

MEETING DATE: August 23, 2018

TITLE: Authorization to Execute Contract for Legal Services

RESOLUTION NUMBER: 18-077

PREPARED BY: Cathy Reynolds

E-MAIL: Creynolds@minnehahacreek.org

TELEPHONE: 952-641-4503

REVIEWED BY: Administrator Counsel Program Mgr. (Name): _____
 Board Committee Engineer Other:

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Final Action on August 23, 2018	

PURPOSE or ACTION REQUESTED:

Authorize the District Administrator to execute a contract for legal services.

PROJECT/PROGRAM COST:

The General Operations budget for legal services in 2019 is \$90,000.

PAST BOARD ACTIONS:

- March 22, 2018 – Board authorization to release the request for qualifications for professional services
- May 24, 2018 - Board approval of qualifications, and authorization to enter contract negotiations

SUMMARY:

Pursuant to Minnesota Statute 103B.227 a watershed district is required to solicit interest proposals for legal, professional, or technical consultant services at least every two years. MCWD professional services contracts were due for renewal and at the March 22, 2018 Meeting the Board of Managers authorized the release of requests for qualifications (RFQ) for the following services:

- Accounting
- Legal Services
- Engineering Services
- Government Relations
- Information Technology Managed Services

Notice of the RFQs was posted in the Star Tribune on April 4 and 7, 2018. The RFQs were also posted on the District website and distributed to companies in the metro area. Responses were due to the District by April 30, 2018.

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

At the May 24, 2018 meeting the Board of Managers approved the selection of vendors based on responses to the RFQ's and authorized the District Administrator to enter into contract negotiations with the selected vendors.

The District Administrator has completed contract negotiations for legal services and is requesting Board authorization to execute the attached contract.

One substantive revision was made to the draft contract, as compared to past contracts. The draft contract proposes to remove the fee for services provided under retainer. Past retainers were approximately \$5,000 per month. Through discussions with Smith Partners, and following an analysis of billing, it is recommended that the District work with Smith Partners on a fee for service basis. It is anticipated that this will reduce total annual costs to the District.

Attachments:

Attachment 1 – DRAFT Legal Services Contract

LEGAL SERVICES AGREEMENT

Between
Minnehaha Creek Watershed District and Smith Partners PLLP

WHEREAS, by vote of the Board of Managers on May 24, 2018, the Minnehaha Creek Watershed District (hereinafter MCWD) selected Smith Partners P.L.L.P. (hereinafter Attorneys) to provide legal services to the MCWD as described herein:

NOW, THEREFORE, it is mutually understood and agreed upon that Attorneys shall provide legal services to the MCWD as specified below:

1.0 SERVICES

ATTORNEY will provide the Services in accordance with this Agreement.

1.1 Legal Services for Special Meetings, Management Planning, Capital Improvement Projects, Interagency Agreements, MCWD Program Development, and Other Specified Matters

Upon request of the MCWD Administrator, ATTORNEY will provide legal counsel for special meetings of the Board of Managers; watershed management planning activities and the development and implementation of programs relating to same; negotiation and drafting of contracts, including interagency agreements and resolutions; the initiation, financing, and implementation of capital improvement projects, including any necessary acquisition of property or other interests in real estate; and all other legal services that ATTORNEY is qualified and authorized to provide by the Board of Managers directly and by delegation through the Administrator.

1.2 Implementation and Enforcement of the MCWD's Permitting Program

ATTORNEY will provide legal counsel for the development, implementation and enforcement of rules pertaining to the MCWD's Permitting Program. Services related to MCWD's Permitting Program will be directed by the Permitting Program Manager, under authority delegated by the Administrator, and conducted in coordination with MCWD's Engineer. Execution and coordination of these Services will be conducted in accordance with a Management Plan developed by and between the Administrator, Engineer and ATTORNEY.

1.3 Real Estate Law

Upon request of the MCWD Administrator, ATTORNEY will provide legal counsel to assist with matters related to the acquisition of property or other interests in real estate. Upon request of the MCWD Administrator, in matters related to the fee acquisition or sale of MCWD property, ATTORNEY will be required to coordinate with identified outside counsel specializing in real estate law.

1.4 Employment Law

ATTORNEY will provide written documentation summarizing the performance reviews for the Administrator, and will maintain the official file with all appropriate records pursuant to MCWD policies and Minnesota statutes.

Upon request of the MCWD Administrator, ATTORNEY will provide legal counsel to assist with matters related to employment law, employee discipline, and employee termination. Upon request of the MCWD Administrator, ATTORNEY will be required to coordinate with identified outside counsel specializing in employment law

1.5 Litigation, Enforcement Actions, and Other Special Matters

ATTORNEY will provide representation for the MCWD in litigation, preparation for litigation, investigation, negotiation, compromise or settlement of claims made against or on behalf of the MCWD, and enforcement actions initiated by the MCWD under its statutes, rules and permits, including legal advice and representation in administrative or judicial proceedings, as authorized by the Board of Managers directly and by delegation through the Administrator, in coordination with the District's insurer and any insurer-designated counsel.

1.6 Maintenance of Files

ATTORNEY will maintain a duplicate set of all contracts, agreements, and other documents provided to ATTORNEY by the MCWD relating to issues of concern to the MCWD.

2.0 RATES FOR LEGAL SERVICES; EXPENSES

ATTORNEY will provide the Services in accordance with the Agreement at the following rates.

2.1 Rates for Legal Services

ATTORNEY will provide legal services in accordance with paragraph 1.0 of this agreement at the following hourly rates: Principal Louis Smith, \$231 per hour in 2018, \$240 per hour in 2019, and \$250 per hour in 2020; for all other attorneys, \$221 per hour in 2018, \$230 per hour in 2019, and \$239 per hour in 2020. Other personnel will be billed at the following rates:

Law Clerk	\$ 105 per hour
Legal Assistant	\$ 80 per hour
Case Assistant	\$ 70 per hour

Special MCWD meetings or committee meetings will be billed on an hourly basis to the project or projects that are the subject of the meeting.

MCWD reserves the right at any time to amend this contract, through negotiation with Smith Partners, to outline routine Services that may be provided on a retainer basis.

2.2 Reimbursable Expenses

The MCWD agrees to reimburse ATTORNEY for reasonable and necessary expenses incurred in the performance of the Services, or advanced by ATTORNEY on behalf of the MCWD, at the following rates:

Photocopying	\$.09 per page (B&W) \$.18 per page (color)
Computer-assisted legal research	Actual cost
Courier charges	Actual cost
Travel	Actual cost (IRS rate)
Filing fees	Actual cost
Postage	Actual cost
Third-party vendor charges	Actual cost

3.0 CONFLICT OF INTEREST

During the term of the Agreement, ATTORNEY may not represent another governmental jurisdiction located fully or partially within the MCWD's jurisdiction without prior written approval of the MCWD Administrator.

4.0 TERMINATION

ATTORNEY is retained at the discretion of the Board of Managers, which may terminate this Agreement, or terminate Services within this Agreement, at any time. Any termination of the Agreement by the ATTORNEY will comply with the applicable rules of professional responsibility. Indemnification, defense, hold harmless and data/materials management terms will survive termination.

5.0 INSURANCE

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

- A. General: \$1.5 million each occurrence and aggregate on an occurrence basis.
- B. Professional liability: \$1.5 million each claim and aggregate; coverage may be on a claims-made basis, in which case ATTORNEY 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 ATTORNEY.

ATTORNEY will not commence work until it has filed with the MCWD a certificate of insurance clearly evidencing the required coverages. The certificate will name the MCWD as a holder and will state that the MCWD will receive written notice before cancellation, nonrenewal or change in a policy limit of any described policy under the same terms as ATTORNEY.

Personnel performing the Services on behalf of ATTORNEY will not be considered employees of the MCWD and are not entitled to any compensation, rights or benefits of any kind from the MCWD.

6.0 STANDARD OF CARE; INDEMNIFICATION

ATTORNEY represents it has the expertise, qualifications, capability and resources to perform the Services under the Agreement. ATTORNEY will perform the Services in accordance with due professional care. ATTORNEY will indemnify, defend and hold harmless the MCWD, 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 ATTORNEY's professional negligence or other action or inaction by ATTORNEY that is the basis for ATTORNEY's liability in law or equity, including but not limited to ordinary negligence. ATTORNEY will indemnify, defend and hold harmless the MCWD, its officers, Board members, employees and agents from any and all actions, costs, damages and liabilities arising out of ATTORNEY's action or omission failing to meet the ATTORNEY's duties as stated in this section 6.0.

The MCWD will indemnify, defend and hold harmless the ATTORNEY 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 MCWD that is the basis for the MCWD's liability in law or equity.

7.0 MATERIALS

All materials obtained or generated by ATTORNEY 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 MCWD. ATTORNEY hereby assigns and transfers to the MCWD 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. ATTORNEY agrees to execute all papers and to perform such other proper acts as the MCWD may deem necessary to secure for the MCWD or its assignee the rights herein assigned.

The MCWD may immediately inspect, copy or take possession of any materials on written request to ATTORNEY. On termination of the Agreement, ATTORNEY may maintain a copy of some or all of the materials except for any materials designated by the MCWD as confidential or non-public under applicable law, a copy of which may be maintained by ATTORNEY only pursuant to written agreement with the MCWD specifying terms. Nothing herein restricts ATTORNEY's non-exclusive retention and subsequent use of its work product consistent with the applicable rules of professional responsibility.

8.0 DATA PRACTICES; CONFIDENTIALITY

If ATTORNEY 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) ATTORNEY possesses or has created as a result of the Agreement, it will inform the MCWD immediately and transmit a copy of the request. If the request is addressed to the MCWD, ATTORNEY will not provide any information or documents in response, but will direct the inquiry to the MCWD. If the request is addressed to ATTORNEY, ATTORNEY 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 MCWD before replying. Nothing in the preceding sentence supersedes ATTORNEY’s obligations under the Agreement with respect to protection of MCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that ATTORNEY 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.

ATTORNEY agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by the MCWD and so denominated by the MCWD. ATTORNEY will not use any such materials for any purpose other than performance of the Services without MCWD written consent. This restriction does not apply to materials already possessed by ATTORNEY or that ATTORNEY received on a non-confidential basis from the MCWD or another party.

9.0 COMPLIANCE WITH LAWS AND STANDARDS

ATTORNEY will perform the Services in accordance with all applicable professional standards and practices; 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. All terms of the Agreement are to be understood within and applied to be consistent with the framework of the professional standards of conduct and practices applicable to ATTORNEY’s professional services.

In performing the Services, ATTORNEY 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.

10.0 TERM

The term of this Agreement shall be from September 1, 2018 to August 31, 2020.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

By _____

By _____

James Wisker, Administrator
Minnehaha Creek Watershed District

Louis N. Smith
Smith Partners P.L.L.P.
400 Second Ave S, Suite 1200
Minneapolis, MN 55401

Date: _____

Date: _____