



Title: Authorization to Terminate Minnesota Dirt Works, Inc. Contract for Twin Lakes Park Pond and Nokomis-Amelia Pond Dredging

Resolution number: 24-060

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Reviewed by: Michael Hayman, Project Planning Director; Chuck Holtman, Smith Partners

Recommended action: Authorize the District Administrator to terminate the construction contract 2023-2024 Twin Lakes Park Pond and Nokomis-Amelia Pond dredging with Minnesota Dirt Works, Inc.

Schedule: November 2023 – Construction contract awarded to Minnesota Dirt Works, Inc.
January 2024 – Construction intended to begin
February 2024 – Construction postponed due to unseasonable weather
September 2024 – Contract termination request from Minnesota Dirt Works, Inc.

Budget considerations: Fund name and code: Capital Finance, 3-3002-4550
Fund budget: \$1,015,000.00
Construction budget: \$567,099.25 + 10% contingency
Expenditures to date: \$16,970.80
Requested amount of funding: N/A

Past Board action:

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| Res # 23-072 | Award the construction contract for the 2023-2024 Twin Lakes Park Pond and Nokomis-Amelia Pond dredging to Minnesota Dirt Works, Inc. |
| Res # 23-063 | Approval of 100% Design Plans for the 2023-2024 Stormwater Pond Dredging Project and Authorization to Solicit Bids |
| Res # 23-043 | Authorization to Contract for Engineering and Design Services for 2023-2024 Stormwater Pond Survey and Maintenance |
| Res #23-033 | Authorization to Release the Request for Proposals for Engineering and Design Services for Annual Stormwater Pond Survey and Maintenance |
| Res # 22-046 | Authorization to Execute a Contract to Analyze MCWD Stormwater Pond Survey Data and Develop Maintenance Recommendations |

Background:

The Minnehaha Creek Watershed District (MCWD) is responsible to inspect and maintain 26 stormwater ponds through ownership or cooperative agreements with its partner communities. The MCWD Board of Managers has established a policy that dictates cyclical investigation and maintenance of its stormwater management infrastructure to ensure the long-term water quality and water quantity function of these systems.

In 2010, the Project Maintenance and Land Management (PMLM) Program recommended pond sediment surveys of six to eleven ponds each year on a three-year rotating basis to adhere to the policy established by the Board. As the District continued its rotational survey efforts, it collected extensive dredging data in the ensuing 12 years. Following the recent completion of MCWD's Stormwater Pond Data Analysis, a 20-year schedule was developed, and ponds are now selected for survey and maintenance based off historical data and a calculated sedimentation rate for each pond. This maintenance is necessary to ensure stormwater ponds are functioning as designed and continue to accrue their designed water resource benefit.

Summary:

Best management practices indicate that a stormwater pond should be dredged when 50% of its wet volume is filled. Utilizing results from MCWD's Stormwater Pond Data Analysis the MCWD Stormwater Pond Maintenance Plan identified that Twin Lakes Park Pond and Nokomis-Amelia Pond are estimated to have reached this threshold and require maintenance. The estimated accumulated sediment needed to be removed is 3,030 cubic yards from Twin Lakes Park Pond and 6,740 cubic yards from Nokomis-Amelia Pond, which would return both ponds to their as-built volumes.

At the November 27, 2023 Board meeting, the Board awarded the construction contract to Minnesota Dirt Works, Inc. (MN Dirt Works) for the total contract price of \$567,099.25 and authorized the Administrator to issue change orders in the aggregate amount of 10% of the contract price. Dredging of both ponds was to be completed by March 29, 2024.

Initial work to prepare the site began on January 17, 2024. However, due to the unseasonably warm weather, and the lack of frozen conditions in early 2024, MN Dirt Works communicated that they were unable to complete the work. The project was postponed on February 9, 2024, with the expectation that staff would evaluate the possibility of extending the existing contract to February 2025, allowing the work to be completed in the winter of 2024-2025.

In late winter 2024, as MN Dirt Works sought dewatering permits, MN DNR staff indicated that Blanding's turtles, a state-listed threatened species, were reported in the vicinity of the project area at Nokomis-Amelia Pond. State law and rules prohibit the destruction of threatened species and their habitats. Because dredging the Nokomis-Amelia Pond would seemingly conflict with these rules, MCWD staff proposed to temporarily cancel the Nokomis-Amelia portion of the work. This approach allowed staff to continue discussions with the DNR while advancing the dredging of Twin Lakes Park Pond through a change order to the existing contract with MN Dirt Works.

MN Dirt Works reviewed the change order to postpone the dredging of Twin Lakes Park Pond to this upcoming winter with cost adjustments, and requested that MCWD terminate the contract per GC 15.03, due to their workload and risk tolerance this winter. GC 15.03 states that the project owner may terminate for convenience without cause, subject to payment for completed and acceptable work. The Board previously authorized payment of \$16,970.80 to MN Dirt Works for start-up work prior to project postponement, including permits, fees, mobilization costs, and site preparation. MN Dirt Works has confirmed that there are no outstanding claims for payment and the District engineer has advised that the site is in conforming condition and there are no outstanding project close-out submittals.

At the November 7, 2024 MCWD Board Meeting, staff will seek authorization for the Administrator to terminate the contract per GC 15.03 and release the project bonds, on advice of counsel.



RESOLUTION

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WHEREAS, the Minnehaha Creek Watershed District (MCWD) engages in regional capital improvement projects as described in its Water Resources Management Plan;

WHEREAS, the MCWD has a policy that dictates cyclical investigation and maintenance of its stormwater management infrastructure and conducts pond sediment surveys on the 26 regional ponds that MCWD is responsible for inspecting and maintaining;

WHEREAS, the Project Maintenance and Land Management Program (PMLM) annually budgets for this effort in accordance with the PMLM Maintenance Plan;

WHEREAS, utilizing MCWD's Stormwater Pond Data Analysis, Twin Lakes Park and Nokomis-Amelia ponds were recommended for survey and maintenance in 2023-2024;

WHEREAS, on August 10, 2023, MCWD Board of Managers authorized staff to enter into a contract with Stantec Consulting for engineering and design services for 2023-2024 stormwater pond survey and maintenance;

WHEREAS, on October 12, 2023, MCWD Board of Managers approved the final design plans for the 2023-2024 Stormwater Pond Maintenance and authorized the District Administrator to solicit bids for construction maintenance of Twin Lakes Park Pond and Nokomis-Amelia Pond in accordance with Minnesota law;

WHEREAS, on November 27, 2023, MCWD Board of Managers awarded the contract for construction maintenance of Twin Lakes Park Pond and Nokomis-Amelia Pond to Minnesota Dirt Works, Inc., including the Base Bid and Alternate #1, for the contract price of \$567,099.25;

WHEREAS, on February 9, 2024, the dredging project was postponed due to unseasonably warm weather and lack of frozen conditions, with staff to evaluate extending the existing contract to February 2025, allowing the work to be completed in the winter of 2024-2025;

WHEREAS, in late winter 2024, DNR staff indicated that Blanding's turtles, a state-listed threatened species, were reported in the vicinity of the project area at Nokomis-Amelia Pond;

WHEREAS, MCWD staff proposed to postpone the Nokomis-Amelia portion of the work and continue discussions with the DNR, while advancing the dredging of Twin Lakes Park Pond through a change order to the existing contract with MN Dirt Works;

WHEREAS, after mutual review of a proposed change order to extend Twin Lakes Park Pond dredging for this winter with 2025 cost adjustments and cancel the Nokomis-Amelia Pond, MN Dirt Works advised that it preferred instead that MCWD terminate the contract;

WHEREAS, MN Dirt Works affirms that no claim for payment, within the meaning of GC 15.03 of the contract, is outstanding; and the District engineer has advised that the site is in conforming condition and that no required contract closeout submittals are outstanding;

NOW, THEREFORE, BE IT RESOLVED in accordance with GC 15.03 termination for convenience clause, that the Minnehaha Creek Watershed District Board authorizes the District Administrator to terminate the contract with Minnesota Dirt Works, Inc., for construction maintenance and release the project bonds, on advice of council.

Resolution Number 24-060 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 11/7/2024

Secretary Date: _____

DRAFT