



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, August 17, 2022

### **Agenda Item**

**Item 4. G. - Grant Agreement Terms & Conditions for Monitoring Ike's Creek between Minnesota Valley Refuge Friends and the LMRWD**

### **Prepared By**

Linda Loomis, Administrator

### **Summary**

The LMRWD and the US Fish and Wildlife Service (USFWS) wished to establish a baseline for chloride pollution in Ike's Creek located within the MN Valley Wildlife Refuge. The Metropolitan Council Environmental Services (MCES) was contacted to conduct monitoring and a monitoring program was established, with an agreement between MCES and the LMRWD. USFWS wished to assist financially and contacted it's Friend of the Refuge. Minnesota Valley Refuge Friends (Friends) received a grant from Cargill and wished to use the grant to fund the monitoring. The attached agreement between the Friends and the LMRWD acknowledges the arrangement whereby, MCES will invoice the LMRWD for monitoring services and the LMRWD will invoice the Friends. The LMRWD is responsible for payment to MCES, and the Friends reimburses the LMRWD.

This agreement replaces an agreement which expired on December 31, 2021.

### **Attachments**

Grant Agreement Terms & Conditions for Monitoring Ike's Creek between Minnesota Valley Refuge Friends and the LMRWD

Intergovernmental Agreement Between the Metropolitan Council and the Lower Minnesota River Watershed District Amendment Number One to Contract for Services (Metropolitan Council Contract No. 20R030)

### **Recommended Action**

Motion to approve Grant Agreement Terms & Conditions for Monitoring Ike's Creek between Minnesota Valley Refuge Friends and the LMRWD and authorize execution

## **GRANT AGREEMENT TERMS & CONDITIONS FOR MONITORING IKE'S CREEK**

This agreement, made and entered into this 01 day of August 2022, by and between the Lower Minnesota River Watershed District, a public body with purposes and powers set forth in Minnesota Statutes Chapters 103B and 103D, hereafter referred to as the "LMRWD" and the Minnesota Valley Refuge Friends, a 501(c)(3) nonprofit corporation, organized under Minnesota statutes Ch. 317A, hereinafter referred to as the "Friends."

**1. Purpose.** The Friends and the LMRWD desire to undertake regular professional water chemistry monitoring program to characterize chloride pollution in Ike's Creek, including sample collection, laboratory analysis and data review and validation. The Metropolitan Council has agreed to provide monitoring program services as described in an Intergovernmental Agreement between the Metropolitan Council and the LMRWD (Attachment 1). This grant ("Agreement") provides financial support for these program services as described below (hereinafter "Program").

**2. Total Award.** The total amount of grant funds awarded is \$16,465.00

**3. Term.** The period of performance is from January 19, 2021 through July 31, 2023, unless terminated earlier.

### **4. Workplan.**

a. The Program as described in the Intergovernmental Agreement Between the Metropolitan Council and the LMRWD (Attachment 1) and as it relates to this Agreement consists of collecting water samples and analyzing samples for chloride, temperature, specific conductance, calcium, magnesium, hardness, sulfate and alkalinity in Ike's Creek; and,

b. The Program will be completed by the Metropolitan Council; and

c. The LMRWD will comply with all of the terms and conditions of the Intergovernmental Agreement Between the Metropolitan Council and the LMRWD (Attachment 1).

**5. Payment & Use of Funds.** The Friends shall reimburse the LMRWD actual allowed costs related to the Program, not to exceed \$16,465.00. Reimbursements shall be made within thirty (30) days after receipt of invoices documenting incurred expenses. Grant funds will be used exclusively to support the project as described in the approved Workplan.

## **6. Liability & Indemnification.**

a. Neither party, its officers, agents or employees, either in their individual or official capacity, shall be responsible or liable in any manner to the other party for any claim, demand, action or cause of action of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of the described work by the other party, or arising out of the negligence of any contractor under any contract let by the other party for the performance of said work; and each party agrees to defend, save, keep and hold harmless the other, its officers, agents and employees from all claims, demands, actions or causes of actions arising out of the negligent performance by its officers agents or employees.

b. It is further agreed that neither party to this Agreement shall be responsible or liable to the other or to any other person or entity for any claims, damages, actions, or causes of actions of any kind or character arising out of, allegedly arising out of or by reason of the performance, negligent performance or nonperformance of any work or part hereof by the other as provided herein; and each party further agrees to defend at its sole cost and expense and indemnify the other party for any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising in connection with or by virtue of performance of its own work as provided herein. Each party's obligation to indemnify the other under this clause shall be limited in accordance with the statutory tort liability limitation as set forth in Minnesota Statutes Chapter 466 to limit each party's total liability for all claims arising from a single occurrence, include the other party's claim for indemnification, to the limits prescribed under section 466.04. It is further understood and agreed that the Parties' total liability shall be limited by Minnesota Statutes Chapter 471.59, Subdivision 1a, as a single governmental unit.

**7. No Agency.** It is further agreed that any and all employees of each party and all other person engaged by a party in the performance of any work or service required or provided herein to be performed by the party shall not be considered employees, agents or independent contractors of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensations Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged shall be the sole responsibility of the employing party and shall not be the obligation or responsibility of the other party.

**8. Civil Rights & Discrimination.** The provisions of Minnesota Statute Chapter 181.59 and of any applicable local ordinance relating to Civil Rights and discrimination shall be considered a part of this Agreement as though fully set forth herein, including Exhibit B, which is attached and hereby incorporated.

**9. Records Retention.** Pursuant to Minnesota Statutes Chapter 16C.05, Subdivision 5, the books, records, documents and accounting procedures and practices of the LMRWD and the City pursuant to the Agreement shall be subject to examination by the LMRWD, the City and the State Auditor. Complete and accurate records of the work performed pursuant to this Agreement shall be kept by the LMRWD and the City for a minimum of six (6) years following termination of this Agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action involving the LMRWD or the City regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the LMRWD or the City notifies each party in writing that the records no longer need to be kept.

**10. Choice of Law, Jurisdiction & Venue.** The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder shall be those courts located within the County of Scott, State of Minnesota. Litigation, however, in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

**11. Severability.** In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non enforceability would cause the Agreement to fail its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

**12. Notices.** Any notice or demand, authorized or required under this Agreement shall be in writing and shall be sent by certified mail to the other party as follows:

Lower Minnesota River Watershed District Linda Loomis, Administrator, their successors or assigns 112 East Fifth Street, Suite #102 Chaska, MN 55318

To the Friends: Minnesota Valley Refuge Friends, Alison Schaub, Executive Director, their successors or assigns 3815 American Boulevard East Bloomington, MN 55425

**13. No Pledge.** This Agreement does not create any pledge or any commitment by the Friends to make any other grants or additional grants or contributions to LMRWD or to any other person or entity for this or any other project.

**14. Publicity & Acknowledgments.** LMRWD will notify Friends of any publications or other media coverage resulting from the grant at least 5 days in advance of distribution or publication. LMRWD agrees to acknowledge Friends' support in the publication (including film and electronic publications) referring to or resulting from this grant, as follows: "Supported (in part] by a grant from Minnesota Valley Refuge Friends," LMRWD also agrees that the Friends may include information about LMRWD and these activities in reports and may distribute information to others.

**15. Entirety & Amendment.** This document contains the complete agreement between the parties and supersedes any prior oral or written agreements or warranties between the Parties. No other agreement, amendment, representation or understanding will be binding on the parties unless made in writing by mutual consent of both parties.

**16. Assignability.** This Agreement may not be assigned without the express written consent of the Friends. If the Agreement is assigned, all provisions of the Agreement will be binding on the successors or assigns.

**17. Termination.** Either party may terminate this agreement with 60 days written notice. If this Agreement is terminated then Friends agrees to reimburse LMRWD for any allowable, eligible expenses incurred through the date of termination.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers as of this day and year first above written.

Lower Minnesota Watershed District	Minnesota Valley Refuge Friends
President:	President:
Date:	Date:

Approved as to form and execution:	Executive Director:
District Counsel:	Date:



**METROPOLITAN COUNCIL**  
**390 North Robert Street, St. Paul, MN 55101-1805**  
**(651) 602-1000**

**AMENDMENT NUMBER ONE**  
to  
**CONTRACT FOR SERVICES**  
**Metropolitan Council Contract No. 20R030**

**Lower Minnesota Watershed District (“DISTRICT”)** and the **Metropolitan Council (“COUNCIL”)** agree that the contract referenced above, with a commencement date of January 19, 2021 and entered into on March 19, 2021, relating to water chemistry monitoring in the contract titled Intergovernmental Agreement Between The Metropolitan Council and The Lower Minnesota Watershed District is amended in the following particulars:

**1. Section II, Subsection 2.01 Monitoring Program**

Delete and replace subpoint “c” with the following:

c. **Monitoring Program Plan**

The Council will collect approximately 96 samples between the commencement of this agreement through July 31, 2023, including bi-weekly routine grab samples and thaw/event samples (samples collected after two days with daily temperatures above 32 degrees Fahrenheit) as conditions permit. The parties understand that the actual number of thaw/event samples is contingent on weather.

The Council will analyze samples for temperature and specific conductance in situ and chloride, calcium, magnesium, hardness, sulfate and alkalinity in the laboratory.

The Council will review and validate the data, publish the data on Environmental Information Management System (EIMS) website and provide a spreadsheet of final data to the District.

**2. Section II, Subsection 2.01 Monitoring Program**

Delete and replace subpoint “d” with the following:

d. **Program Costs**

i. **Labor.** Council Water Resources staff labor will be billed at Council's cost for the services in this Section II with a not to exceed amount of \$11,185.00 for sample collection and delivery and not to exceed \$1,200.00 for data review and validation.

ii. **Samples.** All samples will be analyzed by Council Laboratory Services for \$55.00 per sample.

<b>Analyte</b>	<b>Analysis Code</b>	<b>Cost per Analysis</b>
Chloride	CL-AV	<b>\$15.75</b>
Ca, Mg, Hardness	HARD-OESV	<b>\$12.00</b>
Sulfate	SO4-ICV	<b>\$13.50</b>
Alkalinity	ALK-AV	<b>\$13.50</b>

Total program costs will not exceed \$16,465.00 for labor and sample analysis for services expressly stated this Section II. The parties by written amendment, signed by authorized representatives, may amend this agreement to add or change services.

**3. Section II, Subsection 2.03 Council Responsibilities**

Delete and replace subpoint "d" with the following:

- d. collect final sample on or about 04/30/2023, and

**4. Section II, Subsection 2.03 Council Responsibilities**

Delete and replace subpoint "e" with the following:

- e. provide reviewed and validated data on or about 07/21/2023.

**5. Section IV, Subsection 4.01 Period of Performance**

Delete and replace Subsection 4.01 with the following:

**4.01 Period of Performance.** The services of the Council will commence on 01/19/2021, and will terminate on 07/31/2023, or following work completion and payment, whichever occurs first.

**6. Attachment**

**After Attachment U.S. Fish and Wildlife Service Permit #: 32590-21-01, ADD the following:**


"Attachment: U.S. Fish and Wildlife Service Permit #: 32590-21-01 expires December 30, 2021. A new permit for post December 30, 2021 access ("New Permit") is anticipated to be issued by the U.S. Fish and Wildlife Service in December 2021. Once issued, New Permit is hereby incorporated by reference and made a part of this Agreement. The parties understand and agree that New Permit is required for performance of part or all of the services.

Except as amended hereby, the provisions of the above-referenced contract shall remain in force and effect without change.

**IN WITNESS WHEREOF**, the parties have caused this amendment to be executed by their duly authorized officers on the dates set forth below.

**LOWER MINNESOTA WATERSHED DISTRICT**

**METROPOLITAN COUNCIL**

By:   
Signer

By: *Sam Paske*  
Sam Paske (Dec 7, 2021 10:39 CST)  
Signer

Jesse J. Hartmann  
(Please print name legibly)

Sam Paske  
(Please print name legibly)

Its: President

Its: Assistant General Manager, Env Services

Date: October 20, 2021

Date: Dec 7, 2021





**METROPOLITAN COUNCIL**  
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**METROPOLITAN COUNCIL**

By:

  
\_\_\_\_\_  
Signer

By:

Sam Paske  
Sam Paske (Dec 7, 2021 10:39 CST)  
\_\_\_\_\_  
Signer

Jesse J. Hartmann  
\_\_\_\_\_  
(Please print name legibly)

Sam Paske  
\_\_\_\_\_  
(Please print name legibly)

Its:

\_\_\_\_\_  
President

Its:

\_\_\_\_\_  
Assistant General Manager, Env Services

Date:

\_\_\_\_\_  
October 20, 2021

Date:

\_\_\_\_\_  
Dec 7, 2021