provide any information or documents, but will direct the inquiry to Owner. If the request is addressed to Contractor, Contractor will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with Owner and its legal counsel before replying. Nothing in the preceding sentence supersedes Contractor's obligations under this agreement with respect to protection of Owner 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 § 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

10.11 *Prevailing Wages*

- A. Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry (provided in Exhibit C attached to and made part of this agreement). Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Owner shall demand and the Contractor and all subcontractors shall furnish to the contracting agency, copies of any or all payrolls not more than 14 days after the end of each pay period.

10.12 *Notice of Certification of Truck Rental Rates*

- A. The Department of Labor and Industry Labor Standards Unit Notice of Certification of Truck Rental Rates and Effective Date Pursuant to Minnesota Rules, Part 5200.1105 shall apply to this Contract. A copy (provided in Exhibit D attached to and made part of this agreement) shall apply.



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 1/30/2020 (which is the Effective Date of the Contract).

OWNER:

Lower Minnesota River Watershed District

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

112 5th Street E., Suite 102

Chaska, MN 55318


CONTRACTOR:

MEYER CONTRACTING INC.

By: 

Title: VERLYN SCHOEP, PRESIDENT/COO

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Title: PROJECT COORDINATOR

Address for giving notices:

11000 93RD AVE N

MAPLE GROVE, MN 55369

License No.: NA





RINKE NOONAN
attorneys at law

1015 W. St. Germain St., Ste. 300, P.O. Box 1497
St. Cloud, Minnesota 56302-1497
Telephone 320-251-6700, Fax 320-656-3500

Office Memorandum

To: Lower Minnesota River Watershed District Board of Managers
From: John C. Kolb (320) 656-3503
Re: Contract, Bond and Insurance Review; Spoil Management Site Improvement Project
Date: February 3, 2020

I have reviewed the contract documents, contractor's insurance certificate and both performance and payment bonds for the Spoil Management Site Improvement Project.

Based on my review of the contract documents, the performance and payment bonds and the certificate of insurance, I am comfortable advising the Board to execute the construction contract upon receipt of the following:

Evidence, in the form of a revised certificate of insurance and copies of all endorsements providing additional insured status of the Owner, Engineer and City of Savage and demonstrating clear compliance with the requirements of Supplementary Conditions 5.03 and 5.04 as referenced herein.

Review Discussion:

Article 5 (parts 5.01-5.04) of the general conditions of the contract requires the following:

- Contractor shall furnish performance and payment bonds, each in an amount at least equal to the contract price.
- Contractor shall deliver to owner certificates of insurance.

Sections 5.03 and .04 of the Supplementary Conditions (SC) set forth additional insurance requirements, including the minimum coverage amounts and insurance types. There are additional details within the individual requirements.

Regarding the bonds. The bonds are sufficient. The contractor has provided both a payment and performance bond in the amount of the contract price. The Surety on each bond meets the qualification requirements of the contract documents.

Absent any substantial change orders increasing the contract price, the bond amounts should be sufficient to secure the drainage authority for the project. The Board should consider, in consultation with the engineer, whether and when an increase in the bond amounts is warranted based on approved change orders. The bonds are to continue in effect for 120 days beyond the correction period in the contract (one year after final payment becomes due under the contract). Neither bond specifies an expiration date. However, the bonds do bind the contractor and the surety to the contract terms. This means that the right to discharge the bond rests with the owner and that the bond must remain in place per the contract.

Regarding insurance: The specifications require insurance in excess of that provided in the certificate provided by the contractor. Below is a comparison of what is required and what has been provided in the certificate:

Insurance type	Amount required by contract	Amount provided
Commercial General Liability (CGL) Each Occurrence	1,500,000	1,000,000
CGL Personal Injury	1,500,000	1,000,000
CGL General Aggregate	1,500,000	2,000,000
CGL Products	1,500,000	2,000,000
Auto Bodily Injury Person	1,500,000	1,000,000* *combine single limit for each accident.
Auto Bodily Injury Accident	1,500,000	1,000,000
Auto Property Damage	1,500,000	1,000,000
Auto Aggregate	2,000,000	1,000,000
Workers Compensation	Statutory Requirements	Statutory Requirements

Insurance type	Amount required by contract	Amount provided
Employer Liability (EL) Accident	100,000	1,000,000
EL Disease (employee)	500,000	1,000,000
EL Disease (policy limit)	100,000	1,000,000

For auto coverage the contractor has provided a coverage limit of \$1,000,000 as combined single limit per accident. I believe this covers both the Person and Accident bodily injury requirements. Additionally, the contractor has an umbrella policy in the amount of \$10,000,000. As an alternative to meeting the amounts required by the contract for Commercial General Liability and Auto coverage, the Owner may accept an umbrella or excess coverage policy of at least sufficient value to cover the difference in coverage. Excess Liability coverage must include employer's liability claims. (SC 5.04A.4). The proffered umbrella policy meets this requirement in the amount only. It is unclear whether the other requirements related to the identification of additional insureds is met.

The Certificate states the following disclaimers:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Additional Insured only if required by written contract with respect to General Liability, Automobile Liability and Umbrella/Excess Liability applies on a primary basis and the insurance of the additional insured shall be non-contributory: Certificate Holder, Project Owner and Others as required by written contract.

Waiver of Subrogation only if required by written contract with respect to General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability applies in favor of: Certificate Holder, Project Owner and Others as required by written contract.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

To meet the contract requirements, the Contractor or its insurer must provide the Owner and all additional insureds with evidence of coverage. The umbrella policy and base coverage must list the Owner, Engineer and City of Savage as additional insureds. The Contractor, or its insurer, must provide a certificate of insurance and a copy of all endorsements evidencing the additional insured status of each of the above entities.

Though the suite of coverage evidenced in the certificate of insurance meets the contract requirements of coverage amounts (with addition of the umbrella coverage), the Contractor has not provided the coverage evidence required by the contract – specifically the additional insureds' status. Below are specific requirements that should be communicated to the Contractor and its insurer. The requirements should be clearly articulated in the certificate and all endorsements.

The certificate(s) must indicate unconditionally that the insurance company will provide to Owner and City, in the same manner as to Contractor, notice in the event of cancellation, non-renewal or any material modification or change in the policies and/or coverages thereunder. (SC 5.03)

The certificate must state that Owner and Engineer are additional insureds under the general and automobile liability policies, and that the City is an additional insured under the general liability policy. (SC 5.03)

The additional insured coverage must be on a primary and noncontributory basis, and the endorsement must provide for same and must include coverage for complete operations. (SC 5.03)

Excess Liability coverage must include employer's liability claims. (SC 5.04A.4)

The insurance policy or policies required by this Paragraph 5.04 of the General Conditions shall include the interests of the Owner, City and the Engineer, each of which shall be additional insured parties with primary coverage as provided by paragraph SC-5.03. (SC 5.04A)

Contractor must furnish with the certificate(s) of insurance copies of all endorsements providing additional insured status of Owner, City and Engineer. (SC 5.04A)

The policy of general liability insurance to be purchased and maintained will: contain a provision or endorsement that notice of a cancellation, or modification of coverage afforded will be provided to additional insured(s) identified in the Supplementary Conditions to whom a certificate of insurance has been issued on the same basis as is provided under the policy to the insured (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide); "...under Paragraphs 6.07.B, 6.11, and 6.20. (SC 5.04B.4)

For your reference, see the attached article by the LMCIT risk manager/attorney. Though written from a city perspective, the article is equally applicable to the Watershed District. The risk manager identifies coverage limitation issues and provides guidance from the insurance trust's perspective.

I note as an initial but correctable concern that several of the proposed policies expire on April 1, 2020. We will need an updated certificate upon renewal or replacement with like/kind policies.

Finally, I have reviewed the content of the contract documents – specifically provisions related to dispute resolution, prompt pay and subcontractor payment and find them to be consistent with the requirements of Minnesota law.

Based on my review of the contract documents, the performance and payment bonds and the certificate of insurance, I am comfortable advising the Board to execute the construction contract upon receipt of the following:

Evidence, in the form of a revised certificate of insurance and copies of all endorsements providing additional insured status of the Owner, Engineer and City of Savage and demonstrating clear compliance with the requirements of Supplementary Conditions 5.03 and 5.04 as referenced herein.



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 7. D. - 2020 Legislative Action

Prepared By

Linda Loomis, Administrator

Summary

Language has been drafted to allow the LMRWD to use funds already provided to the District for the Seminary. The Board will receive a verbal update at the meeting.

Attachments

No attachments

Recommended Action

No action recommended



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 7. F. - LMRWD Projects

Prepared By

Linda Loomis, Administrator

Summary

i. East Chaska Creek Stream Bank Stabilization

On February 5, 2020, LMRWD met with the City of Chaska to discuss logistics for this project. The City informed staff that it would need to consult the City's wetland specialist and possibly need to apply for a Conditional Use Permit because the project involves work in the floodplain. This was the first mention that the project would need any kind of permit from the City. The DNR also requested the LMRWD apply for a permit for work in public waters. Staff is working with the City's consultants to provide information to comply with the City's requirements. This will likely result in increased cost to the project, as more time will be required by the LMRWD technical consultants. An estimate of cost for the additional work is being put together for the Board to look at and approve at the March Board meeting. This may also delay the construction of the project until late fall 2020, as this project is best completed when the ground is frozen.

LMRWD staff will need to work with the contractors to see how this delay will affect the cost of the project that was quoted. This information will also be available to the Board at the March meeting.

Attachments

No attachments

Recommended Action

No recommended action