



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, March 17, 2021

Agenda Item

Item 5. A. - Presentation of 2020 monitoring results & approval of 2021 Monitoring, Technical & Education services

Prepared By

Linda Loomis, Administrator

Summary

Jon Utecht and Troy Kuphal of the Scott County Soil & Water Conservation District, will join the meeting to present the results of the sampling and testing conducted in 2020 on behalf of the LMRWD.

An agreement for 2021 monitoring, technical and education services is attached for the Board's review and approval.

Attachments

Agreement between the Lower Minnesota River Watershed District and the Scott Soil and Water Conservation District for Monitoring, Technical, Education and other conservation services

Recommended Action

Motion to approve Agreement between the Lower Minnesota River Watershed District and the Scott Soil and Water Conservation District for Monitoring, Technical, Education and other conservation services

**AGREEMENT BETWEEN THE LOWER MINNESOTA RIVER WATERSHED DISTRICT
AND THE SCOTT SOIL AND WATER CONSERVATION DISTRICT FOR MONITORING, TECHNICAL,
EDUCATION, AND OTHER CONSERVATION SERVICES**

This Contract for Services (Contract) is made and entered into between the Lower Minnesota River Watershed District ("LMRWD"), a body corporate and politic, and the Scott Soil and Water Conservation District, an independent contractor ("Contractor" or "SSWCD").

WHEREAS, the LMRWD is in need of services from SSWCD as set forth in the Statement of Work, attached hereto as Attachment 1, and the SSWCD desires and is capable of providing such services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein the parties agree as follows:

1. TERM

This Contract shall be in effect as of January 1, 2021, notwithstanding the dates of the signatures of the parties, and shall continue through December 31, 2021, unless earlier terminated by law or according to the provisions herein.

2. CONTRACTOR'S OBLIGATIONS

The LMRWD hereby contracts with the SSWCD to provide services related to monitoring (water quality, thermal and well), technical assistance and cost share, education, and other engineering, technical and administrative services, as set forth in Attachment 1 - 2021 Statement of Work.

The Services shall commence immediately upon receipt of notice to proceed from the LMRWD Administrator, who will serve as the LMRWD's agent for such services and will administer this Contract.

3. PAYMENT

3.1 Invoicing. The SSWCD will invoice the LMWRD on a time and materials basis. The maximum amount for which the SSWCD may invoice the LMRWD under this Agreement shall be \$40,450, unless otherwise authorized in advance by the LMRWD Administrator. As set forth in Attachment 1, monitoring services shall not exceed \$29,400; landowner technical assistance and cost share shall not exceed \$6,200, education services shall not exceed \$4,100; and other technical and administrative services shall not exceed \$750. The SSWCD shall not invoice the LMRWD for any additional or other time or materials without prior authorization by the LMRWD Administrator.

3.2 Compensation. The SSWCD will invoice for services according to the following hourly rates:

Administrative Assistant	\$57
Resource Conservation Technician	\$62
Natural Resources Specialist; Water Resources Specialist; Ag Programs Specialist; Outreach and Education Specialist	\$67
Resource Conservationist I; Finance and Accounting Specialist	\$72
Resource Conservationist II	\$77
District Manager	\$85

3.3 Time of Payment. The LMRWD shall make payment to SSWCD within sixty (60) days of the date on which an itemized invoice is received. If the invoice is incorrect, defective, or otherwise improper, the LMRWD will notify The SSWCD within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from the SSWCD, the LMRWD will make payment within thirty-five (35) days.

3.4 Payment for Unauthorized Claims. The LMRWD may refuse to pay any claim that is not specifically authorized by this Contract. Payment of a claim shall not preclude the LMRWD from questioning the propriety of the claim. The LMRWD reserves the right to offset any overpayment or disallowance of claim by reducing future payments.

3.5 Payment Upon Early Termination. In the event this Contract is terminated before the completion of services, the LMRWD shall pay to the SSWCD, for services provided in a satisfactory manner, a sum based upon the actual time spent at the rates stated in paragraph 3.2. In no case shall such payment exceed the total contract price.

4. COMPLIANCE WITH LAWS/STANDARDS

4.1 General. Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which Contractor is responsible.

4.2 Minnesota Law to Govern. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Contract shall be venued in the State of Minnesota, County of Scott.

5. INDEPENDENT CONTRACTOR STATUS

The SSWCD is an independent contractor and nothing herein contained shall be construed to create the relationship of employer and employee between LMRWD and the SSWCD. The SSWCD shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services. The SSWCD shall have discretion as to working methods, hours and means of operation. The SSWCD acknowledges and agrees that the SSWCD is not entitled to receive any of the benefits received by LMRWD employees and is not eligible for workers' or unemployment compensation benefits. The SSWCD also acknowledges and agrees that no withholding or deduction for state or federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due the SSWCD and that it is the SSWCD's sole obligation to comply with the applicable provisions of all federal and state tax laws.

6. SUBCONTRACTING

6.1 The parties shall not enter into any subcontract for the performance of the services contemplated under this Contract nor assign any interest in the Contract without prior written consent of all parties and subject to such conditions and provisions as are deemed necessary. The subcontracting or assigning party shall be responsible for the performance of its subcontractors or assignees unless otherwise agreed.

6.2 Any subcontractor approved by the LMRWD will be required to provide proof of insurance to the LMRWD in coverage and amount the same as the SSWCD. Prior to or concurrent with execution of this Contract, the SSWCD shall file certificates or certified copies of its subcontractor(s)' policies of insurance with the LMRWD. All fees for services and all job supervision will remain the obligation of the SSWCD.

6.3 The SSWCD agrees to pay any subcontractor within ten (10) days of the SSWCD's receipt of payment from the LMRWD for undisputed services provided by the subcontractor. The SSWCD agrees to pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

7. INDEMNIFICATION

Each party to this Contract shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Each party hereby agrees to indemnify, hold harmless and defend the other, its officers, employees or agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the other party, its officers, employees or agents, may sustain, incur or be required to pay, arising out of or by reason of any act or omission of the party, its officers, employees or agents, in the execution, performance, or failure to adequately perform its obligations pursuant to this Contract. Minn. Stat. Ch. 466 and other applicable laws shall govern the liability of the LMRWD.

8. INSURANCE

8.1 General Terms. At its own expense and in order to protect the SSWCD and to protect the LMRWD under the indemnity provisions set forth above, The SSWCD shall procure and maintain policies of insurance covering the term of this Contract, as set forth in the Insurance Terms, unless waived or amended by the LMRWD in writing.

8.2 Certificates. Prior to or concurrent with execution of this Contract, the SSWCD shall file certificates or certified copies of such policies of insurance with the LMRWD.

8.3 Failure to Provide Proof of Insurance. The LMRWD may withhold payments or immediately terminate this Contract for failure of the SSWCD to furnish proof of insurance coverage or to comply with the insurance requirements as stated above.

9. FORCE MAJEURE

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, acts of public authorities, or delays or defaults caused by public carriers; provided the defaulting party gives notice as soon as possible to the other party of the inability to perform.

10. OWNERSHIP, COPYRIGHTS AND FUTURE USE OF WORK PRODUCT

Upon the completion of this Contract, all work product, data compilations, and materials of any kind, regardless of the format in which they exist will become the sole and exclusive property of the LMRWD. The SSWCD, at the request of the LMRWD, shall execute any necessary documents to transfer ownership rights to the LMRWD. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time, actually or constructively reduced to practice by the SSWCD or its employees or agents in the course of or in connection with this Contract, the SSWCD shall immediately give the LMRWD's authorized representative written notice and complete information thereof.

In all publications or press releases or presentations to the public where data collected or compiled in the performance of this contract is disseminated. The SSWCD shall acknowledge funding by the LMRWD for all or part of the costs of making such information available to the public.

11. TERMINATION

Either party may terminate this Contract for cause by giving seven (7) days' written notice or without cause by giving thirty (30) days' written notice, of its intent to terminate, to the other party. Such notice to terminate for cause shall specify the circumstances warranting termination of the Contract. Cause shall mean a material breach of this Contract and any supplemental agreements or amendments thereto. This Contract may also be terminated by the LMRWD in the event of a default by the SSWCD. In the event this Contract is terminated for cause, the SSWCD shall be entitled to payment determined on a pro rata basis for work or services satisfactorily performed. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. Termination of this Contract shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination.

12. CONTRACT RIGHTS/REMEDIES

12.1 Rights Cumulative. All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

12.2 Waiver. Waiver for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification for the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the LMRWD and the SSWCD.

13. AUTHORIZED REPRESENTATIVES

The following named persons are designated the authorized representatives of parties for purposes of this Contract. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to the LMRWD, the authorized representative shall have only the authority specifically or generally granted by the Board. Notification required to be provided pursuant to this Contract shall be provided to the following named persons and addresses unless otherwise stated in this Contract, or in a modification of this Contract.

To the SSWCD:

Rob Casey, Chair
Scott Soil and Water Conservation District
7151 W. 190th Street, Suite 125
Jordan, MN 55352
Telephone: (952) 492-5425

To the LMRWD:

Jesse Hartmann, Chair
Lower Minnesota River Watershed District
112 E 5th Street
Chaska, MN. 55318
(952) 856-5880

14. LIAISON

To assist the parties in the day-to-day performance of this Contract and to define services, ensure compliance and provide ongoing consultation, a liaison shall be designated by the SSWCD and the LMRWD. The parties shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Contract, the following persons are the designated liaisons:

SSWCD Liaison:

Troy Kuphal, District Director
Scott Soil and Water Conservation District
7151 W. 190th Street, Suite 125
Jordan, MN 55352
Telephone: (952) 492-5425

LMRWD Liaison:

Linda Loomis, Administrator,
Lower MN River Watershed District
6677 Olson Memorial Highway
Golden Valley, MN 55427
763-545-4659

15. MODIFICATIONS

Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, signed by authorized representatives of the LMRWD and SSWCD.

16. SEVERABILITY

The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

17. MERGER

17.1 Final Agreement. This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

17.2 Attachments. Attachment 1 attached and incorporated herein by reference.

- Attachment 1 – 2021 STATEMENT OF WORK

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

FOR LOWER MINNESOTA RIVER WATESHED DISTRICT

By: _____
Board Chair

Date: _____

FOR SCOTT SOIL AND WATER CONSERVATION DISTRICT

By: _____
Rob Casey, Board Chair

Date: _____

ATTACHMENT 1: 2021 STATEMENT OF WORK

This Statement of Work (SOW) is made pursuant to and governed by the approved 2021 Contract for Services between Lower Minnesota Watershed District (“LMRWD”) and Scott Soil & Water Conservation District (SSWCD), and defines the specific monitoring, education, technical assistance, and other related services the SSWCD will provide to the LMRWD in connection with said Contract for Services.

Task I. **Monitoring (\$29,400)**

Scope of Work

The SSWCD will assist the LMRWD with planning and implementing its water quality, thermal and well monitoring programs.

A. Eagle Creek Water Quality and Flow Monitoring (\$7,600)

- Collect monthly base-flow samples and storm event composite samples
- Deliver samples to the MCES lab
- Maintain and calibrate sonde
- Collect flow measurements
- Log, process and complete QA/QC of data

B. Eagle Creek Thermal Monitoring (\$2,900)

- Collect data from loggers
- Data management and analysis
- Maintain sites and equipment
- Includes continuing monitoring per approved 2018 project proposal

C. Eagle Creek –Chlorides Monitoring (\$7,400)

- Bi-weekly and event grab samples
- Lab analysis costs
- Data management and analysis
- Includes continuing monitoring per approved 2018 project proposal

D. Water Quality and Flow – Dean Lake (\$6,900)

- Collect monthly base-flow samples and storm event composite samples
- Deliver samples to the MCES lab
- Maintain and calibrate sonde
- Collect flow measurements
- Log, process and complete QA/QC of data

E. Well Monitoring (\$2,300)

- Collect depth-to-water readings monthly
- Enter data into DNR database
- Maintain sites and well monitoring equipment

F. Reporting (\$2,300)

- Prepare written annual data and analysis report for all monitoring
- Prepare and deliver summary presentation
- Prepare and present proposed work plan and budget

Task II. Technical Assistance and Cost Share (\$6,200)

Scope of Work

The SWCD will provide technical and cost share assistance to landowners within the DISTRICT in support of implementation of conservation behaviors and best management practices that reduce soil erosion, decrease runoff volume, and improve water quality. The SWCD will assist landowners who contact the SWCD directly or who are referred by the DISTRICT for conservation program information and/or technical assistance. Cost share may be provided for projects that meet eligibility and other relevant criteria in accordance with the SSWCD's cost share program policy docket, subject to available funding.

A. Technical Assistance (\$4,000)

- a) Project Scoping and Pre-Approval
 - Meet with landowners to clarify goals and interests
 - Conduct preliminary off- and/or on-site research
 - Determine project feasibility and eligibility
- b) Project Development
 - Complete technical assessment
 - Collect and submit soil samples for nutrient analysis, when applicable
 - Conduct topographic surveys if necessary
 - Meet with landowner to finalize decisions and secure commitments
 - Prepare technical and environmental assessments
 - Prepare concept plans and cost estimates
- c) Administrative Activities
 - Prepare and process contract applications, fact sheets, and payment vouchers
 - Prepare and send letters of decision (approval or denial)
 - Prepare and issue cost share checks, upon certified completion
 - Track and report budget activity
 - Project/file close out
- d) Design Activities
 - Conduct surveys
 - Prepare and review designs, specifications, and final cost estimates (or coordinate same if engineering services are outsourced)
 - Apply for/secure applicable permits
 - Prepare Operation and Maintenance agreements
 - If requested submit design packet to the DISTRICT for review prior to construction
- e) Construction Activities
 - Coordinate and lead pre-construction meetings
 - Stake projects
 - Inspect/supervise construction
 - Prepare as-built drawings
 - Provide construction certification
- f) Cost share
 - This is pass-through for landowners that install practices (\$2200)
 - Stake projects
 - Inspect/supervise construction
 - Prepare as-built drawings
 - Provide construction certification

B. Cost Share (\$2,200)

- a) This is pass-through to cooperators that install conservation practices
- b) Advance cost share application approval and final construction certification is required in accordance with SWCD cost share policies

Task III. Education and Outreach (\$4,100)

Scope of Work

The SWCD will provide various educational programming services, as described below.

A. Raingarden Workshop

The SWCD will plan, coordinate and host one Blue Thumb workshop

- Plan and prepare workshop details in coordination with the WMO, PLSLWD and Cities of Prior Lake and Savage
- Develop promotional and informational materials and resources
- Plan and implement media marketing/promotion plan
- Coordinate and manage registrations and venue set-up and take-down
- Prepare and present information
- Post-workshop review and follow up with landowners

B. SCWEP Activities

The SWCD will plan, coordinate and execute events and activities as identified in the 2017 Scott Clean Water Education Program (SCWEP) work plan. These services have multi-jurisdictional benefit and are supported by funding contributions by all SCWEP partners.

C. Other Education Activities

The SWCD will help provide support and assistance with other education efforts as may be requested by the District, including but not limited to developing education and promotion materials and assisting with special event planning and coordination.

Task IV. Other Services (\$750)

Scope of Work

The SWCD will provide the following and technical services on an as-needed basis:

- Provide consultation on activities related to soil and water resources within the LMRWD
- Conduct or assist with LMRWD compliance reviews
- Review development plans for compliance with LMRWD standards
- Conduct construction inspections and oversight to ensure compliance with LMRWD standards
- Assist with surveys, construction supervision, and/or project management for capital improvement projects
- Conduct or assist with inventory and/or mapping projects
- Assist with monitoring plan development
- Attend LMRWD-sponsored meetings, including but not limited to Board and TAC meetings
- Assist with development of plans, including but not limited to Comprehensive Water Resources Management Plan and TMDL Implementation Plans
- Assist with planning and development of LMRWD cost share program
- Other services as may be requested