



Nine Mile Creek Discovery Point
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Eden Prairie, MN 55346

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MEMO

TO: Nine Mile Creek Watershed District Board of Managers
FROM: Randy Anhorn
DATE: February 11, 2020
RE: Amendment to Smith Partners Legal Service Agreement

Background

Similar what was addressed at our January 15, 2020 meeting when we amended the service agreement with Barr Engineering to reflect their revised 2020 fee schedule, we will need to amend the service agreement with Smith Partners to reflect their 2020 hourly rates.

I recently received the new hourly rates for Louis and the other attorneys for 2020. The revised hourly rates are:

Louis Smith (Principal):	\$250 (\$231 in 2018 and \$240 in 2019)
All other attorneys:	\$239 (\$221 in 2018 and \$230 in 2019)

Request

Authorize the administrator to execute and amendment to the District's Legal Service Agreement with Smith Partners

LEGAL SERVICES AGREEMENT

Between

Nine Mile Creek Watershed District and Smith Partners PLLP

WHEREAS, by vote of the Board of Managers on May 16, 2018, the Nine Mile Creek Watershed District (hereinafter NMCWD) selected Smith Partners P.L.L.P. (hereinafter Attorneys) to provide legal services to the NMCWD as described herein, and the most recent Legal Service Agreement expired on December 31, 2019;

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

1.0 SERVICES

Attorneys agree to provide all legal services requested by the District in fulfillment of its charge as a Minnesota watershed district.

2.0 RATES FOR LEGAL SERVICES; EXPENSES

Attorneys will provide the Services in accordance with the Agreement at the following rates: Principal Louis Smith, \$250 in 2020; for all other attorneys, \$239 per hour in 2020.

Other professional staff and fees and expenses are as follows:

Law Clerk	\$105 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

3.0 CONFLICT OF INTEREST

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

4.0 TERMINATION

Attorneys are retained at the discretion of the Board of Managers, which may terminate this Agreement at any time. Any termination of the Agreement by the Attorneys 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, Attorneys 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 Attorneys 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 Attorneys.

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

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

6.0 STANDARD OF CARE; INDEMNIFICATION

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

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

7.0 MATERIALS

All materials obtained or generated by Attorneys 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 NMCWD. Attorneys hereby assign and transfer to the NMCWD 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. Attorneys agree to execute all papers and to perform such other proper acts as the NMCWD may deem necessary to secure for the NMCWD or its assignee the rights herein assigned.

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

8.0 DATA PRACTICES; CONFIDENTIALITY

If Attorneys receive 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) Attorneys possess or have created as a result of the Agreement, Attorneys will inform the NMCWD immediately and transmit a copy of the request. If the request is addressed to the NMCWD, Attorneys will not provide any information or documents in response, but will direct the inquiry to the NMCWD. If the request is addressed to Attorneys, Attorneys will be responsible to determine whether it is legally required to respond to the request and otherwise what their legal obligations are, but will notify and consult with the NMCWD before replying. Nothing in the preceding sentence supersedes Attorneys' obligations under the Agreement with respect to protection of NMCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Attorneys are 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.

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

9.0 COMPLIANCE WITH LAWS AND STANDARDS

Attorneys 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 Attorneys' professional services.

In performing the Services, Attorneys 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 February 1, 2020 to December 31, 2020.

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

By _____
Randy Anhorn, Administrator
Nine Mile Creek Watershed District

By 

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

Date: _____

Date: _____