



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, March 19, 2025

Agenda Item

Item 7. D. – Study Area #3 Update

Prepared By

Linda Loomis, Administrator

Summary

On March 11, 2025, the LMRWD received a permit from the US Army Corps of Engineers for this project. All the permits necessary for construction of the project are in place. However, we are still working to have the property purchased by the LMRWD, re-platted and rezoned by the City of Eden Prairie. The City says the requirement that the owner of the remnant parcel sign off on the request to re-plat the property is coming from Hennepin County. The LMRWD has reached out to the property owner several times without receiving any response. The LMRWD contacted the Hennepin County Administrator to see if there was an alternative, but no response has been received. Legal counsel was consulted to see if any action can be taken to get the attention of the property owner. Legal counsel advised that there are actions that can be taken by the LMRWD, and that action was authorized.

Inter-Fluve, the engineering firm that was chosen to prepare the design for the project has informed the LMRWD that they are unable to continue the project due to capacity issues. On February 28, 2025, the LMRWD sent a message to the LMRWD engineering pool seeking interest and capacity to prepare design and construction documents for the project. Firms that indicated interest were provided with a copy of the RFP on March 6th. The deadline for proposals was March 14th to align with the March Board of Managers meeting. The deadline was extended to March 26th in response to a request from one of the engineering firms. There seems to be a current lack of capacity among engineering firms to take on additional work, as several firms declined to offer a proposal.

Lastly, the City requested that the right-of-way be surveyed and described. The LMRWD asked the surveyor to add this work to the scope of work already ordered. An amendment to the work order is attached for Board approval.

Attachments

- Amendment #001 to Work Order 2024-01 of Agreement for Professional Services between the Lower Minnesota River Watershed District and Bolton & Menk, Inc.
- Professional Services Agreement between Lower Minnesota River Watershed District and Bolton & Menk, Inc. signed October 9, 2024

Item 7. D. – Study Area #3 Update

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Page 2

Recommended Action

Motion to approve Amendment #001 to Work Order 2024-01 of Agreement for Professional Services between the Lower Minnesota River Watershed District and Bolton & Menk, Inc. and authorize execution

**AMENDMENT #001 TO WORK ORDER 2024-01 OF AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN LOWER MINNESOTA RIVER WATERSHED DISTRICT AND BOLTON & MENK, INC.**

This AMENDMENT #001 (“Amendment”) to the original Work Order 2024-01 of Agreement for Professional Services between Lower Minnesota River Watershed District (“OWNER”) and Bolton & Menk, Inc. (“SURVEYOR”) dated October 9, 2024 (the “Agreement”) is made and entered into on this 12th day of March, 2025.

WHEREAS, OWNER has engaged SURVEYOR, pursuant to the Agreement, to furnish OWNER with surveying services in connection with the Boundary Survey for Area 3 Bluff Stabilization Project (the “Project”);

WHEREAS, OWNER and SURVEYOR have agreed to amend the Agreement as set forth in this Amendment and subject to the terms and conditions of this Amendment; and,

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SCOPE. The Scope for this AMENDMENT #001 is to locate the centerline of the traveled roadway through the Project property, to the best of our ability as portions of said roadway are either washed away from the Minnesota River and/or not very visible due to overgrown vegetation, and to establish a centerline for said roadway for the preparation of descriptions for the proposed parcel lot split. If the OWNER requests or SURVEYOR performs additional services for the Project, SURVEYOR shall make such request to OWNER in writing, setting forth any changes or additions to the Scope of the Agreement, including any additional deliverables requested for the Project.

2. FEE. The SURVEYOR’S fixed fee for this AMENDMENT #001 is **\$2,200**. If the SURVEYOR requests additional fees for the services for the Project or for services performed, SURVEYOR shall make such request to OWNER in writing, setting forth any changes in fees and all fees associated with such additional services. If OWNER agrees to the change in scope or fees proposed by SURVEYOR in writing, the parties will adjust the Maximum Fee to account for such changes. No claim for extra services performed by SURVEYOR will be allowed by OWNER except as provided in this Amendment nor will SURVEYOR perform any services or work not previously approved by OWNER except upon receipt of a written amendment.

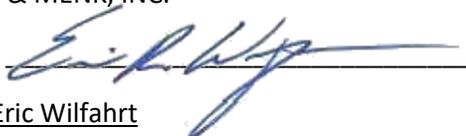
3. All Other Terms and Conditions of the Agreement. Any conflict or inconsistency as to terms set forth in this Amendment and the Agreement or other writing will be governed by this Amendment.

IN WITNESS WHEREOF, the parties have caused this AMENDMENT #001 to be executed by their duly authorized representatives on the dates written below.

LOWER MINNESOTA RIVER WATERSHED DISTRICT

BOLTON & MENK, INC.

SIGNED: _____

SIGNED:  _____

NAME: _____

NAME: Eric Wilfahrt

TITLE: _____

TITLE: Principal Survey Manager

DATE: _____

DATE: March 12, 2025

**PROFESSIONAL SERVICES AGREEMENT BETWEEN LOWER MINNESOTA RIVER WATERSHED DISTRICT
AND Bolton & Menk, Inc.**

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 Bolton & Menk, Inc. ("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:

1. 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.

2. 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.

3. 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.

4. Duty of Care and Indemnification

CONSULTANT will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession currently practicing under similar circumstances in a similar locality. CONSULTANT shall indemnify and hold harmless CLIENT from losses, damages, and judgments arising from third-party claims or actions relating to the Project only to the extent caused by the negligent acts, errors or omissions (whether in the performance of professional services or otherwise) of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants occurring during the scope of CONSULTANT's work on the Project, and provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property. This indemnification shall not apply to claims for consequential damages, lost revenues, increased expense or lost profits, nor to any claim for punitive or exemplary damages. This indemnification shall include reimbursement of CLIENT'S reasonable attorneys' fees and expenses of litigation, but only to the extent that defense is insurable under CONSULTANT's comprehensive general liability and professional errors and omissions insurance policies.

To the fullest extent permitted by law and subject to the maximum limits of liability set forth in Minnesota Statutes Section 466.04, the LMRWD shall indemnify, defend and hold harmless CONSULTANT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts or omission of the LMRWD or the LMRWD's employees, agents, or other consultants.

5. 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. 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.

6. 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 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.

7. 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.

8. Insurance

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

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

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

The liability insurance coverage required of CONSULTANT shall include coverage, on a project basis, for damage to property of others from pollution or contamination.

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.

9. 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.

10. 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, but only upon payment of all fees owed to CONSULTANT. 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. Notwithstanding the foregoing, CONSULTANT retains title and interest in all of its standard details, plans, specifications and engineering computation documents ("Previously Created Works and Documents"), whether in written or electronic form, which have been incorporated into the deliverables and documents provided to LMRWD, but which were developed by CONSULTANT independent of this Agreement. CONSULTANT issues to LMRWD a royalty-free, nonexclusive and irrevocable license to use the Previously Created Works and Documents in relation to the Services.

If no "works for hire" specification is made in the Task Order, drawings and specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the LMRWD shall acquire a limited license in all identified deliverables (including reports, plans and specifications) for any reasonable use relative to the Project and the general operations of the LMRWD. Such limited license to LMRWD shall not create any rights in third parties. The LMRWD may 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 CONSULTANT shall be permitted to maintain pursuant to separate written agreement with the LMRWD specifying commercially reasonable terms.

LMRWD may make and disseminate copies for information and reference in connection with the use and maintenance of Services under any Task Order by LMRWD. However, such documents are not intended or represented to be suitable for reuse by LMRWD or others on extensions of any Task Order, or on any other project. Any reuse by LMRWD or, any other entity acting under the request or direction of the LMRWD, without written verification or adaptation by CONSULTANT for such reuse will be at LMRWD's sole risk and without liability or legal exposure to CONSULTANT and LMRWD shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such reuse.

11. 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.

12. 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.

13. 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.

14. 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
112 5th Street East, Suite 102
Chaska, MN 55318
Email: naiadconsulting@gmail.com

Della Young, PMP, CPESC, CTF
Young Environmental Consulting Group, LLC
6040 Earle Brown Drive, Suite 306
Brooklyn Center, MN 55430
Email: della@youngecg.com

To Bolton & Menk, Inc.:

Eric Wilfahrt
Principal Survey Manager
12224 Nicollet Avenue
Burnsville, MN 55337

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

15. Choice of Law, Venue and Jurisdiction

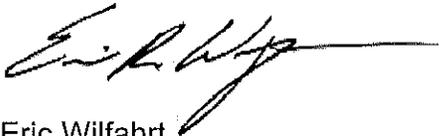
This Agreement will be construed under and governed by the laws of the State of Minnesota. Venue and jurisdiction for any action under this Agreement will lie in Carver County.

16. 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.

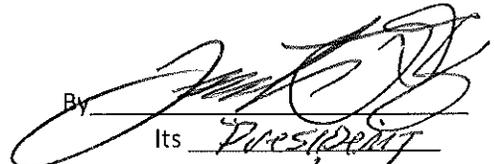
IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this Agreement.

Bolton & Menk, Inc.


By Eric Wilfahrt
Its Principal Survey Manager
Date 10/1/2024

LOWER MINNESOTA RIVER

WATERSHED DISTRICT

By 
Its President
Date 10/9/2024