



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, August 21, 2024

### **Agenda Item**

#### **Item 7. H. \_ Study Area #3**

#### **Prepared By**

Linda Loomis, Administrator

#### **Summary**

The LMRWD is working with the City of Eden Prairie to subdivide and rezone the property the LMRWD purchased to construct the project. The City has requested that the LMRWD organize a meeting with the neighborhood and provided the LMRWD with a mailing list. The LMRWD previously held a meeting with the neighborhood in October 2022, so this will be an update.

The US Army Corps of Engineers (USACE) has requested that the LMRWD conduct archeology field work. 106 Group has provided us with a scope of work required by the USACE, which was approved by the administrator. 106 Group has provided the LMRWD with a Professional Services Agreement to be executed to begin the work.

The LMRWD has received the permits required by the MN Department of Natural Resources that are necessary for the project.

#### **Attachments**

Professional Services Agreement between Lower Minnesota River Watershed District and 106 Group LTD. (PSA)

#### **Recommended Action**

Motion to approve PSA and authorize execution by LMRWD President

**PROFESSIONAL SERVICES AGREEMENT BETWEEN LOWER MINNESOTA RIVER WATERSHED DISTRICT  
AND 106 GROUP LTD**

This Agreement is entered into between the Lower Minnesota River Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (“LMRWD”), and 106 Group LTD (“CONSULTANT”). In consideration of the mutual terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, LMRWD and CONSULTANT agree as follows:

**SERVICES**

CONSULTANT will perform work described in Work Orders that may be authorized by the LMRWD from time to time during the term of this Agreement (hereinafter, “the Services”). A Work Order will specify tasks to be performed and, when applicable, the location of the work to be performed. A Work Order issued by the LMRWD under the terms of this Agreement will be incorporated into this Agreement and binding on CONSULTANT as a term hereof. The LMRWD, at its discretion, in writing, may suspend work immediately or amend the Services to delete any task or portion thereof. Authorized work by CONSULTANT on a task deleted or modified by the LMRWD will be compensated in accordance with Paragraph 6.

**INDEPENDENT CONTRACTOR**

CONSULTANT is an independent contractor under this Agreement. CONSULTANT will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute CONSULTANT as the agent, representative or employee of the LMRWD in any manner. Personnel performing the Services on behalf of CONSULTANT or a subcontractor will not be considered employees of the LMRWD and are not entitled to any compensation, rights or benefits of any kind from the LMRWD.

**SUBCONTRACT AND ASSIGNMENT**

CONSULTANT will not assign, subcontract or transfer any obligation or interest in this Agreement or any of the Services without the written consent of the LMRWD and pursuant to any conditions included in that consent. Written consent to any subcontracting will not relieve CONSULTANT from its responsibility to perform the Services or any part thereof, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services. CONSULTANT will incorporate this Agreement in any assignment, subcontract or transfer agreement.

## **DUTY OF CARE AND INDEMNIFICATION**

CONSULTANT will perform the Services in accordance with due professional care. CONSULTANT will indemnify, defend and hold harmless the LMRWD, its officers, board members, employees and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of CONSULTANT's or a subcontractor's professional negligence or other action or inaction by CONSULTANT or a subcontractor that is the basis for CONSULTANT's or the subcontractor's liability in law or equity.

The LMRWD will indemnify, defend and hold harmless CONSULTANT, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any action or inaction by the LMRWD that is the basis for the LMRWD's liability in law or equity.

## **COMPENSATION**

The LMRWD will compensate CONSULTANT for the Services on an hourly basis in accordance with the fee schedule attached to and incorporated into this Agreement as Exhibit A with a rate escalation of no greater than 3% each calendar year. Invoices are to be submitted monthly for work performed under a Work Order during the preceding month. Payment for undisputed work is due within 30 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the LMRWD Administrator. Subcontractor fees and subcontractor direct costs incurred by CONSULTANT will be reimbursed by the LMRWD at the rate specified in the LMRWD's written approval of the subcontract arrangement.

The Services will be performed at the rates specified in Exhibit A. The total payment for the Services specified under a Work Order will not exceed the total payment specified in the Work Order in accordance with Exhibit A. In each case, total payment includes all sums paid whatsoever, including but not limited to fees, reimbursement of direct costs and reimbursement for subcontract costs.

The LMRWD will not make final payment until CONSULTANT has provided proof of compliance with state income tax withholding requirements pursuant to Minnesota Statutes § 270C.66.

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

## **TERM AND TERMINATION**

This Agreement is effective when fully executed by the parties and remains in force until June 30, 2026, unless earlier terminated as set forth herein.

The LMRWD or CONSULTANT may terminate this Agreement, at its convenience, by a written termination notice stating specifically what prior authorized or additional services CONSULTANT is to complete. CONSULTANT will receive full compensation for all authorized work performed, except that CONSULTANT

will not be compensated for any part performance of a specified task if termination is due to CONSULTANT's breach of this Agreement. Upon termination, the CONSULTANT will turn over all working and archived files to the LMRWD, and agrees to cooperate with the LMRWD in any transition.

## WAIVER

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this Agreement, or to exercise any option, remedy or right herein, does not waive or relinquish the party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this Agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary the party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this Agreement, the LMRWD waives no immunities in tort. This Agreement creates no rights in and waives no immunities, defenses or limitations on liability with respect to CONSULTANT or any third party.

## INSURANCE

At all times during the term of this Agreement, CONSULTANT will have and keep in force the following insurance coverages:

General: \$1.5 million each occurrence and aggregate, covering both CONSULTANT's work and completed operations on an occurrence basis and including contractual liability.

Professional liability: \$1.5 million each claim and aggregate; coverage may be on a claims-made basis, in which case CONSULTANT must maintain the policy for, or obtain extended reporting period coverage extending, at least three (3) years from completion of the Services.

Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.

Workers' compensation: in accordance with legal requirements applicable to CONSULTANT.

The liability insurance coverage required of CONSULTANT shall name LMRWD as an additional insured with primary coverage on a noncontributory basis for the task orders covered by this agreement. As an alternative to the minimum coverage listed above for professional, general and automobile liability, CONSULTANT may place an umbrella or excess liability policy in an amount of at least \$2,000,000 that follows the underlying professional, general and automobile liability policies.

CONSULTANT will not commence work until it has filed with LMRWD a certificate of insurance clearly evidencing the required coverages and naming LMRWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing coverage for CONSULTANT's work and completed operations as primary coverage on a noncontributory basis. The certificate will name LMRWD as a holder and will state that LMRWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as CONSULTANT.

## COMPLIANCE WITH LAWS

CONSULTANT will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services, and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, CONSULTANT 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 or 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.

## MATERIALS

All materials obtained or generated by CONSULTANT in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized, are the property of the LMRWD where specified as “works for hire” in the Task Order. If specified as works for hire, CONSULTANT hereby assigns and transfers to the LMRWD all right, title and interest in: (a) its copyright, if any, in the materials; any registrations and copyright applications relating to the materials; and any copyright renewals and extensions; (b) all works based on, derived from or incorporating the materials; and (c) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and all causes of action in law or equity for past, present or future infringement based on the copyrights. CONSULTANT agrees to execute all papers and to perform such other proper acts as the LMRWD may deem necessary to secure for the LMRWD or its assignee the rights herein assigned. LMRWD makes no claim upon instruments of service obtained, produced or generated by CONSULTANT except as described below.

The LMRWD may immediately inspect, copy or take possession of any materials on written request to CONSULTANT. On termination of the agreement, CONSULTANT may maintain a copy of some or all of the materials, except for any materials designated by the LMRWD as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT only pursuant to written agreement with the LMRWD specifying terms.

The LMRWD acknowledges that the CONSULTANT's plans and specifications and other work products are instruments of professional services. Nevertheless, in the event of termination of this Agreement, plans and specifications and other documents such as permit files, engineering reports and other materials connected with CONSULTANT's services to the LMRWD shall become the property of the LMRWD. The LMRWD agrees to hold harmless, indemnify and defend the CONSULTANT against all damages, claims; expenses and losses arising out of its reuse of work products without CONSULTANT's written authorization.

## **DATA PRACTICES; CONFIDENTIALITY**

If CONSULTANT 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) CONSULTANT possesses or has created as a result of this agreement, it will inform the LMRWD immediately and transmit a copy of the request. If the request is addressed to the LMRWD, CONSULTANT will not provide any information or documents, but will direct the inquiry to the LMRWD. If the request is addressed to CONSULTANT, CONSULTANT 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 the LMRWD and its legal counsel before replying. Nothing in the preceding sentence supersedes CONSULTANT's obligations under this agreement with respect to protection of LMRWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that CONSULTANT is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

CONSULTANT agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by the LMRWD and so denominated by the LMRWD. CONSULTANT will not use any such materials for any purpose other than performance of the Services without LMRWD's written consent. This restriction does not apply to materials already possessed by CONSULTANT or that CONSULTANT received on a non-confidential basis from the LMRWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, CONSULTANT retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any CONSULTANT warranty under this agreement does not extend to any party other than the LMRWD or to any use of the materials by the LMRWD other than for the purpose(s) for which CONSULTANT is compensated under this agreement.

## **PROPERTY OF LMRWD**

All property furnished to or for the use of CONSULTANT or a subcontractor by the LMRWD and not fully used in the performance of the Services, including but not limited to, equipment, supplies and materials, both hard copy and electronic, remains the property of the LMRWD and will be returned to the LMRWD at the conclusion of the performance of the Services, or sooner if requested by the LMRWD. CONSULTANT further agrees that any proprietary materials of the LMRWD are the exclusive property of the LMRWD and will assert no right, title or interest in the materials. CONSULTANT will not disseminate, transfer or dispose of any proprietary data to any other person or entity unless specifically authorized in writing by the LMRWD. Any property supplied to CONSULTANT by the LMRWD or deriving from the LMRWD is supplied to and accepted by CONSULTANT as without LMRWD representation or warranty, including, but not limited to, a warranty of fitness, merchantability, accuracy or completeness. However, CONSULTANT's duty of professional care under paragraph 4, above, does not extend to materials provided to CONSULTANT by the LMRWD or any portion of the Services that is inaccurate or incomplete as the result of CONSULTANT's reliance on those materials.

## CONTINUATION OF OBLIGATION

It is understood and agreed that insurance obligations; duties of care and obligations to defend, indemnify and hold harmless; and document retention requirements will survive completion of the Services and the term of this Agreement.

## NOTICES

Any written communication required under this Agreement to be provided in writing will be directed to the other party as follows:

To LMRWD:

Linda Loomis, Administrator  
Lower Minnesota River Watershed District  
Naiad Consulting, LLC  
6677 Olson Memorial Highway  
Golden Valley, MN 55427  
Email: [naiadconsulting@gmail.com](mailto:naiadconsulting@gmail.com)

Della Young, PMP, CPESC  
Young Environmental Consulting Group, LLC  
6040 Earle Brown Drive, Suite 306  
Brooklyn Center, Minnesota 55430  
Email: [della@youngecg.com](mailto:della@youngecg.com)

To 106 Group LTD:

K. Anne Ketz, CEO & Services Director  
106 Group LTD  
550 Vandalia Street, Suite 102  
St. Paul, MN 55114  
[anneketz@106Group.com](mailto:anneketz@106Group.com)

Either of the above individuals may in writing designate another individual to receive communications under this Agreement.

**CHOICE OF LAW, VENUE AND JURISDICTION**

This Agreement will be construed under and governed by the laws of the State of Minnesota. Venue and jurisdiction for any action under this Agreement will lie in Carver County.

**WHOLE AGREEMENT**

The entire agreement between the two parties is contained herein and this Agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this Agreement is valid only when reduced to writing as an amendment to the Agreement and signed by the parties hereto. The LMRWD may amend this Agreement only by action of the Board of Managers acting as a body.

**TIME IS OF THE ESSENCE**

Time is of the essence in the fulfillment of the terms of this Agreement.

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto execute and deliver this Agreement.

106 GROUP LTD

LOWER MINNESOTA RIVER

WATERSHED DISTRICT

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_





# 106 Group-2024

## Hourly Rate Schedule

<b>Category</b>	<b>Full Rate</b>
Professional 8	\$217.00
Professional 7	\$210.00
Professional 6	\$177.00
Professional 5	\$154.00
Professional 4	\$141.00
Professional 3	\$112.00
Professional 2	\$91.00
Professional 1	\$75.00
Tech 4	\$80.00
Tech 3	\$68.00
Tech 2	\$60.00
Tech 1	\$51.00