

RESOLUTION NO. 23-027
Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Authorizing execution of a service agreement with Smith Partners PLLP to provide legal services to the RPBCWD

Manager _____ offered the following resolution and moved its adoption, which was seconded by Manager _____:

WHEREAS Minnesota Statute § 103B.227, Subd. 5. States that a request for proposals of services shall occur at least every two years; and

WHEREAS the RPBCWD Governance Manual states that this solicitation shall occur in odd numbered years; and

WHEREAS at its January 4, 2023, meeting the RPBCWD Board of Managers adopted resolution 23-008 authorizing the administrator to prepare and submit proposals; and

WHEREAS this solicitation was posted on the RPBCWD website as well as published in all the adopted official publications of the RPBCWD between March 2, 2023 and March 23, 2023; and

WHEREAS one proposal was provided in response from Smith Partners, PLLP; and

WHEREAS the Smith Partners' proposal, as well as prior service to the RPBCWD, demonstrates the necessary qualifications, skills, and resources to provide legal services to RPBCWD;

NOW THEREFORE BE IT RESOLVED that the RPBCWD Board of Managers authorizes the President, with advice of counsel, to enter the attached services agreement with Smith Partners PLLP, as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers and the Services.

The question was on the adoption of the resolution and there were 4 yeas and 0 nays as follows:

Yea Nay Abstain Absent

CRAFTON
DUEVEL
KOCH
PEDERSEN
ZIEGLER

Upon vote, the president declared the resolution adopted on this 12th day of April, 2023.

* * * * *

I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof, and further that the resolution is in full force and effect on this date, and Resolution 23-027 has not been modified, amended or rescinded since its adoption.

IN TESTIMONY WHEREOF, I set my hand this _____ day of _____, 2023.

Dorothy Pedersen, Secretary

**Exhibit A
Agreement**

LEGAL SERVICES AGREEMENT

Between Riley-Purgatory-Bluff Creek Watershed District and
Smith Partners PLLP

WHEREAS by vote of its board of managers on April 12, 2023, Riley-Purgatory-Bluff Creek Watershed District (hereinafter RPBCWD) selected Smith Partners P.L.L.P. (hereinafter Attorneys) to provide legal services to RPBCWD as described herein;

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

1.0 SERVICES

Attorneys agree to provide all legal services requested by RPBCWD 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, \$289 in 2023, \$303 in 2024 and \$319 in 2025; for all other attorneys, \$269 per hour in 2023, \$279 in 2024 and \$289 in 2025.

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, printing	\$.09 per page (B&W)
	\$.18 per page (color)
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

Payment for undisputed work will be due within 60 days of receipt of invoice. Attorneys' invoices will identify each permit matter for which legal services are rendered.

3.0 CONFLICT OF INTEREST

During the term of the Agreement, Attorneys may not represent another governmental jurisdiction located fully or partially within RPBCWD's jurisdiction without prior written approval of RPBCWD 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 RPBCWD a certificate of insurance clearly evidencing the required coverages. The certificate will name RPBCWD as a holder and will state that RPBCWD 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 RPBCWD and are not entitled to any compensation, rights or benefits of any kind from RPBCWD.

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 RPBCWD, 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 RPBCWD, 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.

RPBCWD 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 RPBCWD that is the basis for RPBCWD'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 RPBCWD. Attorneys hereby assign and transfer to RPBCWD 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 RPBCWD may deem necessary to secure for RPBCWD or its assignee the rights herein assigned.

RPBCWD 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 RPBCWD as confidential or non-public under applicable law, a copy of which may be maintained by Attorneys only pursuant to written agreement with RPBCWD 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 RPBCWD immediately and transmit a copy of the request. If the request is addressed to RPBCWD, Attorneys will not provide any information or documents in response, but will direct the inquiry to RPBCWD. 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 RPBCWD before replying. Nothing in the preceding sentence supersedes Attorneys' obligations under the Agreement with respect to protection of RPBCWD 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 RPBCWD and so denominated by RPBCWD. Attorneys will not use any such materials for any purpose other than performance of the Services without RPBCWD written consent. This restriction does not apply to materials already possessed by Attorneys or that Attorneys received on a non-confidential basis from RPBCWD 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

This agreement is effective when signed by both parties and remains effective until December 31, 2025.

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

By _____
David Ziegler, President
Riley-Purgatory-Bluff Creek
Watershed District
Board of Managers

By _____
Louis N. Smith
Smith Partners P.L.L.P.
250 Marquette Ave S, Suite 250
Minneapolis, MN 55401

Date: _____

Date: _____



STATEMENT OF QUALIFICATIONS

Summary of Experience

In addition to our work with the Riley Purgatory Bluff Creek Watershed District, Smith Partners serves as legal counsel for the Minnehaha Creek, Brown's Creek, Rice Creek, Nine Mile Creek, Comfort Lake – Forest Lake, Clearwater River, Prior Lake – Spring Lake, and Heron Lake 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 Minnesota Association of Watershed Districts and other watershed management organizations, 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 management organizations 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;
- Counsel to BWSR on implementation of the Buffer Law;
- Project leader and principal author of a Board of Water and Soil Resources/Minnesota Pollution Control Agency-funded study to coordinate municipal and watershed stormwater management programs;
- 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 31 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; and
- Frequent presenters on water resource law and watershed district administration at legal and technical conferences.

Recent Conference Presentations

Our attorneys have been invited to make more than 100 presentations to professional conferences on watershed law, natural resources conservation and other pressing environmental challenges. Here is a sample:

Minnesota Association of Watershed Districts
New Managers Orientation
November 30, 2022

Minnesota Association of Watershed Districts
Diversity, Equity, and Inclusion in Watershed Work
December 1, 2022

Minnesota Environmental Law Institute
Law & Policy: Drainage, Ag, and Water Quality
April 14, 2022

Minnesota Association of Watershed Districts
New Managers Orientation
December 1, 2021

Minnesota Environmental Law Institute
Water Law Update
August 13, 2020

Minnesota Association of City Attorneys
NOAA Atlas 14: Cities, Stormwater and Climate Resilience
February 7, 2020

Minnesota Association of Watershed Districts
New Manager Orientation; Regional Stormwater Management; Multi-benefit Drainage Solutions
December 5-6, 2019

Minnesota Association of Soil & Water Conservation Districts/Minnesota Association of Watershed Districts
Watershed Statutes & Operations 101
September 12, 2019

American Society of Civil Engineers
Managing Risks & Forging Partnerships
August 5, 2019

Minnesota Association of Watershed Districts
New Manager Orientation; The Carrot and the Hammer
November 29-30, 2018

Minnesota Environmental Law Institute
Water Law Update
April 12, 2018

Minnesota State Bar Association
Put a Buffer on it – Minnesota’s New Water-Protection Landscape Feature
February 23, 2018

Minnesota Environmental Law Institute
Water Law Update
April 22, 2017

Minnesota Environmental Law Institute
Evolving Legal Avenues to Protect and Improve Groundwater Quality
April 21, 2016

Minnesota Brownfields Forum
Stormwater Management on Brownfield Sites
April 13, 2016

Minnesota Association of Watershed Districts
New Managers Orientation
December 3, 2015

Board of Water & Soil Resources
Projects Without Lawsuits
October 28, 2015

Minnesota Environmental Law Institute
Water Law Update
April 23, 2015

Minnesota Association of Watershed Districts
New Managers Orientation
December 4, 2014

Environmental Initiative
The Current State of Minnesota’s Waters: Opportunities for Watershed Partnerships
November 14, 2014

Smith Partners PLLP Attorneys

Louis N. Smith, *Partner*, has practiced water resources law for thirty-three 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 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 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 teaches water law at the University of Minnesota Law School.

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. In addition to the Rice Creek Watershed District, he provides general counsel to the Minnehaha Creek, Comfort Lake-Forest Lake and Prior Lake-Spring Lake and Clearwater River Watershed Districts. 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 has included 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 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, and is now an at-large member of the board of the Twin Cities lawyer chapter of the organization. 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.

Hourly Rates

We serve several governmental clients at special reduced rates, and propose to represent the Riley Purgatory Bluff Creek Watershed District for the following hourly rates: attorneys, \$269 per hour in 2023, \$279 in 2024, and \$293 in 2025; Principal Louis Smith, \$289 per hour in 2023, \$303 in 2024, and \$319 in 2025. Our rates for other professional staff and fees for expenses are as follows:

Law Clerk	\$125 per hour
Legal Assistant	\$ 80 per hour
Case Assistant	\$ 70 per hour
Photocopying, printing	\$.09 per page (B&W) \$.18 per page (color)
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