



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, February 17, 2021

### **Agenda Item**

**Item 4. G. - Authorize amendment to Professional Services Agreement between LMRWD and DRB Consulting, LLC**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

In November of 2019, the Board of Managers authorized staff to work with DRB Consulting, LLC (DRB) to begin a process to better manage the District's data. An agreement for professional services between the LMRWD and DRB was entered into in February of 2020. We began work to assess the District's needs shortly thereafter.

In March 2020 COVID lock down slowed things down and there was a need for the DRB to change personnel that was working with the LMRWD. We essentially had to start over again. The original deadline in the agreement was May 31, 2020. That is about the time that the change in personnel working with the LMRWD occurred. We are now at the point where a new filing structure is being set-up in the cloud using Microsoft SharePoint and we anticipate the project will be complete by the end of March. DRB has asked for the Professional Service Agreement (PSA) to be amended to be reflective of the newest time frame.

The Board should authorize execution of the amendment extending the end date of the PSA.

### **Attachments**

Professional Services Agreement between LMRWD and DRB Consulting, LLC

Amendment to Professional Services Agreement extending the end date of the agreement

### **Recommended Action**

Motion to authorize execution of amendment to Professional Services Agreement between LMRWD and DRB Consulting, LLC

# Lower Minnesota River Watershed District

## Standard Professional Services Agreement

THIS AGREEMENT is between the Lower Minnesota River Watershed District and DRB Consulting, LLC, (Consultant) for document management review and reporting services to be provided under the terms of this Agreement.

The Lower Minnesota River Watershed District and the Consultant for the consideration hereinafter stated agree as follows:

### I. CONTRACT DOCUMENTS

The CONTRACT DOCUMENTS consist of the Consultant's Professional Services Proposal (**Attachment A**), the Consultant's Scope of Services, labor rates and schedule. The Contract Documents are hereby incorporated into this Agreement and are as much part of this Agreement as if fully set forth herein.

### II. SCOPE OF SERVICES

Consultant shall perform for the Lower Minnesota River Watershed District the services illustrated in **Attachment A**.

### III. COMPENSATION

Consultant's total compensation under this Contract shall be:

X On an hourly basis according to the attached rate schedule plus reimbursable expenses for a fee not to exceed \$15,146.00.

Eligible reimbursable expenses must be included in Consultant's Scope of Services and agreed to by the Lower Minnesota River Watershed District.

Consultant shall submit monthly itemized invoices for services rendered to the Lower Minnesota River Watershed District Administrator whose name and address appears in Paragraph XVII of this Contract and whose signature appears on the signature page of the Contract. If uncontested by the Lower Minnesota River Watershed District, the Lower Minnesota River Watershed District shall pay all such invoices within 35 days of receipt of the invoice by mailing the payment to the person identified by Consultant in Paragraph XVII of this Contract.

### IV. EFFECTIVE DATE AND TERMINATION DATE

This Contract shall be in full force and effect from February 10, 2020 through May 31, 2020, **unless** otherwise extended by the Lower Minnesota River Watershed District or terminated earlier under Paragraph XVI, Cancellation, Default and Remedies.

## V. SUBSTITUTIONS AND ASSIGNMENTS

Upon approval by the Lower Minnesota River Watershed District, the Consultant may substitute other persons to perform the services listed in Consultant's Scope of Services. If substitution is permitted by the Lower Minnesota River Watershed District, the Consultant shall furnish information to the Watershed District Administrator signing this Contract for the Lower Minnesota River Watershed District to allow proper review of the qualifications of the substituted person.

No assignment of this Contract shall be permitted without the written amendment signed by the Lower Minnesota River Watershed District and the Consultant.

## VI. INSURANCE

Workers' Compensation and Employer's Liability:

Workers' Compensation	Statutory
If Consultant is based outside the State of Minnesota, coverage must apply to Minnesota law. In accordance with Minnesota law, if Consultant is a sole proprietor, it is exempted from the above Workers' Compensation requirements. If Consultant should hire employees or subcontract this work, Consultant shall obtain the required insurance.	
Employer's Liability. Bodily injury by:	
Accident—Each Accident	\$500,000
Disease—Policy Limit	\$500,000
Disease—Each Employee	\$500,000
Professional Liability—Per Claim	\$1,500,000
Aggregate	\$2,000,000

Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles.

An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.

The above establishes minimum insurance requirements. It is the sole responsibility of Consultant to determine the need for and to procure additional insurance which may be needed in connection with this Contract. Upon written request, Consultant shall promptly submit copies of insurance policies to the Lower Minnesota River Watershed District.

Consultant shall not commence work until it has obtained required insurance and filed with the Lower Minnesota River Watershed District, a properly executed Certificate of Insurance establishing compliance. To the extent not precluded by Minnesota Law, certificate(s) must name the Lower Minnesota River Watershed District as the certificate holder and as an additional insured for the general liability coverage(s) for all operations covered under the Agreement. The certificate must also show that the Lower Minnesota

River Watershed District will receive 30-day prior written notice in the event of cancellation, nonrenewal, or material change in any described policies.

Consultant shall furnish to the Lower Minnesota River Watershed District updated certificates during the term of this Contract as insurance policies expire. If Consultant fails to furnish proof of insurance coverages, the Lower Minnesota River Watershed District may withhold payments and/or pursue any other right or remedy allowed under the contract, law, equity, and/or statute. The Lower Minnesota River Watershed District does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section. Duty to Notify. Consultant shall promptly notify the Lower Minnesota River Watershed District of any claim, action, cause of action or litigation brought against Consultant, its employees, officers, agents or subcontractors, which arises out of the services contained in this Contract. Consultant shall also notify the Lower Minnesota River Watershed District whenever Consultant has a reasonable basis for believing that Consultant and/or its employees, officers, agents or subcontractors, and/or the Lower Minnesota River Watershed District, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Contract. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Contract.

Subrogation and Risk Allocation. In order that Consultant may provide its services at a reasonable cost but still provide for a reasonable response to claims and other liabilities, both parties waive in favor of the other party only, all rights of subrogation for losses covered by their respective insurance policies. Neither party shall be liable to the other for any indirect, consequential, or special damages. The maximum aggregate liability of Consultant as to claims arising out of this Agreement, regardless of the legal or equitable basis for any of them is five million USD (\$5,000,000 USD).

*Remainder of page intentionally left blank.*

## **VII. DATA PRACTICES**

Consultant, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. If Consultant creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the Lower Minnesota River Watershed District pursuant to this Contract, then Consultant must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance.

Consultant agrees to defend, indemnify and hold harmless the Lower Minnesota River Watershed District, its officials, officers, agents, employees, and volunteers from any claims resulting from Consultant's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Consultant agrees to promptly notify the Lower Minnesota River Watershed District if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Contract.

## **VIII. COMPLIANCE WITH THE LAW**

Consultant agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363A), , and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event the Consultant has questions concerning these requirements, The Lower Minnesota River Watershed District agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to termination of this Contract.

## **IX. AUDITS**

The Consultant agrees that the Lower Minnesota River Watershed District, 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, and records that are relevant and involve transactions relating to this Contract. Consultant shall maintain these materials and allow access during the period of this Contract and for one (1) year after its termination or cancellation.

## **X. APPLICABLE LAW**

The law of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise under this Contract will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Consultant.

## **XI. CONFLICT AND PRIORITY**

If a material conflict is found between provisions in this Contract, the Consultant's Scope of Services, or the Consultant's Proposal. If any, the provisions in the following rank order shall take precedence: 1) Contract; 2) Consultant's Scope of Services; 3) Consultant's Proposal.

## **XII. CANCELLATION, DEFAULT AND REMEDIES**

Either party to this Contract may cancel this Contract upon thirty (30) days written notice, except in instances where the Consultant fails to fulfill its obligations under this Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the Lower Minnesota River Watershed District has the right to terminate this Contract, if the Consultant has not cured the default after receiving seven (7) days written notice of the default.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Lower Minnesota River Watershed District for damages sustained by the Lower Minnesota River Watershed District as a result of any breach of this Contract by the Consultant. The Lower Minnesota River Watershed District may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the Lower Minnesota River Watershed District is determined. The rights or remedies provided here shall not limit the Lower Minnesota River Watershed District, in case of any default, error or omission, by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the Lower Minnesota River Watershed District under law.

## **XIII. NOTICES**

Any notice or demand authorized or required under this Contract shall be in writing and shall be sent to the other party as follows:

To the Consultant:

**DRB Consulting, LLC  
1302 Bellavista Drive  
Buffalo, MN 55313**

**Attn: Debra Brisk**

To the Lower Minnesota River Watershed District:

**Lower Minnesota River Watershed District  
12 5th Str. E. Suite 102  
Chaska, MN 55318**

**Attn: Linda Loomis, Administrator**

#### **XIV. INTELLECTUAL PROPERTY**

Unless the Consultant is subject to one or more of the intellectual property provisions in sub-section (a), (b) or (c) below, the Lower Minnesota River Watershed District owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any "Work" created, in progress, produced or completed and paid by this Contract. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under this Contract will be the exclusive property of the Lower Minnesota River Watershed District and will be surrendered to the Lower Minnesota River Watershed District immediately upon completion, expiration, or cancellation of this Contract. The Consultant represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

In consideration for all rights to Consultant's Work, Lower Minnesota River Watershed District will waive, hold harmless, and indemnify Consultant, and its directors, officers, agents, employees, and sub consultants, from any and all claims arising out of the Lower Minnesota River Watershed District's reuse or misuse of this Work, with the exception of the negligent acts, errors or omissions of Consultant and its directors, officers, agents, employees, and sub consultants.

- (i) Data-Ownership: The Lower Minnesota River Watershed District is the sole owner of all information, data, algorithms, policies or programs used by the Consultant in designing, developing and producing the "Work" that is the subject of this Contract.
- (ii) Further Assurances: Each party agrees to cooperate with the other party and take all reasonable actions required to vest and secure in such party all ownership rights, including all intellectual property rights as may be indicated in this Contract.

#### **XV. CONFLICT OF INTEREST/CODE OF ETHICS**

By signing this Contract, the Consultant agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the Lower Minnesota River Watershed District. If the Consultant is unclear if a conflict of interest exists, the Consultant will immediately contact the Lower Minnesota River Watershed District Administrator and ask for an interpretation.

The parties agreeing have caused this Contract to be signed as follows:

**FOR THE CONSULTANT:**

By: Debra R. Brisk, President

Date: 1.27.2020

By signing this agreement, I represent that I have the authority to enter and bind the Consultant to this agreement.

**FOR THE LOWER MINNESOTA RIVER WATERSHED DISTRICT:**

By: Linda Loomis

Linda Loomis, Administrator for Lower Minnesota River Watershed  
District

Date: 2-27-20

Attachment A – Scope of Work & Schedule



October 31, 2019

**Linda Loomis**  
12 5th Str. E. Suite 102  
Chaska, MN 55318

DRB Consulting provides to you and your team a proposal to support analysis and an evaluation of options to support document management for the Lower Minnesota River Watershed District.

**BACKGROUND:** The Lower Minnesota River Watershed District (District) produces, receives, maintains and retains a number of documents. These documents are placed in various places, including network drives and physically stored in offices as hard copies. Based on the organizational structure, board member agencies also have documents related to the District. Publicly available documents (plans, board minutes) are available and accessed via <http://lowermnriverwd.org/>. All other documents retained by the District are stored at the District as paper or digital formats. These latter documents are reviewed, created and / or modified by District staff, vendors and other stakeholders while in progress of review and comment and ultimately retained for reference.

**CHALLENGE / OPPORTUNITY:** Documents stored at the District have limited accessibility. Paper documents require travel to the District office and requires staff time to copy or scan. Access to digital documents requires the administrator to locate and produce a copy (paper or electronic) of the requested document to the requestor.

**OPPORTUNITY / SOLUTION:** The DRB team will facilitate an assessment with the District to provide a solution that will provide a single electronic repository. The repository will be phased and implemented based on the District's recommended prioritization of documents. This proposal is to provide facilitation and knowledge of options to address the goal of maintaining the integrity of the District's documents and providing ease of searching and access of the documents to stakeholders.

**OUTCOMES INCLUDE:**

- Analysis and documentation of the types of documents and identifying District meta data (Searchable terms)
- Identifying optional systems and providing recommendation to the District on the pros / cons of systems to support document management.
- Implementation of document management software
- District will have a host site that is accessible and searchable for documents
- District staff will receive training and documentation to support the system (a system that is useable and functional for the District)

**APPROACH:**

The following tasks illustrate the approach to meet the outcomes.

**Task 1** - Determine and validate the current document and anticipated growth factor for documents (current storage capacity and future capacity) (6 hours)

*\* Dependent on document volume*

*\*\* Because of the non-sensitive nature of documents, several low-cost solutions for document management software are available. In addition to Google and Microsoft, open source options exist.*

The beginning of Task 1 is to have an understanding of the paper and electronic documents that the District has. The hours listed are dependent on the number and types of documents.

**Task 2** – Identify document types, categories, tags (meta data) (30 hours) \*

Receive affirmation from the District on the document types, categories and tagging terms (meta data).

**Task 3** - Identify stakeholders and access (4 hours)

Receive affirmation on accessibility and number of stakeholders / partners / individuals who will use the system.

**Task 4** - Host and software research, prepare options and recommendation. \*\* (32 hours)

Provide to District options and pros / cons of the options. District responds with a recommendation.

**Task 5** - Technology Implementation (20 hours)

Provide support to the implementation of the recommended and approved technology for deployment to the District.

**Task 6** – Training and user documentation (22 hours)

**Task 7** - Project Management Task – includes oversight and monthly invoicing. (5 hours)

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## ASSUMPTIONS

- Documents do not contain confidential or sensitive information
- Solution does not provide functionality to create or modify documents
- All documents are in nonproprietary formats
- Solution will support .pdf and Microsoft office generated documents
- ***Solution does not contain cost of document management system, hosting, imaging or uploading of the documents into the system***

Thank you for the opportunity to provide this proposal to you.

*Debra R. Brisk*

Debra R. Brisk, P.E.

\* *Dependent on document volume*

\*\* *Because of the non-sensitive nature of documents, several low-cost solutions for document management software are available. In addition to Google and Microsoft, open source options exist.*

**DRB CONSULTING, LLC**

**Watershed District Proposal (document & data management)**

**October 31, 2019**

TASK / ACTION	DESCRIPTION	Debra Brisk, P.E. (Project Sponsor)	Sandy Hvizdos (Analyst)	Mariah Helgeson (Administrative Support)	TOTAL HOURS	ASSUMPTIONS
<b>TASK 1</b>	<b>Host requirements</b>					
	Determine and validate the current document and storage growth factor and space requirements – short - long term storage needs	0	6	0	6	
<b>Task 1 Subtotal</b>		0	6	0	6	
<b>TASK 2</b>	<b>Meta data</b>					
	Identify document types, categories, tags and indices	0	30	0	30	Dependent on document volume
<b>Task 2 Subtotal</b>		0	30	0	30	
<b>Task 3</b>	<b>Access definitions</b>					
	Identify stakeholders and access	0	4	0	4	
<b>Task 3 Subtotal</b>		0	4	0	4	
<b>Task 4</b>	<b>Recommendations / Report</b>					
	Host and software research, prepare options and recommendation	2	20	10	32	
<b>Task 4 Subtotal</b>		2	20	10	32	
<b>Task 5</b>	<b>Implementation</b>					
	Implement technology	0	20	0	20	
<b>Task 5 Subtotal</b>		0	20	0	20	
<b>Task 6</b>	<b>Training and Documentation</b>					
	Training and user documentation	2	10	10	22	
<b>Task 6 Subtotal</b>		2	10	10	22	
<b>Task 7</b>	<b>Project Management</b>					
	Oversite and invoicing	5	0	0	5	
<b>Task 7 Subtotal</b>		5	0	0	5	
	<b>TOTAL HOURS</b>	9	90	20	119	
	Hourly rates are loaded with base rate, estimated OH rates and 10% profit.					
	Hourly Rates	\$156.00	\$140.00	\$45.00		
	Total Cost	\$1,404.00	\$12,600.00	\$900.00	\$14,904.00	
	<b>Expenses</b>	<i>Mileage - estimated</i>	200.00	\$0.59	\$117.00	
		<i>Parking</i>			\$25.00	
		<i>Printing / Misc.</i>			\$100.00	
					\$242.00	
			Total Expenses		\$242.00	
			TOTAL		\$15,146.00	
	I certify that this cost estimate is that of DRB CONSULTING, LLC					
	Debra R. Brisk					
		<i>Debra R. Brisk, P.E. On Behalf of DRB CONSULTING</i>				

**Date**

October 31 2019

## DETAILED TASK SCHEDULE & Outputs / dependencies

	Task	Description	Input	Output	Hours	Dependency	Proposal reference
I	Requirements Gathering	Prep intake document; interview client; draft requirement document	Requirements form	document types, users, access, special controls, workflow, growth; naming conventions, cost restrictions, technology restrictions, back up needs, goals	5	none	1, 2, 3
II	Access electronic documents	Secure documents for review	thumb drive	electronic document inventory volumes; growth patterns	1	none	1
III	Access paper documents	Visit document storage area.	paper documents	inventory volumes	5.5	none	1
IV	Analyze electronic documents	Review all electronic documents; identify types; authors; contributors; indices	thumb drive of documents	spreadsheet of analysis	10	I, II	2
V	Analyze paper documents	Site visit to storage location; perform same analysis on as big of sample as possible	physical files	spreadsheet of analysis; high level scan algorithm based on existing filing system	20	I, III	2
VI	Finalize requirements	Prepare system requirement documentation	all outputs	Requirements signed off by client	4	IV, V	4
VII	Research system options	Include m/s; google and open source	Requirements document;	tech specs	20	VI	4
VIII	Prepare and present option document	Option and recommendation documentation prepared and sent to client for review	Requirement documents, tech specs	Option/recommendation document	8	VII	4
IX	Review with client	walk through document and identify next steps	option. Recommendation document	direction on technology	2	VIII	4
X	Licensing and set up	identify technology, set up access	hosting and software source	licensing, user access	4	IX	5
XI	Software setup	set up parameters, test out functionality	access, doc types, electronic document sample, paper document sample, scanner	test system populated with documents	16	X	5
XII	Create user documentation	Based on user function - system manager, document manager, end user	User types, system software	how to manuals	10	VI, XI	6
XIII	User training & Support	provide training of system, review documentation, address questions/concerns	User list; documentation		10	XII	6

**Lower Minnesota River Watershed District**  
**Amendment to Professional Services Agreement**

This amendment is for the professional services agreement between the Lower Minnesota River Watershed District (LMRWD) and DRB Consulting, LLC (Consultant) dated February 27, 2020.

1. The parties hereto agree to amend Section IV. EFFECTIVE DATE AND TERMINATION DATE by extending the end date of the agreement to April 30, 2021.

LOWER MINNESOTA RIVER WATERSHED DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Linda Loomis, Administrator

DRB CONSULTING, LLC

By: Debra R. Brisk (Electronic signature authorized by Debra) Date: February 21, 2021  
Debra R Brisk, President