



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, January 15, 2025

Agenda Item

Item 5. J. – Authorize Execution of Joint Power Agreement between Dakota County SWCD and LMRWD for monitoring, educational and technical assistance services

Prepared By

Linda Loomis, Administrator

Summary

At the December 11, 2024 Board of Manager meeting, the Board approved the scope of work to be performed in 2025 by the Dakota County Soil & Water Conservation District (SWCD) on behalf of the LMRWD. The agreement is attached and it is recommended that the Board authorize the President to sign the agreement.

Attachments

Joint Power Agreement Between the Dakota County Soil & Water Conservation District and the Lower Minnesota River Watershed District for monitoring, Educational and Technical Assistance Services

Recommended Action

Motion to authorize execution of the above referenced agreement

**JOINT POWERS AGREEMENT BETWEEN
THE DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT AND
THE LOWER MINNESOTA RIVER WATERSHED DISTRICT
FOR EDUCATIONAL AND TECHNICAL ASSISTANCE SERVICES**

THE PARTIES TO THIS AGREEMENT are the Dakota County Soil and Water Conservation District (SWCD) and the Lower Minnesota River Watershed District (LMRWD), both political subdivisions of the State of Minnesota and “governmental units” as that term is defined in Minn. Stat. § 471.59. This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. § 471.59.

NOW THEREFORE, the parties, in joint and mutual exercise of their powers, agree as follows:

1. **PURPOSE.** This Agreement will define the responsibilities and obligations of the SWCD and the LMRWD for educational and technical assistance services to be provided by the SWCD to the LMRWD as more fully described herein and LMRWD’s contributions toward SWCD cost share projects.
2. **TERM.** Notwithstanding the dates of signatures of the parties, this Agreement shall be in effect as of January 1, 2025 and shall remain in effect until December 31, 2025, or until completion by the parties of their respective obligations under this Agreement, whichever occurs first, unless earlier terminated by law or according to the provisions of this Agreement.
3. **SCOPE OF SERVICES.** SWCD agrees to provide LMRWD with educational and technical assistance as expressed in the *2025 Dakota County SWCD Work Plan and Budget for Lower Minnesota River Watershed District* attached and incorporated into this Agreement as **Exhibit 1**. LMRWD agrees to pay the SWCD for all services provided pursuant to this Agreement and contribute to cost share projects as expressed in **Exhibit 1** up to the not to exceed amount identified in Section 4 herein.

In the event of a conflict between the terms of this Agreement and **Exhibit 1**, the terms of this Agreement shall govern.

4. **TOTAL COST.** The total amount to be paid by the LMRWD for all services provided and cost share project contributions pursuant to this Agreement shall not exceed \$22,000.00 (Not-to-Exceed Amount). The LMRWD shall pay SWCD for purchased services and cost share contributions at the rates set out in **Exhibit 1**.
5. **TIME OF PAYMENT.** The LMRWD shall make payment to the SWCD within 45 days of the date on which an itemized invoice is received. If an invoice is incorrect, defective, or otherwise improper, the LMRWD shall notify the SWCD within 10 days of receiving the incorrect invoice. Upon receiving the corrected invoice, the LMRWD shall make payment within 45 days.
6. **PAYMENT FOR UNAUTHORIZED CLAIMS.** The LMRWD may refuse to pay any claim for services or cost share contribution that is not specifically authorized by this Agreement. 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.
7. **PAYMENT UPON EARLY TERMINATION.** In the event this Agreement is terminated before the completion of services or the end of the term identified in Section 2, the LMRWD shall pay the SWCD for services provided in a satisfactory manner, in a pro-rated sum of the rates set forth in **Exhibit 1** based upon actual time spent, plus the cost share contributions for projects that have already been approved by the SWCD at the time of termination. In no case shall such payments exceed the Not-to-Exceed Amount.
8. **COMPLIANCE WITH LAWS/STANDARDS.** SWCD shall abide by all federal, state or local statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs and staff for which SWCD is responsible.

9. INDEPENDENT CONTRACTOR STATUS. Nothing in this Agreement is intended or should be construed as creating the relationship of a partnership, joint venture or employer-employee relationship between the parties. Officers, employees or agents of one party shall not be considered officers, employees or agents of the other party.
10. SUBCONTRACTING. The parties understand and agree that one or more of the scope of services set forth in **Exhibit 1** to this Agreement may be performed through another agent or subcontractor and that the subcontracting party is responsible for the performance of its subcontractors, unless otherwise agreed. It is the responsibility of each party to ensure its subcontractor(s) has adequate and appropriate insurance coverage.
11. ASSIGNMENT. A party shall not assign any interest it has in this Agreement without prior written consent of the other party. Said consent may be subject to conditions. The assigning party shall be responsible for the performance of its assignee unless otherwise agreed.
12. LIABLE FOR OWN ACTS. Each party to this Agreement shall be liable for the acts of their own officers, employees, volunteers and/or agents 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, volunteers and/or agents. The Municipal Tort Claims Act, Minn. Stat. Ch. 466, and other applicable laws govern liability arising from a party's acts or omissions. In the event of any claims or actions filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual parties.
13. INSURANCE. Each party warrants that it has an insurance or self-insurance program and that it has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466.
14. AUTHORIZED REPRESENTATIVES. The following named persons are designated the authorized representatives of parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, the authorized representatives shall have only the authority specifically or generally granted by its respective Board. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

To SWCD:

Kevin Chamberlain or successor, Chair
 Dakota County SWCD
 4100 220th Street West, Suite 102
 Farmington, MN 55024

To LMRWD:

Linda Loomis or successor, District Administrator
 Lower Minnesota River Watershed District
 112 E. 5th St.
 Chaska, MN 55318

In addition, notification to the LMRWD or the SWCD regarding termination of this Agreement by the other party shall also be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, Minnesota 55033.

15. LIAISONS. To assist the parties in the day-to-day performance of this Agreement and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by SWCD 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 Agreement, the following persons are the designated liaisons:

SWCD Liaison: Ashley Gallagher, or successor, Director
 Telephone: (651) 480-7781
 Email: ashley.gallagher@co.dakota.mn.us

LMRWD Liaison: Linda Loomis or successor, District Administrator
 Telephone: (763) 545-4659
 Email: niadconsulting@gmail.com

16. DEFAULT: FORCE MAJEURE. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

17. DATA PRIVACY. All data created, collected, received, stored, used, maintained, or disseminated in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the federal laws on data privacy. The Minnesota Government Data Practices Act also applies to subcontractors providing services under this Agreement. If public data is available from the LMRWD, the SWCD may direct the public to the LMRWD for access to the data.

The LMRWD may give the SWCD access to, or the SWCD may become aware of, private or confidential information in performing services under this Agreement. Private and confidential information is data that is not public under the Minnesota Data Practices Act (Minn. Stats. Ch. 13). The SWCD may keep the private and confidential information only for use in performing services under this Agreement. The SWCD must impose procedures as are necessary to assure nondisclosure of private and confidential information directly or indirectly to third parties.

18. OWNERSHIP OF WORK PRODUCT. If SWCD uses LMRWD's copyrighted material in performing work for this Agreement, SWCD will protect LMRWD's right, title and interest in the copyrighted material. Before using a third party's copyrighted material SWCD will get permission from the third-party. Where applicable, work products created by SWCD under this Agreement are "works made for hire" as defined in the U.S. Copyright Act. LMRWD owns the copyright interests in the work product. LMRWD may use, copy and make derivative works of the same, with no duty for an accounting to SWCD. SWCD may use portions or excerpts from the materials prepared under this Agreement.

19. RECORDS DISCLOSURE/RETENTION. Bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Agreement are subject to the examination, duplication, transcription and audit by each party to this Agreement and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, Subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. Each governmental unit agrees to maintain such evidences for a period of six years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

20. TERMINATION. Either party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving 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 this Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. Termination of this Agreement shall not discharge any liability, responsibility or other right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.

Notwithstanding any provision of this Agreement to the contrary, either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement.

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

22. MINNESOTA LAW TO GOVERN. This Agreement 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 Agreement shall be venued in the County of Dakota, State of Minnesota.

- 23. SEVERABILITY. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.
- 24. DISPOSITION OF PROPERTY. Any property purchased with LMRWD money to perform services under this Agreement is owned by LMRWD and will be returned by the SWCD to LMRWD at the termination of this Agreement.
- 25. FINAL AGREEMENT. This Agreement 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 contained in this Agreement.
- 26. SURVIVORSHIP. The following provisions under this Agreement survive after the termination date of this Agreement: Sections 12 (Liable for Own Acts), 17 (Data Privacy), 18 (Ownership of Work Product), 19 (Records Disclosure/Retention), 22 (Minnesota Law to Govern), and 24 (Disposition of Property).

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

LOWER MINNESOTA RIVER WATERSHED DISTRICT

By _____
Joseph Barisonzi or successor, President
Date of Signature _____

DAKOTA COUNTY SOIL AND WATER CONSERVATION DISTRICT

By _____
Kevin Chamberlain or successor, Chair
Date of Signature _____

Approved as to Form:

/s/ Brian J. Wisdorf 1/10/2025
Assistant Dakota County Attorney/Date
KS-25-25
SWCD Board Motion No.25-011

**2025 Dakota County SWCD Work Plan and Budget
for the Lower Minnesota River Watershed District**

EXHIBIT 1

Task	Calculation			Sub-total
Education and Community Engagement				
	Hours	Rate	Fees	
Landscaping for Clean Water			\$1,800.00	\$1,800.00
Provide access to the Landscaping for Clean Water Program: Introduction Class & Design Course Materials (Includes online registration, partner coordination, presentation creation and updates, creation of education and outreach materials, participant tracking, one-on-one design assistance)		Introduction Class = \$600 Design Course = \$1,200		
Education and Outreach Total				\$1,800.00
Technical Assistance				
	Hours	Rate	Fees	
Fen Well Monitoring	100	\$100.00	\$150.00	\$10,150.00
Staff time for groundwater monitoring in Fort Snelling, Nichols, and Quarry Island fens from March 1, 2025 through December 31, 2025 - 10 monitoring trips at 5 hours/trip. Includes data management, reporting and site maintenance as needed.		Fee is for monitoring supplies such as chalk, rags, batteries, tools, etc.		
Landscaping for Clean Water			\$2,000.00	\$1,800.00
SWCD staff time for technical assistance on Landscaping for Clean Water projects.		\$600 x 3 projects		
Conservation Projects	75	\$100.00		\$7,500.00
Technical assistance for potential projects. <i>Only as requested by Lower Minnesota River WD.</i>				
Technical Assistance Total				\$19,450.00
Cost Share				
	Hours	Rate	Fees	
Landscaping for Clean Water			\$750.00	\$750.00
Provide cost share to landowners for projects including raingardens, native plantings and shoreline stabilization projects consistent with Dakota SWCD cost share policies.		\$250 X 3 projects		
Cost Share Total				\$750.00
Total Agreement Not-to Exceed				\$22,000.00

Note: Additional items may be required of the SWCD during the workplan timeframe and individual budget amounts may change as the year progresses. If proposed changes are to exceed the total agreed amount, this work plan can be amended as jointly approved by the LMRWD and SWCD.