



Title: Authorization to Execute Contract for Legal Services

Resolution number: 22-049

Prepared by: Name: Deb Johnson
Phone: 952.641.4500
djohnson @minnehahacreek.org

Reviewed by: Name/Title: James Wisker, District Administrator

Recommended action: Approve Proposal and Authorization Administrator to Execute Contract

Schedule: 8/19/22
Signed contract in place

Budget considerations: Fund name and code: Legal Services
Fund budget: 2022 - \$393,500
Expenditures to date: \$170,132 thru Q2

Past Board action: Res #: 22-034 Title: Authorization to Release RFQ for Legal Services

Summary:

Pursuant to Minnesota Statute 103B.227 a watershed district is required to solicit proposals for legal services at least every two years. MCWD legal services contract with Smith Partners expires on August 31, 2022.

At the June 9, 2022 meeting, the Board of Managers authorized the release of requests for qualifications (RFQ) for legal services.

Staff have completed contract review of legal services and is requesting Board authorization to execute a contract with Smith Partners for a two year period.

Supporting documents (list attachments):

Smith Partners qualifications



RESOLUTION

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WHEREAS, pursuant to Minnesota Statute 103B.227, at least every two years watershed districts are required to solicit responses for legal services; and

WHEREAS, the Board authorized the solicitation of responses for legal services at the June 9, 2022 Board meeting; and

WHEREAS, staff received one response from the placement of the request for qualifications; and

WHEREAS, staff has reviewed the proposal for legal services and recommends the Board of Managers select Smith Partners.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers: hereby authorizes the District Administrator to execute a legal services contract with Smith Partners for the period of September 1, 2022 through August 31, 2024

Resolution Number 22-049 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 8/11/2022

Secretary Date: _____



STATEMENT OF QUALIFICATIONS FOR LEGAL SERVICES

to the

**MINNEHAHA CREEK
WATERSHED DISTRICT**

July 15, 2022



250 Marquette Avenue South

Suite 250

Minneapolis, MN 55401

(612) 344-1400 Office

www.smithpartners.com



STATEMENT OF QUALIFICATIONS

Summary of Experience

In addition to our work with the Minnehaha Creek Watershed District, Smith Partners serves as legal counsel for the Rice Creek, Brown's Creek, Nine Mile Creek, Riley Purgatory Bluff Creek, Comfort Lake – Forest Lake, Prior Lake – Spring Lake, Clearwater River, Heron Lake and Roseau River Watershed Districts and the Red River Watershed Management Board. We have provided water resources counsel to public bodies including the Legislative Citizens Commission on Minnesota Resources, the Board of Water and Soil Resources, the Mississippi Watershed Management Organization, the Minnesota Association of Watershed Districts and other watershed districts and municipalities. Smith Partners' attorneys bring more than 60 years of combined experience in water resources law that includes an intimate knowledge of Minnesota watershed statutes, agency rules, and local rules and ordinances. Through our general counsel role we are carefully versed in legal requirements and best practices for metropolitan watershed districts in matters of governance, administration, planning and financial management.

Our watershed experience includes:

- Counsel for four generations of water resource management planning, with special focus on integrated land use and natural resources planning, and public private partnerships to create shared value by protecting and improving natural systems; making wise, collaborative investments in public infrastructure; and building sustainable communities;
- A careful understanding of roles and relations among watershed management organizations and other local units of government and strong, effective working relationships with key agency personnel in federal and state agencies;
- Project leader and principal author of a BWSR/MPCA – funded study to coordinate municipal and watershed stormwater management programs; Counsel to BWSR on implementation of the Buffer Law;
- Author of an evaluation of Minnesota drainage laws and policy recommendations to better coordinate drainage, wetlands management and water quality for the Legislative Citizens Commission on Minnesota Resources;
- Policy analysis and drafting of water resources legislation, with central involvement in watershed legislative issues for the past 30 years;
- Extensive experience in developing and drafting water resource protection rules for development in areas including erosion control, stormwater management, floodplain preservation, groundwater protection, shoreline alteration, dredging, structures in water bodies, stream and lake buffers, and wetland management;

- Expertise in regulatory program support including compliance and enforcement programs;
- Pioneered use of areawide resource management plans to integrate drainage system and wetland management and assisted in fostering parallel U.S. Army Corps of Engineers regulatory practices;
- Extensive experience in capital project development and support including permitting and environmental review, easement acquisition, contract drafting and procurement, insurance and bonding issues and construction management;
- Expertise in conservation land rights acquisition and conservation land management;
- Counsel for major lake, stream and wetland restoration projects, including the largest urban lake restoration project in the United States, involving complex multi-partner negotiations, development of cooperative agreements to structure relationships with stakeholders and partners, land rights acquisition, consultation through environmental review and federal and state agency permitting;
- Overwhelming success in water resources litigation in administrative and judicial proceedings;
- Publishers of *WaterLaws.com*, an electronic journal of watershed law and policy;
- Authors of the *Watershed Rulemaking Handbook*, published by the Minnesota Association of Watershed Districts; and
- Frequent presenters on water resource law and watershed district administration at legal and technical conferences.

Smith Partners PLLP Attorneys

Louis N. Smith, *Partner*, has practiced water resources law for thirty-five years, representing watershed districts and other clients across the state of Minnesota. Mr. Smith published the *Watershed Rulemaking Handbook* for the Minnesota Association of Watershed Districts. He counseled the Minnehaha Creek Watershed District in structuring the Minneapolis Chain of Lakes Clean Water Partnership, the largest urban lake restoration project in the United States and recipient of five environmental awards, including the CF Industries National Watershed Award and the Minnesota Governor's Award for Excellence in Pollution Prevention. He counseled the Brown's Creek Watershed District through the development and construction of a major flood mitigation and trout stream protection project and adoption of comprehensive rules. He counseled the Rice Creek Watershed District through the adoption of one of the State's first Comprehensive Wetland Protection and Management Plans, and also serves as legal counsel for the Riley Purgatory Bluff Creek Watershed District and the Red River Watershed Management Board. Mr. Smith teaches Water Law at the University of Minnesota Law School.

Mr. Smith has broad experience in structuring public-private partnerships and providing strategic counsel to clients confronting a wide array of public policy challenges. In 1991-92, Mr. Smith served as Deputy Hennepin County Attorney, where he was second in command of an office of 125 attorneys responsible for felony prosecution and civil representation of Hennepin County. Mr. Smith lectures and writes frequently on a broad range of topics relating to water resources,

land use, and government litigation. Since 1994, the Minnesota Guidebook for Law and Leading Attorneys has named him as one of the leading attorneys in Minnesota specializing in urban and local government, and as a “Super Lawyer” by Law & Politics magazine. Since 1995, he has received the Martindale-Hubbell “AV” rating, the highest rating members of the bar bestow upon a small percentage of their peers. Mr. Smith is past Chair of the Rivers Council of Minnesota Board of Directors, and was appointed by Governor Tim Pawlenty to the Clean Water Council in 2007, reappointed by Governor Mark Dayton in 2011, and served as the Council’s first Chair.

Mr. Smith graduated *magna cum laude* and Phi Beta Kappa in 1979 from St. Olaf College, and graduated *cum laude* in 1983 from the University of Minnesota Law School, where he was an associate editor of the *Minnesota Law Review*. He was a law clerk to the Honorable Gerald W. Heaney, United States Court of Appeals for the Eighth Circuit.

Charles Holtman, *Partner*, represents watershed districts and other public and private clients in water and land use matters. He provides general counsel to the Minnehaha Creek, Brown’s Creek, Comfort Lake-Forest Lake and Prior Lake-Spring Lake Watershed Districts, and has advised those clients in the development and drafting of second-, third-, and fourth-generation water resource management plans. His work also includes substantial involvement in rule drafting and rulemaking proceedings, and in his clients’ planning, budgeting and administration of water resource management programs.

Mr. Holtman provides legal counsel for development and construction of water resource capital projects including stormwater conveyance and treatment systems; wetland, lake and stream restorations; drainage system maintenance; fish control structures and basin outlets. He has extensive experience in drafting procurement documents, contracts, agreements and land rights conveyances among public and private entities for capital projects; permitting and compliance inspection programs; and watershed program implementation under metropolitan watershed laws. Mr. Holtman’s water resources practice also includes representation of public bodies in regulatory enforcement, eminent domain and agricultural drainage litigation.

From 1986 to 1992, Mr. Holtman served as an assistant attorney general for the State of New Hampshire, where he was chief counsel to state wetlands, water resource and groundwater protection agencies. From 1993 to 1995, he was counsel to the assistant administrator for hazardous materials transportation at the U.S. Department of Transportation.

Mr. Holtman received B.S. and M.S. degrees in Chemical Engineering in 1979 from the Massachusetts Institute of Technology and a J.D. in 1986 from the University of Virginia School of Law, where he was Executive Editor of the Virginia Journal of Natural Resources Law. Mr. Holtman also holds a Masters’ Degree in Public Affairs from the University of Minnesota’s Hubert H. Humphrey Institute, with a concentration in the administration of public resource protection agencies.

Michael J. Welch, *Partner*, is an attorney in Smith Partners’ water resources and strategic partnership practice. He counsels clients on watershed planning and protection, wetlands protection, land use and general public law. He has specific expertise in watershed district rulemaking and administration including project development and implementation, enforcement of regulatory requirements, wetland-buffer law, data management, open government and financial-control requirements. He has helped clients implement environmental improvements even in urban environments presenting challenging historical contamination issues. In 2005-06, he served as law clerk for Associate Justice Helen Meyer of the Minnesota Supreme Court, after graduating from William Mitchell College of Law. Prior to his clerkship, Michael directed the Resources for Redevelopment program, which supported dozens of nonprofit property-

redevelopment and green-space restoration projects. Michael has served as Minneapolis' representative to the Bassett Creek Watershed Management Commission since January 2000 and was chair of the commission from February 2006 to February 2010. While at William Mitchell, he served as vice president of the college's chapter of the American Constitution Society. Michael served on the governing council of the Minnesota State Bar Association's Environment, Natural Resources and Energy Section for several years, and has written and presented on water resources law topics at numerous workshops, seminars and legal education events.

Outside Counsel

We engage additional counsel as needed, typically on real estate matters ([Alex Selke](#), [Jay Lindren](#), Dorsey & Whitney LLP) or employment law matters ([Julie Fleming-Wolfe](#), [Andrew Parker](#)).

Hourly Rates

We serve several governmental clients at special reduced rates, and propose to represent the Minnehaha Creek Watershed District for the following hourly rates: Principal Louis Smith, \$275 in 2022, \$289 in 2023, and \$303 per hour in 2024; for all other attorneys, \$259 per hour in 2022, \$269 in 2023, and \$279 per hour in 2024.

Our rates for other professional staff and fees and expenses are as follows:

Law Clerk	\$125 per hour
Legal Assistant	\$ 80 per hour
Case Assistant	\$ 70 per hour
Photocopying	\$.09 per page (B&W) \$.18 per page (color)
Facsimile transmission	No Charge
Long distance telephone charges	Actual cost
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