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<b>Title:</b>	Consideration of Pay Request #4 for the Minnehaha Preserve Boardwalk Reconstruction Project
<b>Resolution number:</b>	25-034
<b>Prepared by:</b>	Michael Hayman, Project Planning Director Phone: (952) 471-8226 mhayman@minnehahacreek.org
<b>Reviewed by:</b>	James McDermond-Spies, PMLM Manager; MCWD legal counsel
<b>Recommended action:</b>	The Board of Managers considers pay request #4 in consideration of SRF's review and recommendation and General Conditions 15.01 of the contract.
<b>Schedule:</b>	May 2025: Consideration of pay request Summer 2025: Advancing correction of defective work
<b>Budget considerations:</b>	Fund name and budget code: Project Maintenance and Land Management, 2003 Construction contract: \$1,858,182.00 Construction expenditures to date: \$1,573,959.15 Requested amount of funding: \$146,830.01
<b>Past Board action:</b>	Res # 22-070    Award of Construction Contract for the Minnehaha Preserve Boardwalk Reconstruction Res # 22-047    Approval of 100% Design Plans for the Minnehaha Preserve Boardwalk Reconstruction Project and Authorization to Solicit Bids Res # 22-015    Authorization to Execute a Contract for Engineering and Design Services for Minnehaha Preserve Boardwalk Reconstruction Res # 22-005    Authorization to Release the Request for Proposals for Engineering and Design Services for Minnehaha Creek Preserve Boardwalk Reconstruction

**Summary:**

The purpose of this agenda item is for the Minnehaha Creek Watershed District (District) Board of Managers to consider and take action on Pay Request #4 submitted by JTS Construction, Inc. (JTS), for the Minnehaha Creek Preserve Boardwalk Reconstruction project.

As the Board is aware, JTS's work on the project occurred in early 2023. During inspection by the District and the City of St. Louis Park ("City") for substantial completion in April and May 2023, numerous defects in the construction and joining of underlying pile caps and joists were discovered throughout all parts of the project where the underlying structure could be visually accessed. After further inspections, the obligation to correct these defects was communicated to JTS by the District's project engineer, SRF Consulting Group (SRF) via a defective work notice and a supplemental notice, dated, respectively, June 9, 2023 and June 30, 2023. In the two years since, JTS has been engaged in obtaining approval from SRF and the City for certain methods of correcting the work, and the District has sought to move JTS forward to undertake and complete the corrective work. As of now, apart from very limited work during field testing of methods, JTS has yet to initiate the corrective work.

JTS executed the contract on November 8, 2022, as a unit price contract, in the amount of \$1,858,182.00. On April 27, 2023, the Board approved Pay Request #3 in the amount of \$1,112,210.03, which subsequently was disbursed, bringing total payment to JTS to the amount of \$1,573,959.15, with an additional \$90,567.85 approved and held as retainage.

On May 9, 2023, JTS transmitted Pay Request #4, in the amount of \$146,830.01. Current District staff and District counsel became aware only recently that JTS had submitted this pay request, when JTS counsel referenced it in an April 1, 2025 letter. On researching District files, staff learned that the prior project manager (who left the District in early 2024) received the pay request and advised JTS's president that the District would hold the pay request pending resolution of the wide-ranging defective work issues that had just been discovered. JTS apparently did not object, at the time, to the District's doing so, and thereafter made no mention of the outstanding pay request until the April 1, 2025 letter.

Processing of pay requests is governed under the contract by section 15.01 of the General Conditions (GC 15.01). Under GC 15.01, SRF evaluates the pay request and presents a recommendation to the Board. The Board then acts on the pay request. Although it appears that JTS concurred in setting the pay request aside, under GC 15.01, these actions were to have occurred within a specified time after receipt of the pay request. Now that the District is aware of the outstanding request, it is appropriate to take action on it.

SRF has prepared its recommendation, dated May 19, 2025, which appears in the meeting packet. Under GC 15.01, SRF may refuse to recommend payment in whole or part if it cannot represent that "the quality of the Work is generally in accordance with the Contract Documents," or that "the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is [SRF's] responsibility to observe the Work." Further, SRF is to recommend reduction in payment that, in its opinion, is necessary to protect the District from loss due to defective work that requires correction or replacement.

Pursuant to GC 15.01, SRF completed its review of Pay Request #4, and due to the significant amount of defective work existing, recommends that the MCWD decline the payment in full based on the terms of GC 15.01.C and 15.01.E. SRF notes that the cost to correct present deficiencies is estimated to be higher than the cost requested by JTS in Pay Request #4.

The Board should give due regard to SRF's recommendation. In addition, GC 15.01 states that beyond any reduction in payment that SRF recommends, the Board may impose a set-off against payment if the work is defective and requires correction or replacement; if the District has incurred engineering or other costs or losses due to defective work; or if liquidated damages have accrued due to JTS failure to achieve substantial or final completion. In addition to the presence of defective work requiring correction, through March 2025, the District has incurred engineering and legal costs in the amount of about \$112,000 to respond to the defective work, and liquidated damages in the amount of about \$67,000.

Staff recommends that on the basis of the SRF recommendation and the Board's own consideration of factors set forth in GC 15.01, the Board may determine that no payment is due on Pay Request #4 at this time.

**Attachments:**

- SRF memorandum reviewing Pay Request #4 for the Minnehaha Creek Preserve Boardwalk Reconstruction



## RESOLUTION

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**Resolution number:** 25-034

**Title:** Consideration of Pay Request #4 for the Minnehaha Preserve Boardwalk Reconstruction Project

- WHEREAS the Minnehaha Creek Watershed District (MCWD) engages in regional capital improvement projects as described in its Water Resources Management Plan and in 2015 completed construction of the Minnehaha Preserve project ("Project") on the Minnehaha Greenway in St. Louis Park;
- WHEREAS due to improper materials specification, the boardwalk wood materials of the Project evidenced accelerated deterioration, as a result of which the MCWD Board of Managers ("Board") determined to reconstruct the boardwalk on the existing piers;
- WHEREAS on November 3, 2022, the Board of Managers awarded the contract for reconstruction to JTS Construction for a contract price of \$1,858,182;
- WHEREAS JTS worked on the project in early 2023, and during inspection by the MCWD and the City of St. Louis Park ("City") for substantial completion in April and May 2023, numerous defects in the construction and joining of underlying pile caps and joists were discovered throughout all parts of the project where the underlying structure could be visually accessed;
- WHEREAS after further inspections, the obligation to correct these defects was communicated to JTS by MCWD's project engineer, SRF Consulting Group (SRF), via a defective work notice and a supplemental notice, dated, respectively, June 9, 2023 and June 30, 2023;
- WHEREAS in the two years since defective work notice, JTS has been engaged in obtaining approval from SRF and the City for certain methods of correcting the work, and the MCWD has sought to move JTS forward to undertake and complete the corrective work, but as of now, apart from very limited work during field testing of methods, JTS has yet to initiate the corrective work;
- WHEREAS JTS executed the contract on November 8, 2022, as a unit price contract, in the amount of \$1,858,182.00. On April 27, 2023, the Board approved Pay Request #3 in the amount of \$1,112,210.03, which subsequently was disbursed, bringing total payment to JTS to the amount of \$1,573,959.15, with an additional \$90,567.85 approved and held as retainage;
- WHEREAS on May 9, 2023, JTS transmitted Pay Request #4, in the amount of \$146,830.01, and records show that upon receipt of the pay request, the then-MCWD project manager advised JTS's president that MCWD would hold the pay request pending resolution of the wide-ranging defective work issues that had just been discovered, to which it appears JTS did not object at the time;
- WHEREAS JTS thereafter made no mention of the outstanding pay request until an April 1, 2025 letter from JTS's counsel, at which time current MCWD staff and MCWD counsel first became aware of the pay request;
- WHEREAS although it appears that JTS concurred in setting the pay request aside in 2023, under GC 15.01, these actions were to have occurred within a specified time after receipt of the pay request, and now that the Board is aware of the outstanding request, it is appropriate to take action on it;

WHEREAS the processing of pay requests is governed under the contract by section 15.01 of the General Conditions (GC 15.01), and under GC 15.01, SRF evaluates the pay request and presents a recommendation to the Board and the Board then acts on the pay request;

WHEREAS GC 15.01 provides that the Board may apply a set-off against a pay request, or deny a pay request entirely, if the work for which the payment is sought does not, in the MCWD engineer's judgment, conform to the contract; if there is corrective work to be performed; if MCWD has incurred costs to respond to defective work or liquidated damages; and if the Board finds it warranted to set-off against or deny the request to protect MCWD against loss from these circumstances;

WHEREAS SRF has reviewed Pay Request #4, and pursuant to GC 15.01 recommends that, due to the significant amount of defective work existing on the project, MCWD declines the payment in full based on the terms of GC 15.01.C and 15.01.E.; SRF's recommendation notes that the cost to correct present deficiencies is estimated to be higher than the cost requested by JTS in Pay Request #4;

WHEREAS corrective work is required across the Project site, at a cost for which MCWD does not have a reliable estimate; MCWD has incurred costs and liquidated damages in the neighborhood of \$200,000, as well as costs in staff time, to respond to the defective work; and MCWD will incur further costs to administer the contract and observe the further work until it is completed;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers, on the basis of the SRF recommendation and the Board's own consideration of factors set forth in GC 15.01, hereby determines that no payment is due on Pay Request #4 at this time;

BE IT FURTHER RESOLVED that, in accordance with GC 15.01, MCWD staff will give JTS immediate written notice, with a copy to SRF, stating the Board's action and the reasons for it.

Resolution Number 25-034 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 5/22/2025

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Secretary Date: May 22, 2025



## MEMORANDUM

*SRF Project No. 15470.00*

**To:** James Wisker  
Minnehaha Creek Watershed District

**From:** Jeff Kurth, Project Director, Construction Services

**Date:** May 19, 2025

**Subject:** Pay Request #4, Minnehaha Creek Preserve Boardwalk Reconstruction

Per the request of the Minnehaha Creek Watershed District (MCWD), we have reviewed JTS's Pay Request No. 4. We have updated the working spreadsheet utilized during the project Pay Request review process to include Pay Request 4. Our measured quantities are in alignment with JTS's Pay Request #4 quantities for the applicable period of work. However, due to the significant amount of defective work noted to be corrected by the draft of Change Order 2, we would recommend that the MCWD decline the payment in full based on the terms of GC 15.01.C and 15.01.E. The cost of rework associated with the draft of Change Order 2 is estimated to be higher than the cost requested by JTS in Pay Request 4.