



Title:	Minnehaha Preserve Boardwalk: Work Status, Contract Termination, Use of Bond
Resolution number:	25-039
Prepared by:	Michael Hayman, Project Planning Director Phone: (952) 471-8226 mhayman@minnehahacreek.org
Reviewed by:	James, Wisker, Administrator; James McDermond-Spies, PMLM Manager; MCWD legal counsel
Recommended action:	The Board of Managers delegates authority and directs MCWD legal counsel to terminate the contract for the Minnehaha Preserve Boardwalk reconstruction, and declare a contractor default, provide all notices to the bond issuer, commit MCWD to pay the balance of the contract price, and take all other actions counsel deems necessary or prudent under the contract and bond to protect MCWD's legal and financial interests.
Schedule:	May 2025: Consideration of default and request for conference June 2025: Termination of contract Summer 2025: Advance bond claim and procurement of project completion contract
Budget considerations:	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: N/A
Past Board action:	Res # 25-034 Consideration of Pay Request #4 for the Minnehaha Preserve Boardwalk Reconstruction Project 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:

On January 10, 2023, the Minnehaha Creek Watershed District (MCWD) and JTS Construction, Inc. (JTS) entered into a contract for the Minnehaha Creek Preserve Boardwalk Reconstruction project, located in the City of St. Louis Park.

JTS commenced work on the project in early March 2023 and continued construction activity on the site for approximately six weeks. During inspection by MCWD, SRF Consulting Group (SRF), 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 discovering the defective work, MCWD coordinated with SRF to document the deficiencies and communicate them to JTS for correction. On June 9, 2023, SRF issued a Defective Work Notice (DWN) to JTS, which identified six categories of defects that do not conform to project specifications. On June 15, 16, and 27, 2023, MCWD staff inspected all accessible boardwalk headers to further document the type and number of defects at each individual header. Using MCWD's inspection data, SRF issued a Supplemental Defective Work Notice (SDWN; Attachment 3) on June 30, 2023, which expanded the defective work categories to 11 such categories. The SDWN also identifies the specifications applicable to each defective work category, the required correction to meet project design specifications, and the required process for JTS to follow if it desired to seek a solution other than simply completing the work in accordance with the specifications.

In the SDWN, the project engineer from SRF stated: "Defective work within the categories listed below has been observed on essentially all visually accessible headers within the installation." It further stated: "JTS is directed to correct defective work to bring it into conformance with the project specifications."

Following the issuance of the DWN and SDWN, it became JTS's responsibility to correct the defective work promptly and bring it into conformance with the project specifications, and gave JTS the right to propose and seek MCWD approval of alternative means of correcting the defective work to the specifications. JTS also would need to obtain approval of any such proposals from the City in order to remain in compliance with the City-issued building permit for the work.

Between July and September, 2023, JTS decided on its approach to the SDWN request to correct the work. By September 2023, JTS had advised that it would correct nine of the 11 DWCs to specification, and for the two other DWCs, seek the approval of alternative approaches from SRF and the City. The alternative approaches would use custom hardware fabricated by MiTek, in the form of joist extension brackets to close excessive gaps between joists and bents, and steel restrained bearing plates to resolve low hanger conditions. MCWD and SRF outlined submittal requirements under the contract, and MCWD assisted JTS in contacting the City building official and determining the procedure to request alternative approval under the City building code.

In the two years since the issuance of the DWN and SDWN, JTS has been engaged in obtaining approval from SRF and the City for certain methods of correcting the work, and MCWD has sought to move JTS forward to undertake and complete the corrective work, but it has been a sluggish process.

From October 2023 to March 2024, MCWD received only limited communications from JTS, as JTS slowly advanced its proposal. In January 2024, the MCWD Administrator engaged the City to facilitate alignment between JTS and the City in efficient processing of the alternative proposals. The Administrator urged JTS to work directly with the City to develop JTS's alternatives proposal application, and to prepare an installation plan for the corrective work. JTS visited the site on March 6, 2024, to test its boardwalk lifting (jacking) method, and performed corrective work on one 12-foot section of boardwalk. On March 25, 2024, the MCWD Administrator advised JTS that SRF had accepted the proposed alternatives, conditional on JTS's field testing of correction methods and its completion of an installation plan incorporating the outcome of the field testing.

During this same time period, from January to August 2024, the MCWD Administrator continued to maintain engagement with the City while MCWD awaited JTS's completion of its alternative proposal application and installation plan. JTS finally submitted its application to the City on August 6, 2024. At a September 20, 2024 meeting of JTS, MCWD, SRF and City representatives, the City building official advised the parties informally that it found the JTS application satisfactory, and was prepared to approve the alternatives pending the field test and SRF's approval of a final installation plan prepared by JTS.

Following the September meeting, MCWD worked to secure a field test plan from JTS and to obtain City review and concurrence in the test plan. On December 19, representatives of the parties met on site for JTS to perform the field test work under observation of MCWD, SRF and City representatives. During the field test, JTS used a jacking procedure that

deviated from the test plan, incorrectly installed the custom extension bracket, failed to nail to maximum condition, and split timbers due to poor nailing technique.

On January 13, 2025, MCWD, SRF and City representatives met with JTS to review the field test and identify matters that the installation plan needed to address in order to successfully implement the corrective measures in the field. As MCWD awaited the revised plan from JTS, on February 3, 2025, MCWD Administrator emailed JTS with a summary of points discussed at the January 13 meeting.

On April 1, 2025, legal counsel for JTS responded to the February 3 communication. On behalf of JTS, counsel forwarded a revised installation plan. Counsel then stated that JTS would not commence corrective work until MCWD either:

- a) Had paid it the sum of \$237,397.86 (\$146,830.01, as the amount of an outstanding pay request that JTS submitted in May 2023, and \$90,567.85 in accrued retainage held by MCWD) and promised to pay an additional \$250,000 on JTS completion of the work; or
- b) Stated what it would agree to pay for "complete and final resolution" of contract performance;

In addition to an April 23, 2025, email from the MCWD Administrator to JTS counsel identifying areas that the installation plan continued to fail to address, on April 16, and again on May 5, 2025, MCWD counsel also replied to JTS counsel. In these communications, MCWD counsel emphasized the two years that had passed, the outstanding installation plan, and JTS's failure to demonstrate to MCWD Board's satisfaction that JTS was committed to the corrective work and prepared to perform it diligently and capably. Consistent with the Board's direction, counsel communicated that subject to MCWD's receipt of a final installation plan, MCWD would negotiate an agreement including MCWD's waiver of liquidated damages and accrued staff costs if JTS met interim progress and completion deadlines.

Separately on May 5, 2025, JTS counsel wrote again to MCWD, advising that JTS considered MCWD's dissatisfaction with the status of the installation plan to be excessive. Counsel accompanied the letter with a 22-page draft complaint against MCWD and SRF, and advised that if MCWD did not agree to mediate the cost of the corrective work within 10 days, JTS would initiate suit.

Shortly thereafter, on May 12, 2025, pursuant to paragraph 3.1 of Performance Bond GRMN46531A ("Bond") and GC 16.02 of the contract, MCWD counsel transmitted written notice to JTS and the bond issuer, Granite Re, Inc., that it was considering declaring JTS to be in default of the contract. In the notice, MCWD asserted that JTS had failed to comply with material terms of the contract in the following respects:

- a) Widespread failure to perform the work in accordance with the Contract specifications, including the requirement to conform to terms of applicable city permits.
- b) Failure to perform corrective work promptly when directed by the Engineer in the June 2023 defective work notice and SDWN, and continuing since then.
- c) Failure to complete the work by June 30, 2023.
- d) Disregard of the code requirements of the City of St. Louis Park.
- e) Failure to supply sufficient skilled workers, and suitable materials and equipment, to perform the work, and thereafter to perform the corrective work.

MCWD requested a conference to review these conditions of default and on June 3, 2025, JTS, Granite Re, MCWD and SRF representatives met by virtual conference pursuant to the MCWD notice of consideration of default. In the conference, the MCWD Administrator reviewed the DWCs and the history of work under the contract, and MCWD counsel reported that the Board authorized MCWD staff and counsel to negotiate with JTS, and with Granite Re and SRF if they were to participate, an agreement by which JTS would complete the work, subject to the following conditions:

- There were a proposed agreement in hand by June 24 for the Board's June 26 meeting agenda, and approved by the other participating parties by the time of the meeting.
- By June 26, JTS had supplied a final installation plan addressing outstanding MCWD comments.

- MCWD would receive the project for the contract price, and be reimbursed for its engineering and legal fees to respond to the defective work, accrued and to work completion. MCWD would waive liquidated damages and reimbursement for staff costs.
- The agreement would contain one or more interim deadlines to ensure completion by this fall/winter season.

At the time of this drafting, there is no proposed agreement, in accord with the terms outlined during the bond conference.

As these efforts have proceeded, MCWD sought the professional judgment of its engineer, SRF, as to the suitability of the boardwalk in its present state. SRF has advised that the defective work does not present an imminent public hazard, but compromises the structural integrity of the boardwalk over time. The boardwalk is constructed for public use and a prominent work of MCWD for which it seeks to encourage use for the benefit of public recreation and education. MCWD contracted for a durable boardwalk conforming to an engineering design warranted by the design engineer. It did not contract for a boardwalk that is not under design warranty, does not conform to building code, and would require it to make continuous judgments of risk and prudence without criteria to guide it. Further, it is legally doubtful that MCWD could allow the structure to remain in widespread violation of the City building permit. Accordingly, accepting the work with a deduction for loss in value, an option under GC 14.04, is not an alternative that staff would recommend to the Board.

In conclusion, JTS is in violation of material terms of the contract in that the defective work is widespread; corrective work was not performed promptly on notice from SRF or in compliance with the contract deadline; and the work remains to be performed, despite two years having elapsed from the contract completion date.

While SRF has advised MCWD that the defects in the work do not render the boardwalk an immediate safety concern, as time passes SRF will not be able to continue to so advise. Further, so long as the work has not been completed, MCWD and the City continue to incur public costs in the effort to resolve the project status. MCWD has a strong interest in having the corrective work performed, and the boardwalk completed, without further delay.

Lastly, due to the creek and wetland environment in which the boardwalk is located, the work must be performed during late fall/winter. It is important for MCWD to move forward quickly and efficiently to seek to preserve the possibility that the outstanding work may be procured on a schedule that allows performance during the 2025-26 season.

Under the terms of the performance bond, MCWD has a right to have the work completed at the JTS contract cost, and a right to reimbursement of costs it incurred as a result of the defective work, and to accrued liquidated damages. If the Board elects to direct counsel to terminate the contract and claim against the performance bond, the bond issuer, Granite Re, will have an opportunity to investigate the claim and determine how it will respond to the bond. It may authorize MCWD to contract for completion of the work, may itself contract for the work, may offer to MCWD a sum that it believes it is obligated to pay under the claim, or may deny the claim. For amounts it pays out under the claim, Granite Re will have a right of action against JTS under the bond contract.

Attachments:

The following contract documents and communications are provided to the Board of Managers as reference documents as it considers termination of the contract.

- Attachment 1: Construction Agreement, November 8, 2022
- Attachment 2: Construction Performance Bond
- Attachment 3: Supplemental Defective Work Notice #1 and Defective Work List
- Attachment 4: J. Wisker Field Test Debrief email, February 3, 2025
- Attachment 5: Kemper Law letter and Draft Implementation Plan, April 1, 2025
- Attachment 6: C. Holtman Interim Response email, April 16, 2025
- Attachment 7: J. Wisker MCWD Feedback on Draft Implementation Plan, April 23, 2025

- Attachment 8: Smith Partners letter to Kemper Law, May 5, 2025
- Attachment 9: Kemper Law letter and Draft Complaint, May 5, 2025
- Attachment 10: Smith Partners Formal Notice of Consideration of Default, May 12, 2025
- Attachment 11: Granite Re Conference Presentation, June 3, 2025
- Attachment 12: C. Holtman Settlement Discussion email, June 23, 2025



RESOLUTION

Resolution number: 25-039

Title: Directing Counsel to Terminate Contract with JTS Construction, Inc.

WHEREAS The Board of Managers of the Minnehaha Creek Watershed District ("Board"), hereby makes the following Findings;

1. On January 10, 2023, the Minnehaha Creek Watershed District (MCWD) and JTS Construction, Inc. (JTS) entered into a contract for the Minnehaha Creek Preserve Boardwalk Reconstruction project, located in the City of St. Louis Park ("City"). The contract ("Contract") encompasses trail and boardwalk reconstruction, bituminous, timber and excavation. The contract was awarded at a price of \$1,858,182. There have been no change orders affecting price. The contract establishes June 30, 2023 as the final completion date.

2. The Contract prescribes standards for construction of the boardwalk supporting structure. These standards include specifications stated in the plans, and Minnesota Department of Transportation (MnDOT) Standard Specifications incorporated by reference into the Contract. The Contract also requires that the contractor select hardware that it proposes to use to join joists to headers (pile bents), and submit the selection to the MCWD engineer ("Engineer"), for review and approval of use. JTS proposed hangers manufactured by MiTek Inc. The hangers are attached to the bents by nails or screws, and support the joists that then are attached to them, by nails or screws. The Engineer, SRF Consulting Group, Inc. (SRF), approved the proposed hangers, on the condition that they be used in accordance with MiTek installation and use specifications. In addition, the Contract requires that JTS obtain required City permits and conform to those permits. The City required a building permit, incorporating City building code provisions.

3. JTS commenced work in the field on or about March 7, 2023, and continued for several weeks until it largely had assembled the structure. On April 12, April 18, and May 4, 2023, the Engineer and the City, accompanied by MCWD staff, inspected the work to assess substantial completion. During the inspections, installation concerns were noted.

4. The Contract incorporates EJCDC General Conditions (2013). On June 9, 2023, pursuant to GC 14.03, the Engineer issued a Defective Work Notice identifying six categories of work that did not conform to Contract specifications ("Defective Work Categories," or DWCs):

- #1 Required maximum fastening of hangers not achieved
- #2 Excessive gap between joist and bent
- #3 Square hanger used for skewed joist/bent connection
- #4 Hanger installed low and joist raised with wooden shim
- #5 Interior hanger field-modified and used in place of exterior inverted flange hanger; exterior inverted flange hanger field-modified
- #6 Missing plate on helical pile

The Defective Work Notice was accompanied by a Defective Work List identifying specifications applicable to each DWC, and the required correction.

5. The Engineer and MCWD staff performed additional inspections on June 15, 16 and 26, 2023, to complete inspection of all visually accessible joist headers. On June 30, 2023, the Engineer issued a Supplemental Defective Work Notice (SDWN), superseding the June 9 notice, with updated Defective Work List. The SDWN:

Expanded DWC #4, noting the following defective work:

- Joist elevated above hanger, without bearing support
- Hanger damaged by shim
- Hanger and joist placed too low, resulting in uneven deck surface at the joist/bent junction

Expanded DWC #6 to add helical pile plate not installed properly within the bent saddle

Added five DWCs:

- #7 Fasteners not fully installed (nails not fully driven)
- #8 Square hanger field-modified for skewed joist, or to avoid helical plate
- #9 Skewed hanger used for square joist/bent connection
- #10 Joist screwed directly to bent without use of hanger
- #11 Failure to properly install fasteners in hanger dimple holes

In the SDWN, the Engineer stated: "Defective work within the categories listed below has been observed on essentially all visually accessible headers within the installation." It further stated: "JTS is directed to correct defective work to bring it into conformance with the project specifications."

6. The SDWN communicated the Engineer's direction for the corrective work, as follows:

The installation of corrective work will be subject to inspection by MCWD, SRF, and the City of St. Louis Park in the ordinary course and at time of substantial completion. MCWD and SRF will work with JTS to establish a notice and inspection protocol to minimize any impact on JTS progress.

JTS is directed to correct all examples of defective work categories listed in this SDWN #1 to bring the work into conformance with the project specifications. Corrective work that consists of conforming to the project specifications may proceed at the earliest time. No submittal or SRF approval is needed for this, and JTS has access to the site in all respects for this purpose. If elements of the work are related, such that JTS finds it most efficient to await resolution of a change proposal before completing other corrective work, that is a matter for JTS' judgment as an element of means and methods. SRF encourages corrections to the present specifications and would like to limit proposals for alternative work for which review time and cost would be incurred and that would be subject to set-off in accordance with GC 14.04.

JTS submittal, SRF review, and MCWD approval are required only as to those elements of defective work, if any, for which JTS proposes a solution other than simply completing the work in accordance with the specifications. In such cases, JTS must submit a change proposal with appropriate documentation, in accordance with the GC's, by email to SRF (Casey Black) and copy the MCWD (Tiffany Schaufler). SRF will review JTS' proposal for approval and will consult with MCWD and the City of St. Louis Park for their review. JTS may not proceed under any change proposal until SRF and the MCWD, on advice of SRF, have accepted the proposal in writing, and until JTS has determined that the work as adjusted meets the terms of applicable City permits and approvals. Any accepted change proposals will be converted into change orders.

7. JTS did not object to or contest the Defective Work Notice or SDWN as provided for under GC 11.06. GC 14.03 required that JTS promptly perform the corrective work. JTS did not do so, and did not achieve final completion by June 30, 2023.

8. Between July and September, 2023, JTS decided on its approach to the SDWN request to correct the work. By September 2023, JTS had advised that it would correct nine of the 11 DWCs to specification, and for the two other DWCs, seek the approval of alternative approaches from the Engineer and the City. The alternative approaches would

use custom hardware fabricated by MiTek, in the form of joist extension brackets to close excessive gaps between joists and bents, and steel restrained bearing plates between hangers and joists to resolve low hanger conditions. MCWD and the Engineer outlined submittal requirements under the Contract. MCWD assisted JTS in contacting the City building official to determine the procedure to request alternative approval under the City building code.

9. From October 2023 to March 2024, MCWD received only limited communications from JTS, as JTS slowly advanced its proposal. In January 2024, the MCWD Administrator engaged the City to facilitate alignment between JTS and the City in efficient processing of the alternative proposals. The Administrator urged JTS to work directly with the City to develop JTS's alternatives proposal application, and to prepare an installation plan for the corrective work. On March 25, 2024, the MCWD Administrator advised JTS that the Engineer had accepted the proposed alternatives, on the condition that JTS field tested correction methods and completed an installation plan, satisfactory to the Engineer, incorporating the outcome of the field testing.

10. From January to August 2024, the MCWD Administrator continued to maintain engagement with the City while MCWD awaited JTS's completion of its alternative proposal application and installation plan. JTS finally submitted its application to the City on August 6, 2024. At a September 20, 2024 meeting of JTS, MCWD, SRF and City representatives, the City building official advised the parties informally that it found the JTS application satisfactory, and was prepared to approve the alternatives pending the field test and the Engineer's approval of a final installation plan prepared by JTS.

11. After the September meeting, MCWD worked to secure a field test plan from JTS and to obtain City review and concurrence in the test plan. On December 19, 2024, representatives of the parties met on site for JTS to perform the field test work under observation of MCWD, SRF and City representatives. During the field test, JTS used a procedure to raise (jack) boardwalk sections that deviated from the test plan, incorrectly installed the custom extension bracket, failed to nail to maximum condition, and split timbers due to poor nailing technique.

12. On January 13, 2025, MCWD, SRF and City representatives met with JTS to review the field test and identify matters that the installation plan needed to address. MCWD awaited the revised plan. On February 3, 2025, to advance the process, the MCWD Administrator emailed JTS with a summary of points discussed at the January 13 meeting.

13. On April 1, 2025, counsel for JTS responded to the Administrator's February 3 communication. On behalf of JTS, counsel forwarded a revised installation plan. Counsel then stated that JTS would not commence corrective work until MCWD either:

- (a) Had paid it the sum of \$237,397.86 (\$146,830.01, as the amount of an outstanding pay request that JTS submitted in May 2023, and \$90,567.85 in accrued retainage held by MCWD) and promised to pay an additional \$250,000 on JTS completion of the work; or

- (b) Stated what it would agree to pay for "complete and final resolution" of contract performance.

14. On April 23, 2025, the MCWD Administrator replied to JTS counsel identifying areas that the installation plan continued to fail to address.

15. MCWD counsel replied to JTS counsel on April 16, and again on May 5, 2025. MCWD counsel emphasized the two years that had passed, the fact that the installation plan remained outstanding, and JTS's failure to demonstrate to the Board's satisfaction that JTS was committed to the corrective work and prepared to perform it diligently and capably. In accordance with the Board's direction, counsel communicated that subject to MCWD's receipt of a final installation plan, MCWD would negotiate an agreement including MCWD's waiver of liquidated damages and accrued staff costs if JTS met interim progress and completion deadlines.

16. Separately on May 5, 2025, JTS counsel wrote again to MCWD, advising that JTS considered MCWD's dissatisfaction with the status of the installation plan to be excessive. Counsel accompanied the letter with a 22-page draft complaint against MCWD and SRF, and advised that if MCWD did not agree to mediate the cost of the corrective work within 10 days, JTS would initiate suit.

17. On May 12, 2025, pursuant to paragraph 3.1 of Performance Bond GRMN46531A ("Bond") and GC 16.02 of the contract, MCWD counsel transmitted written notice to JTS and the bond issuer, Granite Re, Inc., that it was considering declaring JTS to be in default of the contract. In the notice, MCWD asserted that JTS had failed to comply with material terms of the contract in the following respects:

- (a) Widespread failure to perform the work in accordance with the Contract specifications, including the requirement to conform to terms of applicable city permits.
- (b) Failure to perform corrective work promptly when directed by the Engineer in the June 2023 defective work notice and SDWN, and continuing since then.
- (c) Failure to complete the work by June 30, 2023.
- (d) Disregard of the code requirements of the City of St. Louis Park.
- (e) Failure to supply sufficient skilled workers, and suitable materials and equipment, to perform the work, and thereafter to perform the corrective work.

In accordance with the bond terms, MCWD requested a conference to review these conditions of default and the parties' intent as to contract performance.

18. On June 3, 2025, JTS, Granite Re, MCWD and SRF representatives met by virtual conference pursuant to the MCWD notice of consideration of default. In the conference, the MCWD Administrator reviewed the DWCs. MCWD counsel related that the Board had authorized MCWD staff and counsel to negotiate with JTS, and with Granite Re and SRF if they were to participate, for the performance of the work. Counsel related that by the board's direction, an agreement by which JTS would complete the work would need to meet the following conditions:

- A proposed agreement would need to be in hand by June 24 for the Board's June 26 meeting agenda, and be approved by the other participating parties by the meeting time.
- JTS would need to provide a final installation plan addressing outstanding MCWD comments by June 26.
- JTS would commit that MCWD would receive the project for the contract price, and be reimbursed for its engineering and legal fees to respond to the defective work, accrued and to work completion. MCWD would waive liquidated damages and reimbursement for staff costs.
- The agreement would contain one or more interim deadlines to ensure completion within the 2025-26 winter season.

19. No proposed agreement, in accordance with the preceding paragraph, has been negotiated or brought before the Board.

20. As recited in MCWD's May 12, 2025, notice and above, JTS has failed to perform the Contract in the following ways:

- (a) *Widespread failure to perform the work in accordance with the Contract specifications, including the requirement to conform to terms of applicable city permits.* MCWD staff and the Engineer have inspected about 60 percent of the joist-bent connections underlying the boardwalk, and have identified instances of work falling in the 11 DWCs that number in the hundreds. Hundreds of hangers appear to require replacement because of the wrong skew for the application, because they were improperly modified, or from damage due to improper shimming or other methods.
- (b) *Failure to perform corrective work promptly when directed by the Engineer in the June 2023 defective work notice and SDWN, and continuing since then.* GC 14.03.D required that the work be corrected promptly on

receipt of the defective work notice and SDWN. At all times since the Engineer issued the SDWN, JTS has had full access to the site. By September 2023, JTS had advised that it would correct nine DWCs to specification and had presented proposals for alternatives for the other two DWCs. In the 21 months since then, JTS has yet to proceed beyond limited work to test correction methods. On May 5, 2025, by counsel, JTS advised that it would not perform the corrective work unless MCWD paid it \$237,397.86 and agreed that it would pay an additional sum of \$250,000. The corrective work remains almost entirely unaddressed.

(c) *Failure to complete the work by June 30, 2023.* JTS has had access to the site at all times. The Board is unaware of circumstances that would support a time adjustment under the Contract, and JTS has not requested an adjustment. The work remains uncompleted two years after the contractual date for completion.

(d) *Disregard of the code requirements of the City of St. Louis Park.* Section 01 41 00 required JTS to conform the work to all local permits and approvals. JTS was aware at the time it performed the work that it was subject to a City building permit. The City building official has advised that some or all of the DWCs are in violation of the City building code and permit.

(e) *Failure to supply sufficient skilled workers, and suitable materials and equipment, to perform the work, and thereafter to perform the corrective work.* The defective work reflects substantial inattention to technical specifications, selection and use of the wrong hardware from materials on site, and generally uncaredful work methods. In addition, DWC #2 (gaps between joist and bent) resulted in part from a failure to measure distances between helical piles before ordering lumber. During the December 19, 2024 field test of correction methods, JTS failed to follow the field test protocol, used incorrect equipment and in orienting custom hardware, failed to follow the manufacturer's instruction. Further, in the two years since the completion date passed, corrective work has not proceeded in any measure, and JTS has not demonstrated that it has one or more crews available and skilled to perform the work.

21. As of this date, the work remains uncompleted. Apart from limited work on or about March 6, 2024, and on or about December 19, 2024, the Board is unaware of work in the field by JTS correcting specific defective work identified in the SDWN. JTS has not evidenced that it is committed to prosecuting the corrective work diligently, and indeed in April 1, 2025 correspondence from JTS counsel, it advises that it will not commence the work until MCWD has agreed to certain payments. This is in contrast to GC 14.03, which requires JTS to perform the corrective work promptly and without such a precondition as it has demanded.

22. JTS is in violation of material terms of the contract in that the defective work is widespread; corrective work was not performed promptly on notice from the Engineer or in compliance with the Contract deadline; and the work remains to be performed, despite two years having elapsed from the Contract completion date.

23. There have been no change orders adjusting the contract price of \$1,858,182.00. To the present, pursuant to three pay requests, MCWD has disbursed to Contractor payment in the amount of \$1,573,959.15, and has approved an additional \$90,567.85 that is being held as retainage.

24. On May 9, 2023, Contractor transmitted a fourth pay request, in the amount of \$146,830.01, to MCWD. The MCWD project manager, at the time, advised JTS that the pay request was being set aside pending resolution of the defective work issues that had just been discovered. The project manager has not been employed by MCWD since Spring 2024, and current MCWD representatives were unaware of the outstanding pay request until JTS counsel asked about it on April 1, 2025. On May 22, 2025, the Board considered the pay request and, due to the outstanding defective work and the accrual of set-offs against payment due, determined pursuant to the General Conditions not to authorize partial or full payment of the request.

25. Because final work has not yet occurred and the Engineer has not calculated final quantities, the outstanding balance of the Contract price is not yet determined. Project accounting also includes MCWD set-offs and liquidated damages as the Contract provides.

26. The Engineer has advised that the defective work does not present an imminent public hazard, but compromises the structural integrity of the boardwalk over time. The boardwalk is constructed for public use, is featured by MCWD on its website and in its informational materials, and is a prominent work for which MCWD seeks to encourage use for the benefit of public recreation and education. MCWD contracted for a durable boardwalk conforming to an engineering design warranted by the design engineer. It did not contract for a boardwalk that is not under warranty due to deviation from design, does not conform to building code, and would require MCWD to make ongoing judgments of risk and prudence regarding continued public use, without criteria to guide it. Further, it is legally doubtful that MCWD could allow the structure to remain in broad violation of the City building permit. Accordingly, accepting the work with a deduction for loss in value, an option available to MCWD under GC 14.04, is not a consideration for the Board.

27. In constructing the project and managing the contract, the MCWD Board acts on behalf of the general public and is responsible for the use of public funds. The Board must take all prudent steps to complete the work in accordance with specifications, and without unnecessary delay or cost. Due to the creek/wetland environment, the work must be performed during late fall/winter. It is important for MCWD to move forward quickly and efficiently so that the outstanding work may be procured on a schedule that allows performance during the 2025-26 season.

NOW, THEREFORE, BE IT RESOLVED that MCWD counsel is delegated authority and directed, on behalf of the Board, and on the basis of the above findings, to terminate the Contract, declare a contractor default, provide all notices to the Bond issuer, commit MCWD to pay the balance of the Contract price, and take all other actions counsel deems necessary or prudent under the Contract and Bond to protect MCWD's legal and financial interests as set forth in the Contract and Bond. This authority does not encompass the resolution of any claim or the initiation of litigation, which remain within the Board's sole authority.

Resolution Number 25-039 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 6/26/2025

Secretary Date: June 26, 2025

SECTION 00040

CONSTRUCTION AGREEMENT

Minnehaha Creek Preserve Boardwalk Reconstruction

Owner: Minnehaha Creek Watershed District

Class of Work: Trail and Boardwalk Reconstruction, bituminous, timber and excavation.

Project Location: Hennepin County, Minnesota

THIS AGREEMENT (the "Agreement") made this day of November 8th, 2022, between Minnehaha Creek Watershed District, a body politic and corporate under and pursuant to the laws of the State of Minnesota, herein called "OWNER" and JTS Construction, a Corporation under the laws of the State of MA herein called "CONTRACTOR".

WITNESSETH:

That the CONTRACTOR in consideration of the payment of the contract price as set forth in the CONTRACTOR'S bid proposal agrees to furnish all materials (except such as are specified to be furnished by the OWNER, if any), all necessary machinery, equipment, tools, labor and other means of construction, and do and perform all other and necessary work and labor for or in connection with the full completion of the work.

Under Contract for the Minnehaha Creek Preserve Boardwalk Reconstruction, Hennepin County, Minnesota (the "Project"), under the operation, direction, and control of the OWNER and/or its ENGINEER, the work to be performed in accordance with the terms and conditions of the Contract Documents, the approved Drawings and Specifications and for the price and compensation set forth above and as specified in the Contract Documents and the Bid Proposal of the CONTRACTOR which is attached hereto, all of which are incorporated herein and hereby made a part of this Agreement. All of said work and payments therefore will be pursuant to and in accordance with the Contract Documents.

If the contractor, during the performance of the work, observes any error in the design or unanticipated circumstance materially affecting the feasibility of the design or the cost or time to complete the work, it immediately shall notify the engineer in writing.

The Contract Documents shall consist of the following:

Modifications (Change Orders, Work Change Directives and Field Orders)
Notice to Proceed
Addenda
Notice of Award
Agreement
Instruction to Bidders
Contract Drawings and Project-Specific Plan Sheets
Technical Specifications and Special Provisions
Payment Bond
Performance Bond
Insurance
Supplementary Conditions and Specifications
General Conditions
Completed Bid Form
Advertisement for Bids
Standard Plans and Standard Plates
Standard Specifications

CONTRACTOR agrees that the work shall be done and performed in a good quality manner, that all materials and labor shall be in strict conformity in every respect with the Drawings and Specifications for the improvement and shall be subject to inspection and approval of the OWNER through its duly authorized ENGINEER, and, in case of any material or labor supplied shall be rejected by the OWNER as defective or unusable, then such rejected material shall be done anew to the satisfaction and approval of the OWNER through its ENGINEER, at no additional cost or expense to the OWNER.

CONTRACTOR further agrees that the work will commence hereunder within ten (10) calendar days of receipt of Notice to Proceed and the work will be completed to the satisfaction and approval of the OWNER, and as specified in the Contract Documents. CONTRACTOR agrees that all work will be done in compliance with the standards of OWNER'S erosion control and other applicable rules, local ordinances, and state and federal laws.

It is further agreed that unforeseeable delay caused by the elements or other causes over which CONTRACTOR has no control or by strikes or other combined action of workers employed in no part caused or resulting from default or collusion on the part of the CONTRACTOR, shall be excused and the time for completion extended to the extent that the OWNER may find and determine such condition to have delayed completion within the time limit through no fault of the CONTRACTOR, but the judgment of the OWNER in respect thereto shall be final and conclusive upon the parties. It shall be understood by the CONTRACTOR that some of the work takes place in winter months and the CONTRACTOR will have to work in such conditions as are inherent in this environment. Regarding unforeseeable delay, in no event shall a CONTRACTOR have an action against the OWNER for damages or any other relief not specifically stipulated in this paragraph.

It is further understood and agreed that no claim for extra work done or materials furnished by the CONTRACTOR will be allowed except as provided by the Contract Documents nor shall the CONTRACTOR do any work or furnish any materials not covered by the Drawings and Specifications and by this Agreement unless such work is first ordered in writing as provided in the Contract Documents. Any extra work or materials done or furnished by the CONTRACTOR without written order first being given therefore as in the Contract Documents provided shall be at the CONTRACTOR'S risk, cost and expense, and CONTRACTOR agrees in such event that no claim for compensation for such extra work or materials will be made.

It is further agreed that in no event shall the contracting officer or any Manager, officer, employee or OWNER REPRESENTATIVE of the OWNER be personally liable or responsible in any manner to the CONTRACTOR or any other person for any claim, costs, demand, damages or causes of action of any kind arising by reason of the execution of the agreement or the performance and completion of the work provided herein.

THEREFORE, intending to be legally bound, the OWNER and CONTRACTOR have executed this Agreement as of the date first written above.

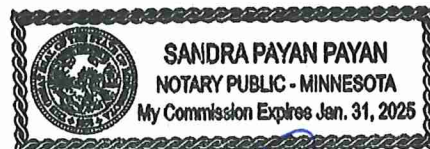
CONTRACTOR

Firm JTS Construction
Address 5756 230th St E
Elko, MN 55020
by Dina Smith
Title President

STATE OF MINNESOTA)
)SS
COUNTY OF Dakota)

This instrument was acknowledged before me on Nov. 8, 2022 by
Dina R. Smith as President of
JTS Construction.

[Signature] (Stamp)
Notary Signature



MINNEHAHA CREEK WATERSHE DISTRICT

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00040-3

Approved: CEB

by

[Signature]

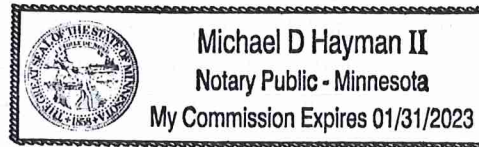
Construction Agreement
Preserve Boardwalk Reconstruction

ADMINISTRATOR
(TITLE)

STATE OF MINNESOTA)
) SS
COUNTY OF Hennepin)

This instrument was acknowledged before me on January 10, 2023 by
James Wisker as Administrator of
Minneapolis Creek Watershed District

[Signature] (Stamp)
Notary Signature



END OF SECTION

Bond No. GRMN46531A

SECTION 00070

CONSTRUCTION PERFORMANCE BOND

Minnehaha Creek Preserve Boardwalk Reconstruction

Owner: Minnehaha Creek Watershed District

Class of Work: Trail and Boardwalk Reconstruction, bituminous, timber and excavation.

Project Location: Hennepin County, Minnesota

NOTE TO BIDDERS: SECTION 00070 PERFORMANCE BOND CONTAINS LANGUAGE CHANGES FROM EJCDC BOND LANGUAGE AS INDICATED IN ITALICS AND STRIKETHROUGH BELOW.

Any singular reference to CONTRACTOR, SURETY, OWNER, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address)

SURETY (Name and Principal Place of Business)

JTS Construction, Inc.Granite Re, Inc.P.O. Box 24314001 Quailbrook DriveLakeville, MN 55044Oklahoma City, OK 73134

OWNER (Name and Address)

Minnehaha Creek Watershed District15320 Minnetonka Blvd.Minnetonka, MN 55345

CONSTRUCTION CONTRACT

DATE: November 9, 2022AMOUNT: \$1,858,182.00(Written Amount) ONE MILLION EIGHT HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED EIGHTY TWO AND 00/100

Description (Project Name and

Location): Minnehaha Creek Preserve Boardwalk Reconstruction: Trail and Boardwalk Reconstruction,
Bituminous, Timber and Excavation, Hennepin County, Minnesota

Bond

DATE: November 9, 20 22

AMOUNT: \$1,858,182.00

(Written Amount) ONE MILLION EIGHT HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED EIGHTY TWO AND 00/100

Contractor (Corporate Seal)

Surety (Corporate Seal)

Company Name: JTS Construction, Inc.

By: *Dina Smith*

(Signature)

Dina Smith

Name:(Typewritten)

Its: President

(Title)

Company Name: Granite Re, Inc.

By: *Troy Staples*

(Signature)

Troy Staples

Name:(Typewritten)

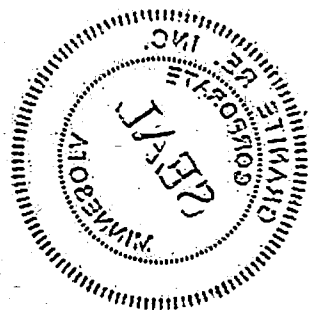
Its: Attorney-in-Fact

(Title)

On this day of , 20 , before me personally appeared and

 , on behalf of the CONTRACTOR and SURETY named in this Performance Bond above, respectively, and each of them, as their free act and deed, caused this Performance Bond to be executed as of this date.

Notary Public



ATTACH POWER OF ATTORNEY FROM SURETY TO THIS BOND

For Information Only (Name, Address and Telephone)

Agent or Broker:

ENGINEER

Pate Bonding, Inc.

1276 South Robert St.

West St. Paul, MN 55118

SRF Consulting Group, Inc.

One Carlson Parkway North, Suite 150

Plymouth, MN 55447-4443

1. Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, *Unless lawfully excused*, the Surety's obligation under this Bond shall arise after:
 - 3.1. The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1: and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly *within 15 calendar days* and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default: or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy *and all remedies* available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the contractor for correction of defective work and completion of the Construction Contract;

6.2. Additional *costs incurred by the OWNER, including without limitation* legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default *is declared by the OWNER or within two years after Surety provides OWNER*

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written notice of its refusal or failure or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2. Construction Contract: The agreement between the Owner and the Contractor identified in the signature page, including all Contract Documents and changes thereto.

12.3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

12.5 *CONTRACTOR: CONTRACTOR is defined to include any subcontractor or sub-subcontractor.*

****END OF SECTION****

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____)
County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____)
County of _____)

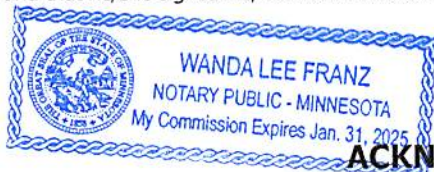
On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

State of Minnesota)
County of Dakota)

On this 9th day of November in the year 2022, before me personally come(s) Dina Smith, to me known, who, being duly sworn, deposes and says that he/she is the President of the JTS Construction, Inc. the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

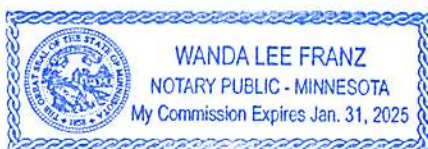


Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
County of Dakota)

On this 9th day of November, in the year 2022, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Notary Public

GRANITE RE, INC.
GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

WANDA FRANZ; TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN Its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

WANDA FRANZ; TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 3rd day of January, 2020.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)



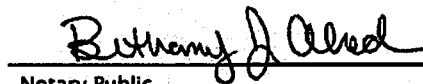

Kenneth D. Whittington, President


Kyle P. McDonald, Assistant Secretary

On this 3rd day of January, 2020, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:
April 21, 2023
Commission #: 11003620




Notary Public

GRANITE RE, INC.

Certificate

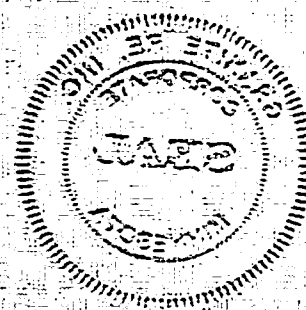
THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of Granite Re, Inc., a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

"RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this
9th day of November, 2022




Kyle P. McDonald, Assistant Secretary



SECTION 00080

CONSTRUCTION PAYMENT BOND

Minnehaha Creek Preserve Boardwalk Reconstruction

Owner: Minnehaha Creek Watershed District

Class of Work: Trail and Boardwalk Reconstruction, bituminous, timber and excavation.

Project Location: Hennepin County, Minnesota

NOTE TO BIDDERS: SECTION 00080 PAYMENT BOND CONTAINS LANGUAGE CHANGES FROM EJCDC BOND LANGUAGE AS INDICATED IN ITALICS AND STRIKETHROUGH BELOW.

Any singular reference to CONTRACTOR, SURETY, OWNER, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address)
JTS Construction, Inc.

P.O. Box 243

Lakeville, MN 55044

SURETY (Name and Principal Place of Business)
Granite Re, Inc.

14001 Quailbrook Drive

Oklahoma City, OK 73134

OWNER (Name and Address)

Minnehaha Creek Watershed District

15320 Minnetonka Blvd.

Minnetonka, MN 55345

CONSTRUCTION CONTRACT

DATE: November 9, 2022

AMOUNT: \$1,858,182.00

(Written Amount) ONE MILLION EIGHT HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED EIGHTY TWO AND 00/100

Description (Project Name and Location):

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00080-1

Approved: CEB

Construction Payment Bond
Preserve Boardwalk Reconstruction

Minnehaha Creek Preserve Boardwalk Reconstruction: Trail and Boardwalk Reconstruction,
Bituminous, Timber and Excavation, Hennepin County, Minnesota

BOND

DATE: November 9, 2022

AMOUNT: \$1,858,182.00

(Written Amount) ONE MILLION EIGHT HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED EIGHTY TWO AND 00/100

Contractor (Corporate Seal)

Surety (Corporate Seal)

Company Name: JTS Construction, Inc.

By: *Dina Smith*

(Signature)

Dina Smith

Name: (Typewritten)

ITS: President

(Title)

Company Name: Granite Re, Inc.

By: *Troy Staples*

(Signature)

Troy Staples

Name: (Typewritten)

ITS: Attorney-in-Fact

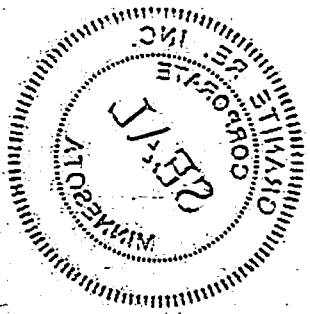
(Title)



On this ____ day of _____, 20____, before me personally appeared _____
and

_____, on behalf of the CONTRACTOR and SURETY named in this
Payment Bond above, respectively, and each of them, as their free act and deed, caused this
Payment Bond to be executed as of this date.

Notary Public



ATTACH POWER OF ATTORNEY FROM SURETY TO THIS BOND

For Information Only (Name, Address and Telephone)

Agent or Broker:
Pate Bonding, Inc.

1276 South Robert St.
West St. Paul, MN 55118
(651)457-6842

ENGINEER
SRF Consulting Group, Inc.

One Carlson Parkway North, Suite 150
Plymouth, MN 55447-4443
(763)475-0010

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands liens or suits to the Contractor and the Surety, and ~~provided there is no~~ *unless CONTRACTOR is lawfully excused due to Owner Default.*
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until *Claimants*:

~~4.1. Claimants who are employed by or have direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and send a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.~~

~~4.2. Claimants who do not have a direct contract with the Contractor:~~

4.1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in

the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

4.2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

4.3. Not having been paid within the above 30 days, have send a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1. Send an answer to the Claimant, with a copy to the Owner within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used *by the Contractor* for the performance of the construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the contractor and the Surety under this Bond, subject to the Owner's priority to use the funds

- for the completion of the work *and the Owner's right to retain said funds as provided by the Construction Contract.*
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located ~~or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable in accordance with the applicable period specified by Minnesota Law.~~
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

- 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 15.3. Owner Defaults: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

****END OF SECTION****

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____)
County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____)
County of _____)

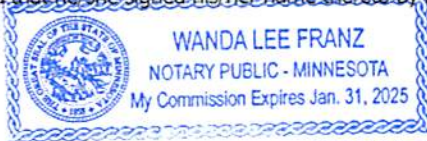
On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

State of Minnesota)
County of Dakota)

On this 9th day of November, in the year 2022, before me personally come(s) Dina Smith, to me known, who, being duly sworn, deposes and says that he/she is the President of the JTS Construction, Inc. the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.



Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
County of Dakota)

On this 9th day of November, in the year 2022, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Notary Public

GRANITE RE, INC.
GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

WANDA FRANZ; TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

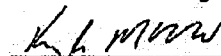
WANDA FRANZ; TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 3rd day of January, 2020.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)



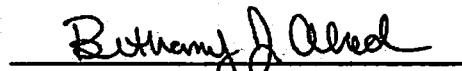

Kenneth D. Whittington, President


Kyle P. McDonald, Assistant Secretary

On this 3rd day of January, 2020, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:
April 21, 2023
Commission #: 11003620




Notary Public

GRANITE RE, INC.
Certificate

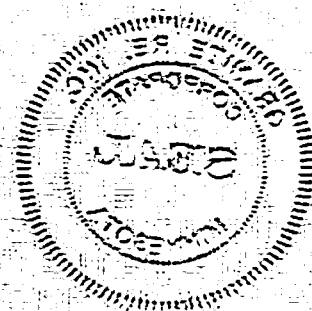
THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of Granite Re, Inc., a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

"RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this
9th day of November, 2022




Kyle P. McDonald, Assistant Secretary



Supplemental Defective Work Notice #1 and Request to Uncover – June 30, 2023

Project: Minnehaha Creek Preserve Boardwalk Reconstruction

Owner: Minnehaha Creek Watershed District (MCWD)

Engineer: SRF Consulting (SRF)

Contractor: JTS Construction (JTS)

Date(s) of Inspections: March 29, April 18, May 4, June 15-16 & 26, 2023

The purpose of this Supplemental Defective Work Notice (SDWN) #1 is to follow up to the June 9, 2023 Defective Work Notice (DWN) #1 transmitted to JTS on that date. SDWN #1 reflects inspection of all visually accessible headers and details the eleven categories of work observed in those inspections that do not conform to the project specifications with respect to the construction of the underlying boardwalk structure.

SDWN #1 is an interim list and is not intended to serve as the final punch list. The punch list is maintained separately and will be finalized after the substantial completion inspection, which will be scheduled after the defective work is corrected to conform with the project specifications.

MCWD and SRF have not inspected the full installation. MCWD staff completed inspection of visually accessible headers on June 15, June 16, and June 26. Defective work within the categories listed below has been observed on essentially all visually accessible headers within the installation.

DWN #1 enumerated six categories of defective work observed during initial inspections. On the basis of the completed inspection of visually accessible headers, SDWN #1 is expanded to eleven such categories. Each category of defective work is listed below, along with project specifications applicable to each. JTS is directed to correct defective work to bring it into conformance with the project specifications.

For any specific category of defective work, under the contract General Conditions (GCs) JTS may propose a correction that deviates from the project specifications. For any such change proposal, JTS is to follow the procedure set forth in the GCs and otherwise in the contract. Note that JTS will be responsible for engineering fees associated with considering the proposal, and for other costs incurred by MCWD to evaluate the proposal, in accordance with the contract GCs.

JTS is responsible to secure City of St. Louis Park approval of any change proposal, as City permits and approvals may require. MCWD and SRF will cooperate in this process to facilitate securing of approval by JTS.

The following Reference Documents are provided as sources of plan or design specifications and are listed in the defective issues identified below:

- P Plans
- SPEC Specifications
- SP Special Provisions
- RFI Request for Information
- AS Approved Submittal
- MSPC MiTek Structural Products Catalog 61st Edition
- MC MiTek Coordination

Uncovering:

Given the widespread defective work observed with respect to the visually accessible headers, MCWD and SRF expect that in the course of corrective work, JTS will inspect all headers in the process of ensuring that all

defective work has been identified and/or for the purpose of meeting requirements of the City of St. Louis Park permit. To the extent that is not JTS' intent, or otherwise required of JTS, pursuant to GC 14.05, SRF is directing that JTS uncover the remaining headers that are not visually accessible, numbering 60, more or less. Specifically, crews are to remove a minimum of 3 decking boards from both sides of pile bents at the following locations or as otherwise directed by the Owner or Engineer:

- All pile bent locations with curb/toe rail
- All pile bent locations within the Pavilion
- All pile bent locations within the Cattail Overlook

The MCWD is requesting that JTS decide how it will uncover the headers to minimize cost and disruption to its work. JTS is requested to propose a method and schedule of uncovering that allows the MCWD, SRF and the City of St. Louis Park to inspect the headers in their present condition, and to inspect them again once corrective work is completed. Please submit this to SRF in writing no later than 5 p.m. on July 7, 2023.

Corrective Work:

The installation of corrective work will be subject to inspection by MCWD, SRF, and the City of St. Louis Park in the ordinary course and at time of substantial completion. MCWD and SRF will work with JTS to establish a notice and inspection protocol to minimize any impact on JTS progress.

JTS is directed to correct all examples of defective work categories listed in this SDWN #1 to bring the work into conformance with the project specifications. Corrective work that consists of conforming to the project specifications may proceed at the earliest time. No submittal or SRF approval is needed for this, and JTS has access to the site in all respects for this purpose. If elements of the work are related, such that JTS finds it most efficient to await resolution of a change proposal before completing other corrective work, that is a matter for JTS' judgment as an element of means and methods. SRF encourages corrections to the present specifications and would like to limit proposals for alternative work for which review time and cost would be incurred and that would be subject to set-off in accordance with GC 14.04.

JTS submittal, SRF review, and MCWD approval are required only as to those elements of defective work, if any, for which JTS proposes a solution other than simply completing the work in accordance with the specifications. In such cases, JTS must submit a change proposal with appropriate documentation, in accordance with the GC's, by email to SRF (Casey Black) and copy the MCWD (Tiffany Schaufler). SRF will review JTS' proposal for approval and will consult with MCWD and the City of St. Louis Park for their review. JTS may not proceed under any change proposal until SRF and the MCWD, on advice of SRF, have accepted the proposal in writing, and until JTS has determined that the work as adjusted meets the terms of applicable City permits and approvals. Any accepted change proposals will be converted into change orders.

Defective Issue 1:

Inspections identified that JTS has not installed the maximum fastener schedule condition, as required by the SRF approval of the JTS submittal.

Location: Site-wide

Plan/Specification Requirements:

Sheet B2 (P) states, joist hangers are to have an allowable load capacity of 2.0 kips (kilopounds).

MiTek Installation Specification:

SRF approved the JTS requested system, MiTek IHF23925 hangers, with the condition all are installed per MiTek's maximum fastener schedule to assure required capacity is provided. (AS on 1/9/2023) (MSPC).

Correction:

JTS to meet manufacturer requirements by installing hangers per the MiTek installation specifications and maximum fastener schedule and as otherwise instructed in MiTek's specifications.



Defective Issue 2:

Inspections identified gaps between the end of joist and pile bents that exceed the MiTek installation specifications of 1/8" maximum gap. In some locations, a piece of wood is installed between the end of the joist and pile bent to fill the gap, which is not allowable.

Location: Site-wide

Plan/Specification Requirements:

MnDOT Standard Spec. 2403.3.C, Framing states, "Accurately cut and frame lumber and timber, true and exact to a close fit to construct the joints with an even bearing over the entire contact surfaces. Do not shim the joints or construct open joints."

MiTek Installation Specification:

Maximum gap between the end of joist and the pile bent is 1/8" maximum gap for full load capacity (MSPC).

Correction:

JTS to meet manufacturer requirements by providing a maximum gap of 1/8" or less between the end of the joist and the pile bent per MiTek installation specifications.



Defective Issue 3:

Inspections identified that square hangers have been installed on skewed joists, and that no specialty hangers (custom skew) were used for this construction.

Location: Site-wide

Plan/Specification Requirements:

Sheet B2 (P), notes that joist hangers are to suit framing conditions and skewed members up to 45-degrees.

Correction:

JTS to meet manufacturer requirements by installing appropriate hangers within skew tolerances acceptable per MiTek installation specifications and as otherwise instructed in MiTek's specifications.



Defective Issue 4A:

Inspections identified that hangers have been installed low and joists have been raised with shims, consisting of cut timber remnants (Douglas fir and southern yellow pine) and plastic, inserted between the hanger and the joist to align the top of the joist and the pile bent.

Defective Issue 4B:

Inspections identified joists that were elevated off the hanger, which provided no bearing support.

Defective Issue 4C:

Inspections identified hangers damaged or mis-shaped due to shimming operations.

Defective Issue 4D:

Inspections identified hangers set too low resulting in uneven deck surfaces at the joist/pile bent interface.

Location: Site-wide

Plan/Specification Requirements:

MnDOT Standard Spec. 2403.3.C, Framing states, "Accurately cut and frame lumber and timber, true and exact to a close fit to construct the joints with an even bearing over the entire contact surfaces. Do not shim the joints or construct open joints."

Correction:

JTS to meet requirements by installing the hanger at the required height to allow the top of joist and header to align.



Defect 4A Condition



Defect 4B Condition



Defect 4C Condition



Defect 4D Condition

Defective Issue 5:

Inspections identified that standard interior hangers have been modified and installed in place of appropriate exterior inverted flange hangers. In some instances where inverted flange hangers were installed, they have been modified so the concealed flange is on the outside.

Location: South boardwalk, near divided boardwalk and cattail marsh overlook, potentially site-wide

MiTek Installation Specifications:

Refer to MSPC for hanger options and installation specifications, including inverted flange hanger options.

Correction:

JTS to meet manufacturer requirements by installing appropriate exterior joist hangers with inverted flange(s) per MiTek installation specifications for the approved hanger system and as otherwise instructed in MiTek's specifications.



Defective Issue 6A:

Inspections identified that pile bents are missing helical pile plates.

Defective Issue 6B:

Inspections identified that helical pile plates are not installed squarely within the bent saddle.

Location: Site-wide

Plan/Specification Requirements:

Sheet B9 (P) indicates existing bent saddles that are part of the existing helical pier system are to remain and be reused.

Requests for Information (RFI):

JTS submitted an RFI requesting the use of “2x2 1/4” thick plate washers” in place of the original single plate that was part of the existing helical pier system. SRF responded on 3/6/23 that the request was not accepted and the original plate washers that make up the bent saddles were to be reinstalled.

Correction:

JTS to meet requirements to install all helical piers with original bent saddle components consistent with the RFI response.



Required 6A Condition



Defect 6A Condition



Defect 6B Condition



Defect 6B Condition

Defective Issue 7:

Inspections identified that hangers have been attached with fasteners that have not been fully installed.

Location: Site-wide

Plan/Specification Requirements:

MnDOT Standard Spec. 3403.3.A, Cutting & Framing states, "Drive nails and spikes to set the heads flush with the surface of the wood. The Engineer may reject wood pieces or members with deep or frequent hammer marks in exposed wood surfaces."

Correction:

JTS to meet specification requirements by installing nails to a point where nail heads are flush with the surface of the hanger or wood without damage to timber members.



Defective Issue 8:

Inspections identified that standard interior square hangers have been modified to install a skewed joist; and interior square hangers have been modified where they intersect helical plates. Defective issues include, but are not limited to:

- Not installed to specifications of maximum fastener schedule
- Not installed to specifications to suit framing conditions and skewed members

Location: Site-wide

Plan/Specification Requirements:

See Plan/Specification Requirements in Defective Issues #1 for information in this section.

See Plan/Specification Requirements in Defective Issues #3 for information in this section.

MiTek Installation Specifications:

See MiTek Installation Specifications in Defective Issue #1 for information in this section.

Correction:

See Correction details for Defective Issue #1 and Defective Issue #3.



Defective Issue 9:

Inspections identified that custom skewed hangers have been installed on square joists. Defective issue is similar to Defective Issue #3 above.

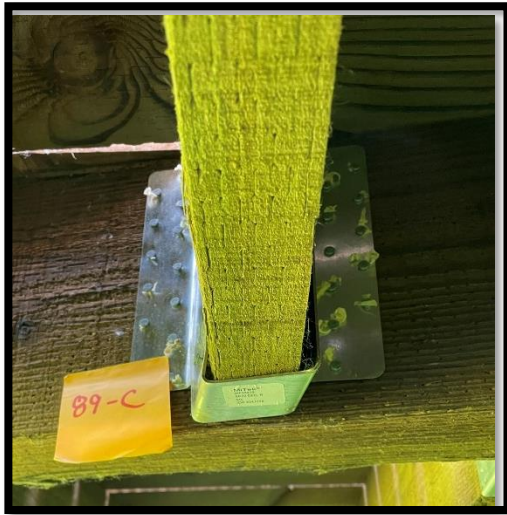
Location: Near divided boardwalk, east of cattail overlook; potentially site-wide.

Plan/Specification Requirements:

Sheet B2 (P), notes that joist hangers are to suit framing conditions.

Correction:

See Correction details for Defective Issue #3.



Defective Issue 10:

Inspections identified that hangers have not been installed at joist to header connections and deck screws have been installed in place of a hanger. Defective issue is the lack of a hanger where either a standard interior hanger or a hanger with inverted flange(s) should have been installed.

Location: At pavilion, west of pavilion near bridge, near Excelsior Blvd. connection; potentially site-wide.

Plan/Specification Requirements:

Sheet B2 (P) states the following regarding hangers: Size to suit framing conditions and skewed members up to 45-degrees. Coordinate with the engineer for any conditions beyond a skew of 45-degrees.

MiTek Installation Specifications:

See MiTek Installation Specifications in Defective Issue #5 for information in this section.

Correction:

JTS to meet manufacturer requirements by installing appropriate standard joist hangers per MiTek installation specifications for the approved hanger system and as otherwise instructed in MiTek's specifications. If the condition is such that standard hangers cannot be utilized, see Correction information in Defective Issue #5 for information on use of inverted flange hangers.



Defective Issue 11A:

Inspections identified that standard hangers are installed without nails through the diamond dimple holes, which are required to be installed into the bottom chord of the joist.

Defective Issue 11B:

Inspections identified that inverted flange hangers with nails installed through the non-diamond dimple holes, have caused damage/splitting of the bottom of the joist, and in some cases improper fit-up/horizontal alignment.

Location: Site-wide

MiTek Installation Specifications:

Refer to MSPC for hanger fastener specification which indicates (2) 10d x 1-1/2" fasteners are to be installed in the diamond dimple holes.

Correction:

JTS to meet manufacturer requirements by installing required fasteners in the diamond dimple holes on the standard hangers, and on the non-diamond dimple holes on the side of the inverted flange hangers, per MiTek installation specifications and as otherwise instructed in MiTek's specifications.



Defect 11A Condition



Defect 11B Condition



Defect 11B Condition

Defective Work List

Amended June 30, 2023

Amended June 30, 2023						Project Name: Minnehaha Preserve Boardwalk			
						Contractor: JTS Construction			
						Date: 6/30/2023			
No.	Issue	Description of Defective Work Category	Proposed Solution Presented by JTS	Owner/Engineer Review Comments - 1	Final Solution Presented by JTS	Agreed Implementation	Agreed Provision for Inspection	Date Approved by Engineer & Owner	Date Correction Implemented by JTS
n/a	Example: Inspections identified that pile bents were missing helical pile plates.	Plan/Specification Requirements: Sheet 89 (P) indicates existing bent saddles which are part of the existing helical pier system is to remain and be reused. Requests for Information (RFI): JTS submitted an RFI requesting the use of "2x2 1/4" thick plate washers" in place of the original single plate that was part of the existing helical pier system. SRF responded on 3/6/23 that the request was not accepted and the original plate washers which make up the bent saddles were to be reinstalled.	6/19/23: JTS will remove and replace all small washers with correct plates	(By MCWD/SRF) How will correction be implemented and inspections coordinated?	See proposed solution presented by JTS. No change required per comments.	Remove decking only in areas that cannot be accessed for corrections or inspections from below. Remove in-place hardware. Shore the pile bent if needed. Remove washers and replace with original or new plate washer matching the original system. Replace hardware. Replace decking after all inspections are completed.	Access will be provided to MCWD/SRF & City inspectors as follows: <u>Areas accessible from below.</u> In areas where decking removals ARE NOT needed for corrections, visual inspections can occur as needed. <u>Areas NOT accessible from below.</u> In areas where decking removals are needed for corrections, decking removed for the correction shall not be reinstalled until all inspections are completed.	(By MCWD/SRF)	
1	Inspections identified that JTS has not installed the maximum fastener schedule condition, as required by the SRF approval of the JTS submittal.	Plan/Specification Requirements: Sheet 82 (P) states joist hangers are to have an allowable load capacity of 2.0 kips (kilopounds). Manufacturer Installation Specifications: SRF approved the JTS requested system, Mitek IHF23925 hangers, with the condition all are installed per Mitek's maximum fastener schedule to assure required capacity is provided. (AS on 1/9/2023) (MSPC). Correction: JTS to meet manufacturer requirements by installing hangers per the Mitek installation specifications and maximum fastener schedule and as otherwise instructed in Mitek's specifications.	6/19/23: JTS will be completing maximum nailing on all inside hangers	6/30/23: How will correction be implemented and inspections coordinated? J. Smith email (6/19/23) states: "I am requesting that the load rating be reduced to 1.2 kips on the exterior hangers." JTS must state in the "Proposed Solution Presented by JTS" column if this will be a formal change proposal, as conditions will apply that may affect other corrective actions.					
2	Inspections identified gaps between the end of joist and pile bents that exceed the Mitek installation specifications of 1/8" maximum gap. In some locations, a piece of wood is installed between the end of the joist and pile bent to fill the gap, which is not allowable.	Plan/Specification Requirements: MnDOT Standard Spec. 2403.3.C, Framing states, "Accurately cut and frame lumber and timber, true and exact to a close fit to construct the joints with an even bearing over the entire contact surfaces. Do not shim the joints or construct open joints." Manufacturer Installation Specifications: Maximum gap between the end of joist and the pile bent is 1/8" maximum gap for full load capacity (MSPC). Correction: JTS to meet manufacturer requirements by providing a gap of 1/8" or less between the end of the joist and the pile bent per Mitek installation specifications.	6/19/23: Correction described in 6/16/23 letter authored by Mitek under engineer's seal.	6/30/23: Reference 1st bullet of Mitek letter dated 6/16/23. For review, Mitek calculations on the proposed system are required and must be certified by a Professional Engineer licensed in MN. Calculations shall include Mitek computations for joist capacity with a bolted end connection, as this is a changed condition from the original design. How will correction be implemented and inspections coordinated?					
3	Inspections identified that square hangers have been installed on skewed joists, and that no specialty hangers (custom skew) have been used.	Plan/Specification Requirements: Sheet 82 (P) states that joist hangers are to suit framing conditions and skewed members up to 45-degrees. Correction: JTS to meet manufacturer requirements by installing appropriate hangers within skew tolerances acceptable per Mitek installation specifications and as otherwise instructed in Mitek's specifications.	6/19/23: Correction described in 6/16/23 letter authored by Mitek under engineer's seal	6/30/23: Referenced Mitek letter does not offer correction for this category of defective work. Reference 4th bullet of Mitek letter dated 6/16/23. Letter documents that hangers with joist skews ranging from 6-to-39-degrees cannot be accommodated by the 0-degree & 45-degree hangers installed. JTS/Mitek to review design skews vs. installed hangers and certify that hangers installed are within applicable hanger skew tolerances. Per JTS request, SRF provided a CAD baseline on 1/9/23 to show design angles, along with the approved hanger submittal. JTS is to note locations not within hanger skew tolerance on a plan sheet and provide to MCWD/SRF along with a proposed corrective action, method of implementation and inspection accommodations.					
4A-4D	4A) Inspections identified that hangers have been installed low and joists have been raised with shims, consisting of cut timber remnants (Douglas fir and southern yellow pine) and plastic, inserted between the hanger and the joist to align the top of the joist and the pile bent. 4B) Inspections identified joists that were elevated off the hanger, which provided no bearing support. 4C) Inspections identified hangers damaged or mis-shaped due to shimming operations. 4D) Inspections identified hangers set too low resulting in uneven deck surfaces at the joist/pile bent interface.	Plan/Specification Requirements: MnDOT Standard Spec. 2403.3.C, Framing states, "Accurately cut and frame lumber and timber, true and exact to a close fit to construct the joints with an even bearing over the entire contact surfaces. Do not shim the joints or construct open joints." Correction: JTS to meet requirements by installing the hanger at the required height to allow the top of joist and header to align.	6/19/23: Correction described in 6/16/23 letter authored by Mitek under engineer's seal	6/30/23: Referenced Mitek letter does not offer a correction for this category of defective work. Reference 5th bullet of Mitek letter dated 6/16/23. Letter documents Mitek system is acceptable with shims meeting certain criteria.					
5	Inspections identified that standard interior hangers have been modified and installed in place of appropriate exterior inverted flange hangers. In some instances where inverted flange hangers have been installed, they have been modified so the concealed flange is on the outside.	Manufacturer Installation Specifications: Refer to MSPC for hanger options and installation specifications, including inverted flange hanger options. Correction: JTS to meet manufacturer requirements by installing appropriate exterior joist hangers with inverted flange(s) per Mitek installation specifications for the approved hanger system and as otherwise instructed in Mitek's specifications.	6/20/23: JTS is waiting on submittals from Mitek	6/30/23: JTS has not yet proposed a correction.					

[illegible]

From: [James Wisker](#)
To: jsmith@jtsconstruct.com; mkemper@kemperlaw.com
Cc: [Chuck Holtman](#); [David Skallet](#); [Grant Sala](#); [Jeffrey Kurth](#); [Casey Black](#); [Michael Hayman](#)
Subject: DFAFT Outline of Implementation Plan - RE: AGENDA for 1-13-25 Preserve Boardwalk Field Test Debrief
Date: Monday, February 3, 2025 2:52:14 PM
Attachments: [image001.png](#)
[250113 Means-Methods Findings_SRF.pdf](#)

Good afternoon, Jeff and Mark.

Thank you for meeting with MCWD and St. Louis Park on January 13, 2025, to discuss the results from the field test.

I am following up to summarize our discussion, to offer an outline to help JTS draft an implementation plan that leverages the learnings from the field test, and report that SRF is preparing a change order which would begin the process of integrating the alternatives into the contract documents. This is necessary precursor to the City of St. Louis Park considering acceptance of the JTS proposed alternatives.

After you review the information below, please let me know if it would be helpful to arrange a phone or Teams call to discuss. Ideally, we can move the change order and implementation plan forward on parallel timelines in the coming two weeks.

Field Test Debrief:

General conclusions from our collective field test debrief are included below, with more detail in SRF's attached document shared during the meeting.

1. The alternative parts performed well
2. The field test jacking operations did not follow the plan, in terms of use of beams, load ratings, securing of jacks, etc.
3. Jacking was often uneven, causing strain on timber and tear out on joists and splitting of railings and posts
4. Lowering of sections after jacking cause instances of misalignment and nail pulling
5. Exterior inverted flange hangers were exposed during test jacking. Several of these hangers were revealed to not be nailed to maximum schedule for even inside portions of the flange (see attached picture)
6. Screws reduced the issue of nails splitting the pile cap ends. No pre-drilling occurred which would help. Screws were stripped and not all seated properly
7. During test jacking, there were instances where repairs were not maximum nailed/screwed, including exterior inverted flange hangers, and the joist extension bracket was initially installed incorrectly
8. Learnings from the field test must be transferred into a plan for the method of correction JTS
9. A coordinated framework for uncovering, inspection, issue identification, and approval of corrections needs developing among JTS, City, SRF

Draft Outline of Implementation Plan

1. Overall Planned Approach

- a. Starting location for repairs and rationale
 - b. Outline of crew size and specific roles, who is leading and overseeing the crew
 - c. Planned start date, estimate of segments jacked and repaired per unit time, and total time for completion
- 2. Updated Jacking Plan Adjusted to Integrate Field Test Learnings
 - a. Commitment to use beams to ensure even lifting that reduces tension and tear out
 - b. Plans to address safety of jack slipping, experienced during field test
 - c. Jacks not to be secured to outside joists with screws
 - d. Blocking to spread load
 - e. Outline number of jacks and segments expected to be lifted at once. JTS indicated it would be scaled up from field test
 - f. Correct jack load rating
- 3. Material Procurement & Staging
 - a. Outline of total materials estimated to be needed
 - b. Summarize how much material will be on hand, versus ordered throughout to ensure pace of implementation
 - c. Plans for having lumber on hand to replace timbers as damage occurs (any tear out, splitting or damage will need to be replaced)
- 4. Environmental Compliance
 - a. Pulling from original plans and specifications, e.g. Catching treated materials, etc. work tarps
- 5. Inspection, Issue Logging, Directing Corrective Repairs, Approval Protocol (developed by JTS in collaboration with SRF and St. Louis Park)
 - a. Estimate of number of sections opened per unit time (day)
 - b. Number and frequency of anticipated inspections
 - c. Consistent form for identification of defective work at each location, and direction of repairs
 - d. Development of gauges, to ensure consistent identification of gaps among JTS, SRF, SLP, MCWD
 - e. Process for field determining appropriate hanger skew, aligning plan requirements and field review
 - f. Sign off process, and chain of command among City, SRF, MCWD, JTS

James Wisker
District Administrator

Minnehaha Creek Watershed District
15320 Minnetonka Blvd.

Minnetonka, MN 55345

Office: 952-641-4509

Fax: 952-471-0682

www.minnehahacreek.org



From: James Wisker

Sent: Sunday, January 12, 2025 1:24 PM

To: David Skallet <DSkallet@stlouisparkmn.gov>; Grant Sala <GSala@stlouisparkmn.gov>; Michael Hayman <MHayman@minnehahacreek.org>; Casey Black <cblack@srfconsulting.com>; Jeffrey Kurth <JKurth@srfconsulting.com>; jsmith@jtsconstruct.com; mkemper@kemperlaw.com

Cc: Chuck Holtman (Holtman@smithpartners.com) <Holtman@smithpartners.com>

Subject: AGENDA for 1-13-25 Preserve Boardwalk Field Test Debrief

Good afternoon, everyone.

Attached, please find a simple agenda and discussion guide for our 11am meeting tomorrow, January 13, 2025, at St. Louis Park City Hall.

I thought we would systematically debrief on observations and findings from the Field Test, from the perspective of JTS, St. Louis Park, and SRF. Then synthesize that discussion to identify recommendations to inform JTS' ultimate implementation plan and procedures for implementing the proposed alternatives.

I look forward to seeing you all tomorrow morning.

Thanks!

James Wisker
District Administrator

Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

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Fax: 952-471-0682

www.minnehahacreek.org





Memorandum

SRF No. 15470.00

To: James Wisker, District Administrator
Minnehaha Creek Watershed District

From: Casey Black, PE, SRF Project Manager

Date: January 13, 2025

Subject: Preserve Boardwalk Field Test Debrief

Repair Implementation / Means & Methods

From MCWD agenda:

Discuss adjustments JTS will make in implementation plan and procedures for proposed alternatives. SRF findings / recommendations:

Inspection (B)

1. Deck was partially removed, and sections were jacked before inspection could be completed to confirm additional defects. Inspection needs to occur prior to jacking for accurate gap measurement.

Maximum Fasteners

1. Installing max. fasteners with nails resulted in misalignment (exposed nails) and splitting of the header at cut edges (see 241219_Location A (3).JPG & 241219_Location A (13).JPG)
2. JTS observed some screws seemed to strip easily during installation. Holes were not predrilled which would help.
3. Screws will need to be fully seated.

Jacking Operations

1. General Process
 - a. Jacking operation did not match what the jacking plan describes.
 - b. Jacks did not meet the plan statement of 7000lb jacks. 5000 and 6000lb jacks were used.
 - c. Jacking and tilting joists resulted in some partial splitting of lower joists in some instances (see 241219_Location C (2).JPG)

- d. Jacking operation could be improved for better stability and the protection of the in-place materials.
 - e. Environmental collection required for drilling, and coating. Not addressed in field repair test.
2. Jacks on Fascia Joists (A, B & C)
 - a. Recommend support beams under all joists for balanced lifting. Otherwise deck screws are lifting the inner joists while the outer joists are jacked.
3. Stability (A)
 - a. Jacking looked awkward and unstable w/ higher sections like location A
4. Even Lifting/lowering (A, B & C)
 - a. Jacking did not progress evenly
 - b. Some jacks came out from under the deck sections when lifting and lowering (A)
 - c. During lowering a jack was accidentally fully released and the deck section dropped hard from a height of 8"-10" (B).
5. Lack of Blocking (A, B & C)
 - a. Some jacks had questionable footing without blocking
6. Joist Splitting (A, B & C)
 - a. Splitting occurred due to jacking (see Damage Observed below)
7. Decking (A, B & C)
 - a. Deck boards seemed to tolerate the jacking relatively well. No damage or loosening of the system was observed.
 - b. Removal of deck boards without removing deck screws below toe rail resulted in splitting/damage to top of joist in some areas (see 241219_Location B (22).JPG)
8. Railing (A & C)
 - a. Railing gaps opened and (1) post split (see Damage Observed) below
9. Toe Rail (B)
 - a. Toe rail was not loosened/removed prior to jacking. Contractor noted to others something to the effect of "...when we do this right we will loosen or remove the toe rail".

Damage Observed

1. Contractor will be responsible for making all repairs to damaged materials due to means/methods used for repairs.
2. Slant in boards to extend past rail appeared to induce torsion to joist. How should screw holes be sealed? (A)
3. Jacking and tilting joists resulted in splitting of lower joists in some instances (see image 241219_Location A (5).JPG / 241219_Location B (4).JPG)
4. Toe nails to resist uplift need to be installed. This is a challenge where jacking has split the lower part of the joist at the hanger.
5. Timber railing was damaged in areas from the jacking operation resulting in gaps in the final condition and post splitting (see 241219_Location A (26).jpg & 241219_Location A (267.jpg)

6. Extra holes in joist due to improper JEB installation. (B)
7. Some damage to deck boards was observed during reinstallation (see 241219_Location B (38).JPG)
8. Some nails in toe rail popped up due to jacking operation and needed to be hammered back to flush.
9. Toe rail had damage and visible loosening of through bolts
10. Adjustment of deck and rails when put back down. We saw a couple areas of the rail (toe rail more than full rail), and deck not being uniform and level once re-installed. Likely due to adjustment of supports after fixes were applied.

Material on Hand

1. JTS/MiTék did not have the correct skewed exterior hanger for one of the two sides at location B.
2. What excess original timber material is on-hand for damage repairs?
3. What is the plan for excess timber materials in case of damage?
4. Some locations will require 14' timber joists to replace members w/ gaps > 1 1/4". How will this be handled?



Mark J. Kemper
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April 1, 2025

Mr. James Wisker
District Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Minnehaha Creek Preserve Boardwalk Reconstruction

Dear Mr. Wisker:

Attached is the *Implementation Plan* in connection with repairs to the above-referenced project, which is self-explanatory. The *Plan* was prepared following the post-field testing meeting between representatives of JTS Construction, Inc., Minnehaha Creek Watershed District (“MCWD”), SRF Consulting Group (“SRF”) and the City of St. Louis Park (“City”).

Regarding *Change Order 2*, on the one hand SRF states that “Impacts to contract cost and time will be addressed in a future Change Order”, but on the other hand, it states that there shall be no change to the Contract Price. The discussion concerning costs and payment for the contemplated work has repeatedly been kicked down the road over the past nine months in an effort to first get the City to agree to the alternative work. Now that the City appears willing to accept JTS Construction, Inc.’s *Proposal*, this discussion on costs must now be had. I cannot advise my client to execute *Change Order 2* as drafted as it provides no assurances that MCWD will in fact discuss payment for the contemplated work at some point in the future.

In light of the fact that MCWD currently owes JTS Construction, Inc. \$146,830.01 for Pay Request No. 4, plus \$90,567.85 in retention, and \$3,000.00 for field testing on December 19, 2024, JTS Construction, Inc. is unwilling to perform the work contemplated in the *Proposal* and *Plan* at no cost to the MCWD. However, if the MCWD agrees to a lump sum payment of \$250,000.00 for all work contemplated in *Change Order 2* and pays all past due amounts, the parties may proceed to schedule the work as expeditiously as possible.

April 1, 2025
Mr. James Wisker

If MCWD does not agree to the above payments (totaling \$490,397.86), **JTS Construction, Inc. demands that MCWD specify every reason for withholding the \$240,397.86 in funds currently owed to JTS Construction, Inc. for Pay Request No. 4, retention, and the field testing on December 19-20, 2024. JTS Construction, Inc. further demands that MCWD identify the contractual provisions which it contends permits the withholding of those funds.** My client is entitled to this information under the parties' contract, including but not limited to, Article 15 of C-700 General Conditions.

JTS Construction, Inc. has authorized me to commence litigation in the event MCWD refuses to pay the amounts currently withheld or for *Change Order 2*, or if MCWD otherwise refuses to discuss a *reasonable* and mutually acceptable resolution. As such, I will note that a court will not require JTS Construction, Inc. to reconstruct or re-perform any of its previous work or pay the cost of reconstruction. See e.g. *N. Petrochemical Co. v. Thorsen & Thorshov, Inc.*, 297 Minn. 118, 211 N.W.2d 159 (1973) (a court will not require reconstruction in accordance with a contract if it results in unreasonable economic waste); *Asp v. O'Brien*, 277 N.W.2d 382 (Minn. 1979) (Courts will not measure damages for breach of a construction contract as the cost of reconstruction if reconstruction results in unreasonable economic waste).

As you know, the boardwalk has been in use for nearly two years. Neither the City, nor MCWD, nor SRF have prevented the public's use of the boardwalk due to safety concerns or any other issue during this time frame. In other words, the boardwalk is serving its intended purposes, has been utilized for its intended purpose for nearly two years, and reconstruction will result in substantial and unreasonable economic waste. Additionally, SRF and MCWD inspected JTS Construction, Inc.'s work throughout the entirety of the Project, and approved JTS Construction, Inc.'s work at every step. Pursuant to the Construction Agreement, the bidding documents, and Minnesota law, JTS Construction, Inc. was entitled to rely on SRF's and MCWD's approval of change orders and substitutes. However, in an effort to resolve this matter short of litigation, JTS Construction, Inc. is willing to reconstruct certain portions of the Project identified in, and pursuant to, the *Implementation Plan*, subject to MCWD agreeing to pay JTS Construction, Inc. a lump sum payment of \$250,000.00 for all work contemplated in *Change Order 2* and all past due amounts.

In the event MCWD declines my client's good faith offer to resolve this matter amicably, I am requesting that MCWD identify how much it is willing to pay JTS Construction, Inc., for a complete and final resolution. If MCWD fails to pay JTS Construction, Inc. what it is owed or otherwise fails to present a reasonable counteroffer, we will proceed accordingly. In other words, JTS Construction, Inc. will not continue going back-and-forth on this while MCWD refuses to make any concessions, refuses to compensate my client for the work it performed under the supervision of MCWD and SRF, and/or refuses to shoulder some of the cost to complete the work set forth in *Change Order 2*.

This letter does not go through every dispute/claim currently at issue between the parties and nothing contained or omitted here is or shall be deemed to be a limitation, restriction, or waiver of any of JTS Construction, Inc.'s rights, remedies, or claims, all of which are expressly reserved.

April 1, 2025
Mr. James Wisker

Sincerely,

Mark J. Kemper

Mark J. Kemper

MJK/jmf

Attachment

Cc: Thomas Priebe, Esq. / Hellmuth & Johnson

IMPLEMENTATION PLAN – JTS CONSTRUCTION INC.

Minnehaha Creek Preserve Boardwalk Reconstruction

April 1, 2025

PURPOSE: The purpose of the Implementation Plan is to adopt acceptable means and methods for the removal and replacement of hardware connectors, framing and decking materials deemed to be out of compliance with the City of St. Louis Park Building Code and/or previously approved Contract documents submitted to the City by the Minnehaha Creek Watershed District. Pursuant to the *Proposal for Alternative Materials, Design or Method of Construction* submitted by JTS Construction, Inc. to the City of St. Louis Park on August 6, 2024, onsite testing of the Preserve Boardwalk was performed on December 19, 2024 and December 20, 2024 to test and verify the efficacy of the alternatives proposed by JTS Construction, Inc. (See said *Proposal* for an accounting of the claimed defective work conditions.) Interested parties at the testing included representatives of JTS Construction, Inc. (contractor), Minnehaha Creek Watershed District (owner), SRF Consulting Group, Inc. (owner engineer), and the City of St. Louis Park (building inspector). A subsequent debriefing meeting of all interested parties was held on January 13, 2025 at the St. Louis Park City Hall to discuss the field test findings and make recommendations for future action. Said recommendations are set forth below.

PROCEDURE:

1. Field work shall commence consistent with the field-testing procedure set forth in *JTS Construction, Inc. counsel correspondence to MCWD* dated December 17, 2024 (attached hereto), with the exception of those items stated below.
2. Work shall be completed on a section-by-section basis. All sections shall first be inspected by the City of St. Louis Park prior to any jacking procedure to establish the existing joist gap space and hanger height, which shall then determine the appropriate work to be completed and materials to be utilized for each individual section consistent with the guidelines set forth in the previously submitted *Proposal*. All measurements shall be performed by City of St. Louis Park staff personnel through use of a metal measuring “jig” to be provided by JTS Construction, Inc.
3. For instances where gaps between the ends of joists and the pile bents are greater than 1/8” and up to 5/8”, no repair is necessary.
4. For instances where gaps between the ends of joists and the pile bents are greater than 5/8” but less than 1 1/4”, JTS Construction, Inc. may replace the joist with a longer joist or install a MiTek Product No. EC-SB23-0509A (joist extension bracket).
5. For instances where joist and joist hangers are misaligned with the top of the pile bent, JTS Construction, Inc. may repair (a) with a replacement joist hanger set to the correct elevation, (b) with a joist extension bracket where required by installing the joist in the joist extension bracket to the proper height to correct the elevation, or (c) with the

installation of up to three (3) maximum MiTek Product No. EC-TG23-1023A (restrained bearing plates).

6. Toe rail shall be loosened or removed as necessary prior to jacking to prevent damage during jacking operations.
7. Jacking of each section shall be performed pursuant to the *Proposed Jacking Plan* attached as *Exhibit B* to the previously submitted *Proposal* and *counsel correspondence*, with the exception that 6,000-pound jacks shall be utilized. Perpendicular support beams shall be installed while jacking to ensure balanced lifting. Jacks shall be blocked and stabilized for the safety of onsite personnel and protection of in-place materials.
8. All hangers and hardware components to be flush and max nailed and/or screwed as necessary.
9. Deck and railing to be adjusted, as necessary, following joist repairs to maintain flush and level conditions.
10. JTS Construction, Inc. to repair damaged materials sustained as a result of jacking operations.

EQUIPMENT: Hi-Lift 48” jacks – 6000-pound capacity – Model HL-484 or similar

 Timber blocking to be placed below each Hi-Lift jack to provide support and stability during jacking operations.

 8’ or longer timber beams to be placed below boardwalk joists to provide universal lifting of joists while hanger work is performed

 MiTek Product No. IHF 23925 (Hanger)

 MiTek Product No. IHF 293251F (Hanger)

 MiTek Product No. EC-SB23-05091 (Joist Extension)

 MiTek Product No. EC-SB23-0509A (Joist Extension Bracket)

 MiTek Product No. EC-TG23-1023 (Restrained Bearing Plate)

 14’ or longer, properly treated 2x10 framing members to be utilized as replacement joists where necessary

 #9 2 7/8” Gold Coated Screws

 Miscellaneous hand and power tools as needed, included but not limited to, pry bars, hammers/mauls, sledgehammers, and drills/impact drivers.



Mark J. Kemper
612-202-3242
mkemper@kemperlaw.com

December 17, 2024

Mr. James Wisker
District Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Minnehaha Creek Preserve Boardwalk Reconstruction

Dear Mr. Wisker:

In follow-up to our recent communications, I had an opportunity to discuss the field testing with my client, Jeff Smith, of JTS Construction, Inc. ("JTS"), and plan the following:

1. Field testing to be performed beginning at 8:00 a.m. on Thursday, December 19, 2024 at the Minnehaha Creek Preserve Boardwalk and concluding by 4:45 p.m. Additional testing, if necessary, shall begin at 8:00 a.m. on Friday, December 20, 2024 and conclude by 4:45 p.m. All testing is subject to acceptable weather conditions. Unless otherwise noted, all parties should meet at 7341 Oxford St., St. Louis Park, MN 55426 at the commencement of each day. Invitees include representatives of JTS Construction, Inc., MCWD, SRF Consulting Group, Inc., MiTek, Inc. and the City of St. Louis Park. Field testing may take upwards of two full days.
2. Field testing shall occur at three (3) locations:

Test location A involves a raised deck portion with railings as indicated on the attached *Figure 2-Repair Locations (Sheet 1 of 4)* prepared by MCWD and distributed to interested parties at the meeting held at St. Louis Park City Hall on September 20, 2024 (*Exhibit A*). Repairs are anticipated to be completed per the attached *Proposed Jacking Operation Schematic* – Sections with Railings shown in Figure 1 (*Exhibit B*) and as discussed below.

December 17, 2024

Mr. James Wisker

Test location B involves a low deck section with toe rails as indicated on the attached *Figure 2 – Repair Locations (Sheet 1 of 4)* prepared by MCWD and distributed to interested parties at the meeting held at St. Louis Park City Hall on September 20, 2024 (*Exhibit A*). Repairs are anticipated to be completed per the attached *Proposed Jacking Operation Schematic – Sections with Toe Rail* shown in Figure 1 (*Exhibit B*) and as discussed below.

Test Location C shall be a standard boardwalk section as selected by the City of St. Louis Park; however, the horseshoe shaped segment colloquially known as the “cattail overlook” on the south side of Minnehaha Creek directly opposite the education pavilion is not acceptable as it is not a standard boardwalk selection. A new standard section shall be selected by the City of St. Louis Park and communicated to all parties in advance of the inspection date to permit adequate time for JTS to set up. Repairs to the selected area are anticipated to be completed per the attached *Proposed Jacking Operation Schematic* shown in Figure 1 (*Exhibit B*) and as discussed below.

3. JTS Jacking Equipment List:
 - a. Jacks - Hi-Lift 7000lb 48” Model #HL-484 or similar.
(<https://hi-lift.com/hi-lift-jacks/cast-steel/>)
 - b. Temporary Timber Beam - There will be a support beam placed under the stringers, if needed.
 - c. Temporary Timber Blocking - There will be some blocking placed under the jacks and stringers, if needed.
4. Field Testing Procedure (as previously directed by Casey Black, P.E and implemented in conjunction with the parties prior March 15, 2024 test jacking attended by Josh Wolf of MCWD):
 - a. The procedure for jacking sections with railing involves four (4) sets of jacks, raising of five (spans) to conduct repairs within one (1) span. See *Exhibit B* for a schematic of the jacking operation to conduct repairs.
 - b. Four (4) sets of jacks will be located at four pile bents. Blocking and temporary beams will be installed to support joists during jacking operations.
 - c. Five (5) spans will be raised as follows:
 1. Spans 1 & 5 will slope due to jacking ends from 0” to half jacking height.
 2. Spans 2 & 4 will slope due to jacking ends from half the jacking height to full jacking height.
 3. Span 3 will be level and raised to full jacking height so repairs can be conducted. Full jacking height is the height required to conduct all repairs including hanger replacement. However, on the prior test jacking on March 15, 2024 with Josh Wolf of MCWD, to ensure that the pile caps remained in place, Span 3 was only raised one side at a time, rather than both sides at the same time to remain level. This is the suggested method

December 17, 2024

Mr. James Wisker

for December 19, 2024 to ensure the pile caps remain in place and will only require twelve (12) jacks, rather than sixteen (16) jacks.

- d. The procedure for jacking sections with toe rails involves two (2) sets of jacks to conduct repairs within one (1) span. See *Exhibit B* for a schematic of the jacking operation to conduct repairs.
 - e. Temporary beams and blocking must be located to provide access for repairs to be conducted and inspections to take place.
 - f. Prior to jacking:
 1. Joist uplift fasteners installed in hangers are to be removed. Install uplift fasteners with appropriate MiTek fasteners after repairs and all jacking at the location are completed.
 2. Toe rail shall be removed over pile bents. Salvage and install toe rail with hardware after repairs and all jacking at the location are completed.
 3. Railing hardware shall be removed to loosen rail panels over pile bents. Reconnect panels with hardware after repairs and all jacking at the location are completed.
 4. Remove deck boards attached to the pile bents. Salvage and install deck boards with hardware after repairs and all jacking at the location are completed.
 - g. JTS intends to limit the jacking height, so the joists are not raised above the pile bent to help maintain joist and pile bent alignment (vertical and horizontal) for proper resetting.
 - h. Necessary repairs to be completed in accordance with the *Defective Work List and Uncovering Plan*.
 - i. It is recognized and agreed that all hardware removed that can be re-used shall be re-used rather than replaced with new hardware.
5. The estimated costs associated with the field testing include labor costs and material costs. The original estimated cost for materials was \$6,726.14, though updated pricing increased this figure to \$8,398.75. MCWD has agreed to contribute \$3,000.00 to JTS for material costs for the field testing. JTS expects a draft payable in this amount from MCWD prior to the commencement of field testing. JTS will cover the remaining material costs necessary for field testing over and above MCWD's contribution. In addition, JTS will pay for all of its labor costs necessary for the field testing.
 6. Evaluation and Documentation of Field Test - Attached is a draft outline summarizing how the Field Test will be evaluated and documented, the final form of which will be discussed and agreed upon by all parties prior to acceptance (*Exhibit C*).
 7. The purpose of this field testing is to test the effectiveness of JTS's alternatives as set forth in its *Proposal for Alternative Material, Design or Method of Construction* dated August 6, 2024. Pending satisfactory completion of the Field Test, the parties will

December 17, 2024

Mr. James Wisker

provide comments to support the formulation of a repair installation plan. If acceptable, SRF would then issue change orders that approve and incorporate JTS's proposed alternatives into the certified contract documents, including the pricing and payment for same. The City of St. Louis Park would then use the modified certified plans and change orders as documentation of SRF's acceptance of the JTS's alternatives for consideration on their approval of JTS's *Proposal for Alternative Material, Design or Method of Construction*.

Sincerely,

Mark J. Kemper

Mark J. Kemper

MJK/jmf


Attachments

FIGURE 2 - REPAIR LOCATIONS
(Sheet 1 of 4)

[illegible]

FOR INFORMATION ONLY,
REFER TO ORIGINAL PLANS
FOR MORE DETAILS.

CONFORMED DRAWINGS
AS OF 1/29/2014

 H2Green		 H2Green.com		 STATE OF MISSOURI		MINNEHAHA CREEK TRAILS INITIATIVE MINNEHAHA CREEK WATERSHED DISTRICT ST. LOUIS PARK, MINNESOTA		SHEET NO. C109	
NO. _____		DATE _____		BY _____		REVISION _____		NORTH BOARDWALK - WESTERN	
400 DATE: 03/11/2023		400 DATE: 12/24/2022		400 DATE: 12/24/2022		400 DATE: 12/24/2022		MINNEHAHA CREEK WATERSHED DISTRICT	
APPROVED: JSC		APPROVED: JSC		APPROVED: JSC		APPROVED: JSC		MINNEHAHA CREEK PRESERVE BOARDWALK RECONSTRUCTION	
CADD DATE: 12/27/2014 5:37:02 PM		CADD DATE: 12/27/2014 5:37:02 PM		CADD DATE: 12/27/2014 5:37:02 PM		CADD DATE: 12/27/2014 5:37:02 PM		GENERAL PLANS	
CADD FILE: S:\2013\20001\2013\20001\2013\20001\2013\20001.dwg		CADD FILE: S:\2013\20001\2013\20001\2013\20001\2013\20001.dwg		CADD FILE: S:\2013\20001\2013\20001\2013\20001\2013\20001.dwg		CADD FILE: S:\2013\20001\2013\20001\2013\20001\2013\20001.dwg		(SHEET 1 OF 6)	

[SRF]

DESIGNED BY
E. JOHNSON

CHECKED BY
R. DUBOIS

IN CHARGE
C. BLACK

COMM. NO. 15470

I hereby certify that this plan, specification, contract was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Print Name: **DAVE E. BLACK**

Signature: *Dave E. Black*

Exp. 09-02-2022 License # 49163

EXHIBIT C

EVALUATION AND DOCUMENTATION OUTLINE FOR JTS FIELD TEST PLAN

Evaluation Criteria & Acceptability

Test Repairs

All repairs shall be conducted as documented in the DWL. Evaluation criteria for test repairs includes:

- Does the repair resolve the defect?
- Is the repair repeatable at other locations?
- Is the condition and integrity of non-defective work maintained after the repair is complete?

Each DWC repair will be evaluated individually. The acceptance of each repair is determined by its ability to meet the evaluation criteria to the satisfaction of the inspectors or the ability to successfully modify the repair to better meet the criteria based on inspection feedback.

Jacking Operation

Evaluation criteria for the JTS jacking operation includes:

- Does the operation provide safe conditions for repairs and inspections to be conducted?
- Is the operation repeatable at other locations?
- Is the condition and integrity of non-defective work maintained after the operation is complete?

The acceptance of the jacking operation is determined by its ability to meet the evaluation criteria to the satisfaction of the inspectors or the ability to successfully modify the operation to better meet the criteria based on inspection feedback.

Observation & Inspection

Test field repairs shall be conducted by JTS in the presence of the following agency and product representatives:

Agency Representatives:

- Owner: Minnehaha Creek Watershed District staff
- Owner's Engineer: SRF Consulting Group, Inc.
- Permitting Agency: City of St. Louis Park inspection staff

Product Representatives:

- Product Representative: MiTek Field Representative

All representatives will assess the repairs and jacking operation against the evaluation criteria. Each entity will have the ability to comment on the acceptability of the repairs and operation as demonstrated or provide comments and suggested modifications to make them more acceptable. JTS shall incorporate suggested modifications into a final repair plan for approval prior to advancing any other repairs.

Documentation

The test field repairs and jacking operations will be documented as follows:

- Site photos of completed repairs.
- Site photos of jacking operations and equipment setup
- Field notes from observation and inspection from agency representatives which will be provided to SRF and MCWD for incorporation into the project records by SRF.
- Letter of Acceptability from MiTek to be provided to SRF and MCWD that documents for the project the successful installation by JTS and performance of MiTek custom products.
- Findings memorandum by SRF will be reviewed with MCWD staff prior to being provided to JTS and the City. Memo will incorporate the MiTek letter and provide recommended repair modifications.
- Incorporation of repair and jacking operation modifications into the final repair plan which will be approved by JTS and the agency representatives prior to initiating additional repairs.

From: [Chuck Holtman](#)
To: mkemper@kemperlaw.com
Cc: [James Wisker](#)
Subject: RE: Minnehaha Preserve Boardwalk Change Order 2 and Implementation Plan
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Mark:

At James Wisker's request, I'm providing an interim response to your April 1, 2025 letter.

In April 2023, the substantial completion inspection revealed widespread defects in the work. Two years later, JTS has yet to begin corrections. In that time, it has determined to correct eight categories of defects to specification, and address the three remaining categories of defective work by means of alternatives using custom MiTek hardware. The District, the City of St. Louis Park ("City"), JTS and MiTek all have devoted substantial time and resources to developing JTS's alternatives proposal, to advancing it through technical review by SRF and the City building official, and to JTS's development of an installation plan for performing the corrective work.

On February 20, 2025, Mr. Wisker forwarded proposed Change Order #2 to you and Jeff Smith for JTS signature. The purpose of the change order is to allow JTS's proposed approach to corrections to conform to the contract, by revising the plans and specifications to incorporate the three alternative corrections as they have been conditionally accepted by the MCWD engineer, SRF. It is MCWD's understanding that full execution of CO#2 will allow the City to complete its building code alternative review process and issue a formal approval.

A condition of CO#2 is JTS's submittal, and SRF and City approval, of a satisfactory installation plan. With your letter, you transmitted a proposed plan that incorporates the experience of the parties from the December 19, 2024 field testing. MCWD staff and SRF have reviewed the plan, and Mr. Wisker will transmit comments under separate cover. To my understanding, he intends to do this by the end of the week. A signed change order, City building official approval, and an approved installation plan are the three predicates for the corrective work to proceed. Until the plan is in place, we cannot gauge the schedule or cost of the corrections. Accordingly, independent of the parties' discussion of any of the matters you raise in your letter, MCWD would urge JTS to review the comments and produce a proposed final installation plan as soon as that can be done. Until we have this plan, we don't know that we have a viable route to project completion.

In your reply to Mr. Wisker's correspondence, you state that JTS will sign CO#2 only in conjunction with a resolution of contract payment issues. You indicate that MCWD currently owes JTS the combined sum of \$240,397.86, comprising \$146,830.01 for Pay Request No. 4; \$90,567.85 in retainage; and \$3,000.00 for reimbursement of December 19, 2024 field testing costs. You advise that JTS will perform the corrective work only after MCWD agrees it will pay JTS this combined sum of \$240,397.86, and another \$250,000 besides. And you request that if MCWD does not find this acceptable, it communicate what it would agree to pay for a "complete and final resolution" of

contract performance. The MCWD is reviewing this demand and will reply.

Separately, you request that MCWD state its grounds for not having paid JTS the \$240,397.86 that you assert to be outstanding. I can respond briefly to your request at this time, as follows:

- **Pay Request No. 4:** Until receiving your April 1 letter, no present MCWD representative was aware that JTS had transmitted a Pay Request #4. On a file search, we have discovered a May 9, 2023 transmittal of the request from Dina Smith to Tiffany Schaufler. It was sent in the wake of the April 18 and May 4, 2023 inspections involving JTS, MCWD, SRF, MiTek and the City where the defective work was discovered. Ms. Schaufler was the MCWD project manager at the time, and replied that MCWD would not be processing the pay request until the parties resolved the situation. Ms. Schaufler left the MCWD in February 2024.

GC 15.01 does stipulate a formal procedure for pay request review by the engineer, and then the owner. Pursuant to the explicit terms of GC 15.01.C and 15.01.E, the engineer may recommend a set-off, or may recommend that payment be declined, if it is unable to represent that the work conforms to specification. The owner may refuse payment to protect itself from loss due to defective work. These provisions would seem to apply quite directly. Nonetheless, Ms. Schaufler should have sought Ms. Smith's explicit acknowledgment of this postponement. That said, to the knowledge of present MCWD representatives, Ms. Smith did not take issue with Ms. Schaufler's reply, nor for two years, until your recent letter, have you or Mr. Smith referenced the existence of the pay request. If JTS would like Pay Request #4 to be reviewed and formally processed at this time, please advise and MCWD will do so.

- **Retainage:** MCWD would pay retainage in conjunction with the engineer's issuance of a certificate of substantial completion, and otherwise in accordance with Minnesota Statutes §15.72. The project has not been substantially completed, either by the contract terms or within the meaning of Minnesota Statutes §541.051. Accordingly, retainage is not yet due.
- **Field test cost reimbursement:** In his November 16, 2024 email to you, James advised that MCWD would reimburse JTS for actual materials costs incurred for the December 19 field test, up to \$3,000. The email included a list of eligible MiTek item numbers. If JTS sends documentation of materials costs used in the field test, MCWD will promptly process reimbursement.

Finally, you return in your letter to a contention of Mr. Smith's raised several times over the past two years. You state: "SRF and MCWD inspected JTS Construction, Inc.'s work throughout the entirety of the Project, and approved JTS Construction, Inc.'s work at every step." As a legal matter, I note: (a) MCWD staff do not under the contract have the role or authority to approve work that deviates from technical specifications; (b) the MCWD engineer has that authority to a limited degree, but only by means of a written work change; and (c) neither may authorize a deviation from the city building code. That said, and further reserving debate on the law, each time Mr. Smith has expressed this, MCWD has invited him to elaborate and offer documentation of any purported approval, and each

time he has declined. You say: "Pursuant to the Construction Agreement, the bidding documents, and Minnesota law, JTS Construction, Inc. was entitled to rely on SRF's and MCWD's approval of change orders and substitutes." I agree with you. But MCWD is unaware of any change order or substitution approval that authorized the defective work to be performed as it was.

Again, MCWD is conscientiously considering whether the public interest is served at this juncture by a negotiated agreement as to contract price and, if so, on what terms. MCWD wishes to move forward toward project completion without further delay, and so intends to advise shortly.

This is not intended as a complete reply with respect to any subject raised in your letter. MCWD reserves all rights, claims and remedies with respect to the matter.

Yours truly,
Chuck

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From: mkemper@kemperlaw.com <mkemper@kemperlaw.com>
Sent: Friday, April 11, 2025 3:31 PM
To: James Wisker (jwisker@minnehahacreek.org) <jwisker@minnehahacreek.org>; Chuck Holtman <Holtman@smithpartners.com>
Subject: RE: Minnehaha Preserve Boardwalk Change Order 2 and Implementation Plan

It's been 10 days. Any response?

Mark Kemper
Kemper Law LLC

----- Original message -----

From: mkemper@kemperlaw.com
Date: 4/1/25 5:34 PM (GMT-05:00)
To: "James Wisker (jwisker@minnehahacreek.org)" <jwisker@minnehahacreek.org>, "Chuck Holtman (Holtman@smithpartners.com)" <Holtman@smithpartners.com>
Subject: Minnehaha Preserve Boardwalk Change Order 2 and Implementation Plan

Mr. Wisker:

See attached correspondence and implementation plan dated April 1, 2025.

Mark J. Kemper

Attorney - MN & WI

Kemper Law LLC

☐ [612-202-3242](tel:612-202-3242) ☐ [612-616-3764](tel:612-616-3764) ☐ www.kemperlaw.com

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☐ Litigation | Construction | Real Estate

From: [Chuck Holtman](#)
To: [Chuck Holtman](#)
Subject: FW: MCWD Feedback RE: JTS Draft Implementation Plan to Correct Defective Work at Preserve Boardwalk
Date: Sunday, June 22, 2025 8:52:54 PM
Attachments: [image001.png](#)
[25 04-01-25 Implementation Plan - JTS Construction Inc. \(Preserve Boardwalk Project\) \(with attachments\).pdf](#)

From: James Wisker <JWisker@minnehahacreek.org>

Sent: Wednesday, April 23, 2025 1:59 PM

To: mkemper@kemperlaw.com

Cc: Chuck Holtman <Holtman@smithpartners.com>; David Skallet <DSkallet@stlouisparkmn.gov>; Grant Sala <GSala@stlouisparkmn.gov>; Jeffrey Kurth <JKurth@srfconsulting.com>; Michael Hayman <MHayman@minnehahacreek.org>; Casey Black <cblack@srfconsulting.com>; James McDermond-Spies <jmcdermondspies@minnehahacreek.org>; jsmith@jtsconstruct.com

Subject: MCWD Feedback RE: JTS Draft Implementation Plan to Correct Defective Work at Preserve Boardwalk

Good afternoon, Mark.

I am writing in follow up to the Implementation Plan you provided on behalf of JTS, on April 1, 2025 (attached). Below are areas of feedback that need addressing to finalize JTS' plan to implement the corrections to defective work at the Preserve Boardwalk.

I want to note that in my February 3, 2025, email to you and Jeff Smith, I provided an outline for a clear implementation plan. A key component in the provided outline sought JTS' expectations for how it plans to coordinate the uncovering, inspection, issue identification, correction mapping, implementation, and approval of corrections among St. Louis Park, SRF and MCWD. More clarity is still needed on this front within the draft you provided. Knowing that collaboration among the parties would be the most efficient way to develop shared expectations for how the corrections will be coordinated in the field, I had offered a Teams meeting to discuss in both my February 3 email and the February 20 follow up. After you and JTS digest the feedback below and provide a revised draft, I still believe a meeting would help facilitate the collaboration needed to cement common understanding and agreement across all parties involved.

1. The 10 bullets in the two-page Implementation Plan do not address the minimum requirements detailed in the draft outline of an Implementation plan, provided on February 3, 2025, to JTS.
 - a. JTS 4-1-25 Implementation Plan does not address:
 - i. Overall Planned Approach
 1. Staging and construction access for repair work
 2. Starting location for repairs and rationale
 3. Outline of crew size, specific roles, and who is leading and overseeing the crew
 4. Planned start date, estimates of segments jacked and repaired per unit time, and estimated total time for completion

5. Addressing environmental concerns and compliance for wetland impacts and potential hazardous materials capture and disposal
6. Site restoration

ii. Updated Jacking Plan Adjusted to Integrate Field Test Learnings

1. Procedure Step 1 in 4-1-25 Implementation Plan notes that field work shall commence consistent with the field-testing procedure set forth in JTS Construction, Inc. counsel correspondence to MCWD dated December 17, 2024. JTS did not follow this plan during the field test, which raised sections unevenly, stressing timber and causing splitting of railing posts. The wrong jacks were used. Jacks were not properly secured, causing slipping, which resulted in safety risks.
2. Updated Jacking Plan must address:
 - a. Safety of jack slipping experienced during field test
 - b. Blocking to spread load
 - c. Number of jacks and segments expected to be lifted at once.
 - i. JTS indicated field test would be scaled up for full implementation of corrections

iii. Material Procurement and Phasing/Staging

1. Outline of total materials estimated to be needed
2. Summarize how much material will be on hand, versus ordered throughout the corrections, to ensure pace of implementation is achievable within the target seasonal timeframe
3. Plans for having lumber on hand to replace timbers as damage occurs (tear out and splitting of joists and railings were caused during JTS' field test)

iv. Protocol for Inspection, Issue Logging, Directing Corrective Repairs, and Approval (developed by JTS in collaboration with SRF and St. Louis Park)

1. Estimate of number of sections opened per unit time (day)
2. Number and frequency of anticipated inspections
3. Consistent form for identification of defective work at each location/segment, and direction and documentation of repairs needed
4. Process for field determining appropriate hanger skew, aligning plan requirements and field review
5. Approval of correction sign-off process and chain of command among JTS, SRF, City, MCWD

2. Procedure Step 2 notes that all sections will be first inspected by St. Louis Park prior to jacking to establish joist gap space and hanger height, which shall then determine the appropriate work to be completed and materials to be utilized for each individual section consistent with the guidelines set forth in the previously submitted Proposal.

- a. The implementation plan should detail JTS' plan for uncovering, inspecting, and

documenting all defective work within each segment, and determining all corrective actions required in each segment, in a chain of command with City building officials, and the design engineer, SRF. See 1-iv, above.

- i. The 4-1-25 Implementation Plan reads that the City of St. Louis Park will inspect and determine all defective work and speaks only to joist gap and hanger height. For example, it does not address JTS' process for identifying where replacement hangers are needed to implement the correct skew. It also does not outline JTS' process for determining which hangers are installed at incorrect height.
- ii. The 4-1-25 Implementation Plan does not provide appropriate detail on how JTS plans to coordinate and document the uncovering and identification of all defective work in each segment. It does not outline how JTS will determine and document all the corrective actions needed in coordination with St. Louis Park and SRF. It does not provide detail on the anticipated logistics of how this process is expected to be coordinated with St. Louis Park or SRF, or the process for documenting the issues and documenting that the corrections were found acceptable.

3. Procedure Step 3 identifies the installation of up to three (3) maximum MiTek Product No. EC-TG23-1023A (restrained bearing plates).

- a. The defective work list references the MiTek Submittal which states that (1) IHF23925IF (inverted flange), a maximum shim height of $\frac{1}{4}$ " is allowable (2 shims); and that (2) with an IHF23925, a maximum shim height of $\frac{1}{2}$ " is allowable (4 shims). During the field test there was a discussion surrounding the maximum allowable shims all parties would accept. I recall three (3) shims being the maximum allowable for the IHF23925 hanger. However, the inverted flange hanger would still be limited to a maximum of two (2) shims. This should be clarified in the document and confirmed with the City of St. Louis Park.

4. Procedure Step 6 identifies that toe rails shall be loosened or removed as necessary prior to jacking to prevent damage during jacking operations, for low sections of boardwalk.

- a. JTS' field test split railing posts on elevated boardwalk sections. What is JTS plan for removal of railings, or determining which sections of railings will be removed to avoid damage in elevated sections?

5. Procedure Step 7 identifies that 6,000-pound jacks shall be utilized, instead of the 7,000-pound jacks specified in JTS' field test plan. It also states that perpendicular support beams shall be installed while jacking.

- a. Please clarify why the load rating of jacks has been lowered.
- b. Please clarify that perpendicular support beams refers to beams between jacks under the boardwalk to support even lifting and lowering.
 - i. During the field test, JTS improperly installed vertical timbers for jacking, screwed perpendicular to the exterior joists.

6. Procedure Step 10 identifies that JTS will repair damaged materials sustained as a result of jacking operations
 - a. The implementation plan should detail how damage caused by jacking operations will be assessed, by whom, and how damage will be documented and repairs implemented.
 - i. During the field test, JTS' jacking operations split railings, posts and caused tear out on joist bottoms due to uneven lifting. It was discussed that these timbers would need replacing. Please clarify what is meant by "repair".
7. The implementation plan incompletely references defective work and required corrections. For example, hanger skew, improper hanger installation, and damaged hangers, are not referenced. The principal purpose of the implementation plan is to comprehensively address the means and methods that JTS will deploy to implement corrections to the defective work on site. Therefore, it is recommended that the implementation plan appropriately incorporate by reference the defective work list, which outlines the defective work categories, the proposed corrections to plan and specification, and those defects to be corrected through use of alternatives.
 - a. Again, as an overarching comment, means and methods are not appropriately detailed within the draft implementation plan. For example:
 - i. The logistics of the proposed repairs (staging, start location, crew size, roles, schedule, timing per segment)
 - ii. The logistics and documentation associated with uncovering, inspecting, directing corrections, and approving corrections
 - iii. The implementation of repairs, scale and adjustments in jacking operation, need for pre-drilling and screwing, the identification and replacement of damaged timber, etc.
 - iv. The respective roles of JTS, SLP, SRF and MCWD in the entire process

I hope this feedback is useful in focusing revisions to the draft implementation plan. As I mentioned, it may be useful for JTS to facilitate a meeting to drive shared clarity on a final draft.

Please confirm receipt of this email and outline JTS' next steps and timeline regarding revisions to the implementation plan.

Thank you.

James Wisker
District Administrator

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Mark J. Kemper
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May 5, 2025

Dear Mr. Kemper:

At its meeting of April 24, 2025, the Minnehaha Creek Watershed District (MCWD) Board of Managers reviewed your April 1, 2025 letter concerning the Minnehaha Preserve reconstruction project. The Board has directed that I reply to you. I note, also, receipt of your further letter dated today. MCWD will review and respond further to that letter.

Background

JTS Construction, Inc. (JTS), under contract to the MCWD, performed the work on the Minnehaha Preserve project to the point of substantial completion inspection. During inspections in April and May 2023, MCWD, the MCWD project engineer, SRF Consulting Group (SRF), and the City of St. Louis Park ("City") discovered numerous and widespread instances of deviations from contract specifications and building code, in the methods by which JTS crews joined joists to pile caps and supported joists. On June 9, 2023, pursuant to GC 14.03.C, MCWD transmitted a defective work notice to JTS. On June 30, 2023, it transmitted a supplemental notice reflecting additional inspection. The notices, together, identify 11 categories of defective work methods requiring correction.

After that date, JTS determined that it would correct eight of the defective work categories to contract and code specification. As to the other three, it conferred with the hardware fabricator, MiTek, which has designed custom connecting hardware to allow the installation to meet structural requirements more economically than by reconstructing the connections in question. MCWD and the City have invested a good deal of time in evaluating these alternatives, and assisting JTS to apply for and gain City building official approval of them.

A critical component of the corrective work has been how it will be performed, so that JTS crews can work efficiently, materials are on hand in time but not in excess, SRF and the City are able to inspect on uncovering and before covering, and the procedure for corrections doesn't compromise the integrity of the surrounding structure. In December, the parties met at the site for trial work. Since then, JTS has

been engaged in completing the installation plan, with comments from MCWD and SRF that Mr. Wisker provided by email on April 23, 2025. Foremost, he reiterated a prior suggestion that the parties meet to determine how best to coordinate the work and inspections. Meanwhile, nearly two years have passed, and JTS has performed no corrective work. The boardwalk is in public use, but it does not conform to contract specifications, does not meet city building code, and is not constructed to be durable for its intended life.

SRF prepared a change order to incorporate the three alternatives proposed by JTS into the specifications. The city building official has advised that the city will approve the alternatives when the change order has been signed. When this has occurred, and the installation plan has been finalized, JTS may commence the corrective work, noting however that some, or a good portion, of the work is better performed in late fall or winter, under cold conditions.

MCWD Evaluation of JTS Demand

Your letter states a demand on behalf of JTS. JTS states that it will not sign the change order or perform the corrective work until MCWD has: (a) paid an amount that JTS believes to be outstanding under the contract; and (b) agreed to pay an additional amount when the project is complete. Specifically, JTS states that \$237,397.86 is outstanding on the contract (\$146,830.01 payable and \$90,567.85 in retainage),¹ and demands this amount now. And it demands an additional \$250,000.00 to perform the corrective work and complete the contract.

I would begin MCWD's response by communicating MCWD's perception of the frame within which JTS's demand arises. In November 2022, MCWD entered into a unit price contract with JTS, in the amount of \$1,858,182, for JTS to reconstruct the Minnehaha Preserve boardwalk in accordance with contract specifications and local requirements. JTS mobilized in early January 2023, and by April had removed the existing wood and reconstructed the boardwalk to the point of substantial completion inspection. On April 27, 2023, the MCWD Board approved Pay Request #3, as a result of which MCWD had disbursed \$1,656,799 to JTS, in payment and retainage for work performed. MCWD had a contractual right to a complete project by the contract completion date of June 30, 2023, in exchange for the outstanding contract amount of about \$200,000 (depending on final quantities), and held retainage.

MCWD has been delayed in receiving a complete project going on two years. However, in MCWD's view, it still has the right under the contract to a complete project, for the outstanding contract amount. The JTS demand suggests that JTS sees its failure to conform to specifications and building code as an event for which responsibility lies with parties other than itself, and therefore the costs of which need to be negotiated. But JTS is responsible for its means and methods, and to conform its work to specifications. The standard terms of the contract are quite straightforward in this regard. GC 9.09 states:

The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the

¹ I omit the \$3,000 claim for costs relating to the December 2025 field test, to which I spoke in my April 16 email to you.

safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

GC 7.01 states:

Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

EJCDC General Condition section 14.03 governs defective work. Under GC 14.03.A, "It is Contractor's obligation to assure that the Work is not defective." GC 14.03.D required JTS to correct defective work "[p]romptly after receipt of written notice." Notice was given in June 2023.

In addition to its obligation to correct the work, per GC 14.03.F, JTS is responsible for "all claims, costs, losses, and damages arising out of or relating to defective Work" to which MCWD has been subject, "including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work." From May 2023 through March 2025, engineering and legal invoices to the MCWD related to this matter are about \$58,000 and \$54,000, respectively. The services that have been invoiced are almost entirely "arising out of or relating to" the defective work. MCWD costs for consultant services will continue until the corrective work has been completed. As well, MCWD has incurred, and will continue to incur, a substantial cost in the form of staff time.

And, pursuant to Section 00020-8 of the contract, MCWD has incurred liquidated damages at the rate of \$100 per day since the June 30, 2023 contract completion date. The amount of liquidated damages accrued through April 30, 2025 is \$67,000.

Under the contract terms, then, JTS will be paid something in the vicinity of \$290,000 (outstanding contract amount plus retainage, again depending on final quantities) on the completion of corrective work and delivery of the completed project. But MCWD is entitled to deduct from this amount some \$112,000 in engineering and legal costs and \$67,000 in liquidated damages through April 30, and such further costs and damages as are incurred until corrective work is completed. Aside from a refinement and accounting of these figures, MCWD does not find ambiguity in the contract. Note as well that the terms of the Granite Re performance bond (GRMN46531A) align with the contract terms. Per section 6 of the bond, in addition to providing for correction and completion of the contract, the surety is responsible for "[a]dditional costs incurred by the OWNER, including without limitation legal, design professional and delay costs resulting from the Contractor's Default" as well as accrued liquidated damages.

Your letter offers two grounds for the demand that MCWD share the cost of JTS's defective work. I won't seek in this letter to address these fully as to either the facts or the law, but I will respond briefly.

- You state: "SRF and MCWD inspected JTS Construction, Inc.'s work throughout the entirety of the Project, and approved JTS Construction, Inc.'s work at every step."

It's a fundamental proposition, and the General Conditions are clear, that contract terms may be modified only in writing: via change order, work change directive or field directive. See GC 1.01, 11.01. There has been no such paperwork. And, of course, MCWD and SRF would have no ability to alter the terms or applicability of the city building code. JTS's principal, Jeff Smith, has asserted several times over the past two years that the deviations in his crews' work were based on MCWD staff or SRF approvals or representations. He has been invited to offer support for his assertions, and has declined to do so.

As the owner of an established construction firm, Mr. Smith understands the procedures for changes in the work, and that any change must be in writing. And MCWD finds it implausible that an SRF representative would informally advise JTS to ignore the technical specifications of the contract, or the requirements of the city building code.²

As well, GC 10.08 is abundant in its emphasis that the Engineer does not supervise, direct or control the Contractor's means and methods, nor is it responsible for the Contractor's failure to conform to specifications. In particular, paragraph 10.08.A states:

Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor.

Had SRF, in its construction oversight, observed the improper construction methods sooner, this would have been to the benefit of all of us. However, while SRF is responsible to MCWD for its exercise of care in construction oversight, it did not owe to JTS a legal duty to observe and alert JTS to JTS's own improper methods.

- You suggest, and cite two cases for the proposition, that a court would relieve JTS of its obligation to correct the defective work, in order to avoid economic waste. In these two cases, the court awarded damages in the form of loss of value.

First, I note that the case on which the two cited cases rest, HP Droher & Sons v. Toushin, 85 N.W. 2d 273 (Minn. 1957), stipulates loss of value as the remedy only where the cost to correct is "grossly disproportionate" to the benefits, and where there has been "substantial good-faith performance." JTS would be challenged to determine loss of value attributable to structural

² MCWD staff have no role in, or authority to make, changes to technical requirements of the work. Per GC 9.01: "Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer." Nowhere in the General Conditions is the Owner empowered to alter the technical terms and specifications of the contract without the recommendation of the Engineer. Nor has the MCWD Board delegated Owner's work change authority to staff.

deficiencies undermining the durability of a public boardwalk facility and the attendant increase in public risk. It isn't clear that the cost to correct is at all of a magnitude approaching the standard of "grossly disproportionate." And the scope and nature of the defective work makes it less than clear that JTS's work can be characterized as substantial good-faith performance.

More fundamentally, as a matter of law rather than fact, the doctrine is applied in the line of cases as one of common law, where the contract does not otherwise speak to remedies. Our present contract speaks extensively to remedies, and in Article 14 of the General Conditions explicitly spells out MCWD's right to correction of defective work, and the process by which it is obtained. As well, at GC 14.04, the contract specifically includes the remedy of damages for loss of value, in lieu of correction, but entirely at the election of Owner. A judge would not disregard a carefully crafted framework of legal remedies, developed to serve as an industry standard and agreed to by the parties, in order to substitute a cursory Restatement doctrine. And MCWD will not elect damages for loss of value in this case, not only because of the inadvisability of maintaining into the future a structurally substandard facility for public use, but also because the city building official would not close the building permit on a structure widely deviating from the code: the remedy is legally unavailable.

Conclusion

If JTS is committed to a motivated and conscientious effort to correct the work and deliver the project, MCWD would receive a completed project sooner rather than later, and with less administrative cost and distraction. MCWD would view this favorably.

However, JTS demands that before it fulfills the obligation it assumed under the contract, MCWD must agree to forego reimbursement of some \$167,000 to which it is entitled, forego reimbursement for additional costs incurred until JTS completes the work, and pay JTS an additional quarter million dollars besides. With this demand, JTS communicates that it considers MCWD to be responsible for JTS's own work. This makes it difficult for MCWD to conclude that JTS is prepared to be motivated and conscientious.

Because of the administrative benefit of completing the work under the present contract, and because MCWD would prefer to complete its engagement with JTS on reasonable terms, MCWD would be willing to negotiate an agreement for project completion, pursuant to which it would waive liquidated damages. It also would be willing to waive its right to reimbursement of staff costs, to which it otherwise would have a claim under the contract (and bond). Without binding itself at this time, MCWD would indicate the following:


- The waivers would be conditioned on JTS's meeting specified deadlines to begin and complete the corrective work, and possibly other deadlines.
- The agreement might contain other terms to protect MCWD or compensate it for the loss of an additional season if JTS were to fail to complete the work.

- MCWD would make payment on substantial completion of the work, city building official approval, and the engineer's certification of substantial completion, with an appropriate and lawful amount withheld until completion.
- The negotiation would be expedited, and Granite Re would have the opportunity to be informed, or to participate. MCWD would have the right to limit its investment of resources in the negotiation until a final installation plan were in hand.

There is, indeed, economic waste at hand in this matter, not in the legal sense, but in the practical sense of materials, time and money expended unnecessarily to complete the boardwalk reconstruction. It is regrettable. But MCWD is not a responsible party for this circumstance. It hired JTS to assemble the structure, and JTS's crews proceeded to do so with speed, but with substantial inattention to the contractual plans, and to the owner, manufacturer and building official specifications they contained.

MCWD does not believe it should use its public funds to pay the cost of JTS's inattention. It believes JTS should make good on the obligation it assumed, and deliver a completed project. As a show of good faith, and in its desire to conclude the relationship on reasonable terms, MCWD would waive its rights to certain set-offs within a negotiated framework as indicated above. If JTS doesn't find this satisfactory, then MCWD will pursue another course of action available to it under the contract.

Thank you in advance for your consideration and reply.



Yours truly,
Chuck Holtman

C: MCWD Board of Managers
James Wisker, Administrator



Mark J. Kemper
612-202-3242
mkemper@kemperlaw.com

May 5, 2025

Mr. Charles B. Holtman
Smith Partners PLLP
250 Marquette Avenue South, Suite 250
Minneapolis, MN 55401

Mr. Todd Polum, P.E.
SRF Consulting Group, Inc.
3701 Wayzata Boulevard, Suite 100
Minneapolis, MN 55416

Re: Minnehaha Creek Preserve Boardwalk Reconstruction
Rule 408 Communication

Dear Messrs. Holtman and Polum:

Efforts to resolve the above-referenced matter appear to be at a standstill. Despite significant contributions of time and work by JTS Construction, Inc. ("JTS"), the Minnehaha Creek Watershed District ("MCWD") and SRF Consulting Group, Inc. ("SRF") appear unsatisfied with JTS's efforts to date. As JTS has indicated from the outset, it is willing to compromise to resolve this dispute, but it appears that MCWD and SRF are unwilling to do likewise.

I can argue that MCWD and SRF agents were onsite daily during construction and inspected, reviewed and approved JTS's work each and every day, including what later was described as defective work, while you can argue that the onsite field adjustments were not reduced to writing or implemented in a Change Order. We can argue these points all day long, but it solves nothing. Despite these differences, the parties have attempted to move forward to come to a resolution and avoid litigation. However, MCWD's recent response to JTS' proposed Implementation Plan continues its prior pattern of not taking any responsibility for the current situation and attempts, once again, to lay everything at the feet of JTS.

While the work proposed in Change Order No. 2 can certainly be performed by JTS, it cannot be performed without cost. Seemingly, MCWD expects JTS to perform all labor and provide all materials without further compensation. MCWD also expects JTS to continue to wait for payment on its Pay Request No. 4 and outstanding retention, as well as the promised material costs for the onsite field testing. At this point, JTS is tired of waiting.

Accordingly, please see the attached draft Complaint prepared by my co-counsel, Hellmuth & Johnson, PLLC. While the Complaint has not yet been served, JTS is ready to move forward

May 5, 2025
Mr. Holtman & Mr. Polum

with litigation if MCWD maintains its current position of expecting JTS to perform all Change Order work for free and refuses to pay for work already performed and retention wrongfully withheld.

MCWD's continuous nitpicking and overly meticulous review of JTS' submissions, beginning with its response to the initial Defective (and Supplemental) Work Notice, Proposal for Alternative Material, Design or Method of Construction, Field Testing Procedure, and Implementation Plan creates a highly elevated and unreasonable standard to satisfy. JTS is not interested in re-submitting multiple versions just to satisfy MCWD while MCWD continues to deny payment to JTS. Simply stated, the work to be performed here is not that difficult and everybody knows what needs to be done without over-complicating the situation. The fact the boardwalk has been in use for two years without incident clearly indicates that it is not a risk to the public.

In an effort, and for the last time, to avoid litigation, JTS is willing to mediate this dispute with MCWD, as well as SRF, provided I hear back from each of you within ten (10) days of this letter that you agree to mediation. If I do not hear back from you within the allotted time, JTS will initiate suit and we can let the Court sort it all out.

Sincerely,

Mark J. Kemper

Mark J. Kemper

MJK/jmf

Attachment

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT

JTS Construction, Inc.,

Court File No: _____

Plaintiff,

Judge _____

vs.

COMPLAINT

Minnehaha Creek Watershed District, and
SRF Consulting Group, Inc.,

Defendants.

Plaintiff JTS Construction, Inc. (“Plaintiff” or “JTS”), as and for its Complaint against Minnehaha Creek Watershed District (“MCWD”) and SRF Consulting Group (“SRF”) (collectively, “Defendants”), states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff JTS Construction, Inc. is a Minnesota corporation with a registered office address of 5756 – 230th Street E., Elko, MN 55020, and a principal executive office address of 19376 Huntington Avenue, Lakeville, MN 55044.

2. Defendant Minnehaha Creek Watershed District is a Minnesota government agency, with an address of 15320 Minnetonka Boulevard, Minnetonka, MN 55345.

3. Defendant SRF Consulting Group, Inc. is a Minnesota corporation with a registered office address and a principal executive office address of 3701 Wayzata Boulevard, Suite 100, Minneapolis, MN 55416.

4. This Court has subject matter jurisdiction with respect to this case under Minn. Stat. § 484.01, because it is a civil action within this district.

5. This Court has personal jurisdiction over Defendants because they are Minnesota entities that are located in, and regularly do business in, the State of Minnesota.

6. Venue is proper in Hennepin County pursuant to Minn. Stat. § 542.09 because Defendants operate business in and reside in Hennepin County, and this cause of action arose in Hennepin County.

BACKGROUND FACTS

I. The Project and Requests for Bids.

7. On or around September 2, 2022, MCWD published an Advertisement for Bids (“Advertisement”), which contemplated work related to the Minnehaha Creek Preserve Boardwalk Reconstruction (“Project”).

8. The Project consisted of approximately 23,323 square feet of elevated wooden boardwalk, which runs for approximately 2,000 feet adjacent to the Minnehaha Creek in St. Louis Park, MN.

9. Pursuant to the Advertisement, the Project was to be completed “in accordance with drawings and specifications prepared by SRF Consulting Group, Inc.”

10. The necessity for the Project arose after complications arose out of the original construction of the boardwalk performed by other contractors unrelated to JTS. The scope of the Project was limited to reconstruction work on the pre-existing boardwalk pursuant to reconstruction plans and specifications prepared by SRF.

11. Pursuant to the Advertisement and corresponding Instructions to Bidders (“Instructions”), the “class of work” was described as “Trail and Boardwalk Reconstruction, bituminous, timber, and excavation.”

12. The Instructions further identified all “Contract Documents” and identified the order of priority of each document as follows:

- Modifications (Change Orders, Work Change Directives and Field Orders)
- Notice to Proceed
- Addenda
- Notice of Award
- Agreement
- Instruction to Bidders
- Contract Drawings and Project-Specific Plan Sheets
- Technical Specifications and Special Provisions
- Payment Bond
- Performance Bond
- Insurance
- Supplementary Conditions
- General Conditions
- Completed Bid Form
- Advertisement for Bids
- Supplemental Specifications
- Standard Plans and Standard Plates
- Standard Specifications

(collectively, “Contract Documents”).

13. Pursuant to the Contract Documents, contractors who were interested in performing work on the Project were required to submit their bids by October 13, 2022, at 11:00 a.m.

14. On or before October 13, 2022, JTS submitted a bid (“Bid”) to MCWD pursuant to the process identified in the Contract Documents.

15. On or around November 4, 2022, MCWD, through its duly authorized agent and Administrator, James Wisker (“Mr. Wisker”) accepted JTS’s Bid in the amount of \$1,858,182.00.

16. On or around November 8, 2022, MCWD and JTS executed the Construction Agreement (“Agreement”), which memorialized their agreement that JTS was to perform the work on the Project.

17. Pursuant to the Agreement, JTS agreed to perform all work and labor in connection with the Project in exchange for \$1,858,182.00, plus change orders and extras.

18. JTS's work was to include the removal and replacement of the existing boardwalk, bituminous milling and paving, excavation, and the placement of riprap materials.

19. The Agreement further identified several material provisions of the Contract Documents, including: that the Project and JTS's work "shall be subject to inspection and approval of [MCWD] through its duly authorized ENGINEER [SRF], and, in case of any material or labor supplied shall be rejected by [MCWD] as defective or unusable, then such rejected material shall be done anew to the satisfaction and approval of [MCWD] through its duly authorized ENGINEER [SRF]."

20. The Contract Documents further provide that the work was to be performed "under the operation, direction, and control" of MCWD and/or its duly authorized engineer, SRF.

21. Pursuant to the Contract Documents, if JTS observed any error in the design or unanticipated circumstance materially affecting the feasibility of the design, cost, or time to complete the Project, JTS was required to notify SRF of the situation.

22. Pursuant to the Contract Documents, JTS was required to submit payment applications to SRF for each progress payment throughout the Project.

23. Within ten (10) days of receiving each payment application from JTS, SRF was required to present the payment application to MCWD and recommend whether payment should be made, and whether MCWD should set-off any payments.

24. Within ten (10) days of receiving the payment application and recommendation from SRF, MCWD was required to pay the amount recommended by SRF.

25. The Contract Documents further define the phrase “substantial completion” to mean: “the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.”

26. Minnesota Statute § 541.051, subd. 1 defines “substantial completion” as “the date when construction is sufficiently completed so that the owner or the owner’s representatives can occupy or use the improvement for the intended purpose.”

II. JTS Commenced Work on the Project.

27. In late 2022 or early 2023, JTS commenced work on the Project.

28. JTS completed multiple 12-foot sections of the Project per day for the majority of the Project, and repeated its process until the Project was complete.

29. Nearly every day throughout the Project, MCWD and/or SRF assigned two (2) – three (3) inspectors to monitor JTS’s performance, address any issues that arose, and otherwise supervise the Project to ensure compliance with the Contract Documents.

30. During the course of JTS’s work, JTS coordinated its work with representatives and inspectors of MCWD – including, Tiffany Schaufler and Josh Wolf – and representatives and inspectors of SRF – including, Matt Schroeder and Casey Black.

31. Despite MCWD and SRF supervising and approving JTS’s work nearly every day throughout the Project, after JTS substantially completed the work on the Project, MCWD and SRF alleged that the Project contained defects.

32. During the early stages of the Project, JTS, SRF, and MCWD discovered that the design of the Project, which was prepared by SRF, was flawed.

33. For instance, JTS, SRF, and MCWD noticed and discussed issues related to the nailing and spacing of framing members.

34. The Contract Documents required that JTS install the Boardwalk such that the gaps between the end of joist and pile bents did not exceed 1/8-inch gap.

35. During the early stages of the Project, SRF, MCWD, and JTS noticed that the Project could not physically be completed pursuant to the Contract Specifications for the 1/8-inch gap.

36. Since representatives and inspectors from SRF and MCWD were on-site at the Project nearly every day, SRF, MCWD, and JTS agreed on an different means to install the Boardwalk, which would minimize the gaps between each joist and pile bent.

37. The distance between each pre-existing helical anchor and attached pile bent was initially designed to be 12-feet.

38. However, in certain locations, the distance between the pre-existing helical anchors and attached pile bents exceeded 12-feet.

39. After MCWD awarded the Bid to JTS, and pursuant to the Contract Documents, JTS ordered special-order joist lumber in exactly 12-foot lengths to span the distance between the pile bents.

40. However, since the distance between the pre-existing helical anchors and attached pile bents exceeded 12-feet in certain areas, the special-ordered lumber did not fit as planned.

41. In order to make the specially-ordered 12-foot joist lumber work for the Project, representatives and inspectors from MCWD and JTS advised, authorized, and approved JTS's installation of the boards exceeding 1/8-inch gap between boards.

42. MCWD and SRF advised JTS to do whatever it could to install a Boardwalk that was suitable for its intended purpose, even if that meant leaving gaps larger than 1/8-inch.

43. Despite MCWD and SRF not only agreeing to this course of performance but also directing, authorizing, and approving it, MCWD and SRF now allege that JTS's work is deficient because it deviated from the Contract Specifications.

44. On or around March 21, 2023, St. Louis Park ("SLP") conducted an on-site inspection of the Project and identified several items which it believed deviated from the Contract Specifications.

45. SLP, MCWD, SRF, and JTS inspected the Project several other times between March and June 2023.

46. On June 9, 2023, MCWD issued a "Defective Work Notice" to JTS and a "Supplemental Defective Work Notice" to JTS on June 30, 2023.

47. MCWD updated the prior "Defective Work Notices," and provided JTS with a "Supplemental Defective Work Notice and Uncovering Plan," which identified eleven (11) issues which MCWD, SLP, and/or SRF claimed to be defective work.

48. Of the eleven identified issues, JTS has corrected or agreed to correct nine (9) of the issues.

49. The two (2) outstanding alleged defects relate to (1) gaps between joists and pile bents, and (2) hangers which were allegedly installed too low.

50. Most recently, on April 1, 2025, MCWD proposed an "Implementation Plan," which identified "acceptable means and methods" to resolve the outstanding alleged defective work ("Proposed Implementation Plan").

51. Pursuant to the Proposed Implementation Plan, MCWD requested that JTS re-perform the following work: (1) reconstructing certain portions of the Project where there are gaps between the ends of joists and the pile bents greater than 5/8-inch and less than 1 1/4-inch, and (2) reconstructing joists and joists hangers that are not aligned with the top of the pile bent.

52. However, MCWD and SRF have previously directed, supervised, controlled, authorized, and approved JTS's work performance and the gapping in the Project.

53. MCWD further denies that the Project has reached substantial completion.

54. Pursuant to the Contract Documents and Minn. Stat. § 541.051, substantial completion is achieved when the Project can be used for its intended purpose.

55. Between April 2023 and the present, MCWD has opened the Boardwalk to the public and has allowed the public to utilize the Boardwalk.

56. Because the intended purpose of the Boardwalk is to provide means of ingress and egress to the public, and MCWD allows the public to utilize the Boardwalk, the Project was substantially complete in April 2023.

57. Since opening the Board to the public, there have not been any incidents or problems related to JTS's work.

58. MCWD's allegations that the Boardwalk is deficient and/or contains defective conditions is contradicted by the fact that MCWD allows the public to utilize the Boardwalk.

III. MCWD Refuses to Pay JTS Pursuant to the Contract Documents.

59. Throughout the Project, JTS submitted multiple Payment Applications to SRF and/or MCWD in accordance with the terms of the Contract Documents.

60. Despite JTS timely submitting Payment Applications, MCWD refused or otherwise failed to compensate JTS pursuant to the terms of the Payment Applications and Contract Documents.

61. MCWD has withheld payments to JTS in an improper effort to leverage JTS into curing the alleged defects.

62. For instance, on November 8, 2023, JTS submitted Payment Application Number 4 to SRF and/or MCWD, requesting payment of \$146,830.01. At this time, and as indicated by Payment Application No. 4, MCWD held \$90,567.65 in retainage amounts.

63. Pursuant to the terms of the Contract Documents, SRF was to provide the Payment Application and a recommendation to MCWD within ten (10) days of receiving the Payment Application, and MCWD was required to pay JTS within ten (10) days of receiving the Payment Application and recommendation from SRF.

64. In other words, MCWD was supposed to pay JTS pursuant to Payment Application No. 4 within twenty (20) days of November 8, 2023 – by or before November 28, 2023.

65. Alternatively, the Contract Documents also state that MCWD shall pay JTS within 35 days of the date of receipt of invoice from JTS. Therefore, MCWD was required to pay JTS pursuant to Payment Application No. 4 within thirty-five (35) days of November 8, 2023 – namely, by or before December 13, 2023.

66. MCWD refused or otherwise failed to pay JTS pursuant to the terms of the Contract Documents, and as of the date of this Complaint, continues to deny JTS compensation which JTS is legally entitled to receive.

67. On or around December 14, 2023, MCWD held a Board of Managers Regular Meeting.

68. During this meeting, MCWD's Board of Managers discussed the Project.

69. The Meeting Minutes for the December 14, 2023 Meeting state: "Ms. Schaufler stated that MCWD is holding approximately \$240,000.00 - \$280,000.00 owed to JTS. Manager Loftus stated that it appears that the liquidated damages of \$100.00 per day was not high enough to motivate JTS to prompt resolution."

70. In other words, MCWD's December 14, 2023 Meeting Minutes evince that MCWD concedes that it owes JTS between \$240,000.00 and \$280,000.00, yet it is withholding these funds in an improper attempt to leverage JTS into resolving the alleged issues.

71. MCWD's withholding of these funds which it admits is owed to JTS, is not in good faith. MCWD does not have a good faith basis to withhold the payment reflected on Payment Application Number 4.

COUNT I
BREACH OF CONTRACT
(against MCWD)

72. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

73. The Contract Documents and Agreement constitute a binding, valid, and enforceable Contract between JTS and MCWD.

74. Pursuant to the terms of the Contract Documents, MCWD was required to promptly pay JTS within ten (10) days of receiving a Payment Application and recommendation from SRF.

75. JTS submitted Payment Application Number 4 on November 8, 2023.

76. MCWD was required to pay JTS the amount stated on Payment Application Number 4 by or before November 28, 2023.

77. Alternatively, the Contract Documents also require that MCWD pay JTS within 35 days of the date of receipt of invoice from JTS, unless MCWD, in good faith, disputes the invoices.

78. JTS provided an invoice, Payment Application Number 4, to MCWD on or around November 8, 2023.

79. As of the date of this Complaint, MCWD has failed to pay JTS pursuant to Payment Application Number 4.

80. MCWD does not have a good faith basis to dispute the invoice amount.

81. MCWD's refusal to pay JTS pursuant to Payment Application Number 4 is in bad faith, as evidenced by agents of MCWD admitting that MCWD owes JTS between \$240,000.00 and \$280,000.00 and was withholding such funds to "motivate JTS to prompt resolution."

82. As of the date of this Complaint, MCWD has refused or otherwise failed to pay JTS the amounts it owes to JTS pursuant to the Contract Documents.

83. MCWD's breach of contract has caused damage to JTS in an amount exceeding \$50,000.00, the exact amount to be determined at trial.

COUNT II
BREACH OF CONTRACT
(against MCWD)

84. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

85. The Contract Documents and Agreement constitute a binding, valid, and enforceable Contract between JTS and MCWD.

86. Pursuant to the Contract Documents, the Project contemplated the construction and preservation of the Boardwalk.

87. The Project has been substantially complete for over two years.

88. MCWD and SRF claim that the substantial completion inspection revealed defects throughout the Project.

89. However, if the work was truly defective, MCWD would not have allowed the public to utilize the Boardwalk.

90. The Contract Documents define “substantial completion” as the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.”

91. Minnesota Statute § 541.051, subd. 1 defines “substantial completion” as “the date when construction is sufficiently completed so that the owner or the owner’s representatives can occupy or use the improvement for the intended purpose.”

92. JTS’s work on the Project complies with the intended purposes of the Boardwalk.

93. MCWD and SRF have previously inspected JTS’s work on the Project, and approved all of JTS’s work.

94. By refusing to execute a Certificate of Substantial Completion, MCWD has materially breached the Contract Documents.

95. MCWD alleges that the Project is not substantially complete as an excuse to withhold retainage from JTS.

96. Furthermore, by refusing to execute the Certificate of Substantial Completion, MCWD has hindered and/or barred JTS from requesting retainage payments and/or an Application for Final Payment.

97. Because the Project is substantially complete, MCWD is required to execute the Certificate of Substantial Completion, pay JTS all retainage amounts withheld, and permit JTS to request an Application for Final Payment.

98. MCWD's breach of contract has caused damage to JTS in an amount exceeding \$50,000.00, the exact amount to be determined at trial.

COUNT III
VIOLATION OF MINN. STAT. § 471.425 AND MINN. STAT. § 16A.124
(against MCWD)

99. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

100. Minn. Stat. § 16A.124 requires that state agencies pay each valid vendor obligation within 30 days following the receipt of the invoice for the completed delivery of the product or service.

101. Pursuant to Minn. Stat. § 16A.124, if a state agency refuses or otherwise fails to promptly pay an obligation within 30 days, interest accrues at a rate of 1.5% per month.

102. Pursuant to Minn. Stat. § 16A.124, a vendor who prevails in a civil action against a state agency for their failure to promptly pay an obligation is entitled to collect its costs and disbursements, including attorneys' fees incurred in bringing the action.

103. Alternatively, Minn. Stat. § 471.425 requires prompt payment of local government bills.

104. Pursuant to Minn. Stat. § 471.425, local government entities must pay each vendor obligation according to the terms of their contract with said vendor, unless the municipality, in good faith, disputes the amounts owed.

105. Pursuant to Minn. Stat. § 471.425, if a local government entity fails to pay a vendor pursuant to the terms of their contract, interest accrues at a rate of 1.5% per month, and, if the local government's failure to promptly pay its obligations is determined to be in bad faith, the vendor may recover all costs and attorneys' fees.

106. JTS provided an invoice, Payment Application Number 4, to MCWD on or around November 8, 2023.

107. MCWD was required to pay JTS the amount stated on Payment Application Number 4 by or before November 28, 2023, or, alternatively, by or before December 13, 2023.

108. MCWD failed to pay JTS the amount owed to JTS within thirty (30) days receipt of the invoice and within the timeframe set forth by the Contract Documents.

109. As of the date of this Complaint, MCWD has failed to pay JTS pursuant to Payment Application Number 4.

110. MCWD does not have a good faith basis to dispute the invoice amount.

111. MCWD's refusal to pay JTS pursuant to Payment Application Number 4 is in bad faith, as evidenced by agents of MCWD admitting that MCWD owes JTS between \$240,000.00 and \$280,000.00 and was withholding such funds to "motivate JTS to prompt resolution."

112. MCWD's failure to promptly pay JTS has caused damage to JTS in an amount exceeding \$50,000.00, the exact amount to be determined at trial, plus interest accruing at 1.5% between November 2023, and the present, plus costs, including attorneys' fees.

COUNT IV
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
(against MCWD)

113. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

114. Every contract, including the Contract Documents, include an implied covenant of good faith and fair dealing.

115. MCWD acted in bad faith and dishonestly by refusing to pay undisputed amounts to JTS pursuant to Payment Application Number 4.

116. MCWD acted in bad faith and dishonestly by failing to close out the Project.

117. MCWD acted in bad faith and dishonestly by requiring JTS to re-perform several portions of the Project, despite JTS's work being directed, controlled, supervised, and approved by SRF, MCWD's authorized agent.

118. MCWD breached the implied covenant of good faith and fair dealing with JTS by their actions explained herein, which were taken with an ulterior motive.

119. JTS has suffered and will suffer financial damages as a result of MCWD's breach of the implied covenants of good faith and fair dealing.

120. As a result of MCWD's breaches of the covenant of good faith and fair dealing, JTS has suffered damages and is entitled to compensation in the amount to be determined at trial, but believed to be in excess of \$50,000.00.

COUNT V
DECLARATORY JUDGMENT

121. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

122. A justiciable controversy exists as to whether the Project is completed and/or substantially complete.

123. JTS has legal rights and interests which are complicated by MCWD alleging that the Project remains deficient, incomplete, and/or substantially incomplete.

124. JTS' legal rights under the Project and Contract Documents are capable of and in need of protection from the illegal actions of MCWD.

125. MCWD claims that the Project is not substantially completed pursuant to the Contract Documents and Minn. Stat. § 541.051. However, both the Contract Documents and Minn. Stat. § 541.051 define substantial completion as determined by the date on which the owner can

use the improvement for its intended purpose. The Project/Boardwalk has been in use by the public since April 2023.

126. Due to Defendants' actions described herein, JTS is entitled to declaratory judgment from the Court that the Project is complete and/or substantially complete, and any further work on the Project constitutes economic waste because the Project has been utilized by the public for over two years and serves its intended purpose.

127. JTS is further entitled to a declaratory judgment from the Court that it is entitled to receive full payment pursuant to Payment Application Number 4, and MCWD's withholding of these amounts was not in good faith.

COUNT VI
NEGLIGENCE
(against SRF)

128. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

129. At all times relevant hereto, SRF served as the engineer of record for the Project.

130. Pursuant to the Contract Documents, SRF had a duty to direct, control, supervise, and approve JTS's performance on the Project.

131. As the Project engineer, SRF owed JTS a duty to exercise reasonable care, skill, and diligence, consistent with the standards of the engineering profession in evaluating and approving JTS's work throughout the Project.

132. SRF was authorized and contractually obligated to inspect and approve JTS' work throughout the Project.

133. Throughout the Project, SRF directed, controlled, supervised, and approved all of JTS's work on an ongoing basis and at every step in the Project.

134. JTS relied on SRF's direction, supervision, and approvals in performing the work on the Project.

135. After substantial completion of the Project, SRF reversed its prior approvals and subsequently claimed that JTS's work was deficient and/or defective.

136. SRF breached its duty of care to JTS by negligently approving the work throughout the Project and subsequently disavowing those approvals without excuse.

137. SRF further breached its duty of care by failing to design the Project with the skill and care ordinarily exercised by qualified engineer professionals in the State of Minnesota, by, but not limited to: (1) SRF's design, plans, and specifications did not account for the pre-existing inconsistent spacing between the helical anchors and attached pile bents; (2) SRF's designs, plans, and specifications did not account for the fact that wood shrinks as it dries, and causes gapping and spacing over time; (3) pursuant to SRF's designs, plans, and specifications, JTS was required to order 12-foot specially manufactured lumber, despite the spacing between the pre-existing helical anchors and attached pile bents exceeding 12-foot spacing in many locations; and (4) SRF approved JTS's performance on the Project despite now alleging that JTS's performance on the Project deviated from Minnesota code requirements.

138. As a direct and proximate result of SRF's negligence, JTS has suffered damages in an amount exceeding \$50,000.00, the exact amount to be determined at trial.

139. JTS has retained and/or will retain an expert whose qualifications provide a reasonable expectation that the expert's opinion will be admissible at trial and that the opinion of the expert is that SRF deviated from the applicable standard(s) of care and by that action, JTS was injured. The affidavit of expert review will be provided and filed within ninety (90) days of service of the complaint, in compliance with Minn. Stat. § 544.42, *et. seq.*

COUNT VII
UNJUST ENRICHMENT
(against MCWD)

140. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

141. JTS has conferred appreciated and substantial benefits upon MCWD, which include, but are not limited to, performing substantial work on the Project and providing MCWD with a newly constructed boardwalk as contemplated by the Project.

142. MCWD knowingly accepted and retained these benefits which MCWD was not otherwise entitled to receive without paying or providing just consideration to JTS.

143. MCWD has failed to pay JTS in full for the benefits JTS conferred upon MCWD, and/or MCWD has failed to pay JTS the reasonable value of JTS's services.

144. MCWD has unjustly retained the benefits conferred by JTS.

145. JTS has suffered and will suffer financial damages as a result of MCWD's actions and omissions.

146. As a direct and proximate result of MCWD's actions and omissions described herein, JTS has suffered damages and is entitled to just compensation, in an amount exceeding \$50,000.00, the exact amount to be determined at trial.

COUNT VIII
INDEMNIFICATION
(against SRF)

147. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

148. All services and labor provided by JTS and SRF to MCWD was provided through the Contract Documents.

149. In the event MCWD asserts a claim, such claim arises from the performance of JTS's work under the Contract Documents, to which SRF was obligated to supervise, direct, control, and approve.

150. In the event MCWD asserts a claim, such claim arises from the performance of JTS's work on the Project, to which SRF's design was negligent, faulty, and/or faulty.

151. If there was any negligent act or omission, defective work, or deficient work that caused any damage to MCWD, such negligent act, defective work, and/or deficient work is SRF's fault and responsibility.

152. In the event JTS is adjudged liable to MCWD, such liability is entirely the cause of, and attributable to, SRF. JTS is therefore entitled to be fully indemnified by SRF for any such award entered against it, including indemnification and reimbursement of any and all costs and attorneys' fees incurred by JTS in defending itself from any claims asserted by MCWD.

COUNT IX
CONTRIBUTION
(against SRF)

153. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

154. SRF provided engineering services for the Project pursuant to the Contract Documents between JTS and MCWD.

155. SRF had control over the project and was tasked with supervising, directing, controlling, and approving JTS's work and the manner of JTS's performance.

156. In the event JTS is adjudged liable to MCWD for any sum, said liability is due to the negligent acts and/or omissions or other fault of SRF.

157. In the event JTS is adjudged liable to MCWD for any sum, said liability is due to SRF's negligent, flawed, and/or faulty designs..

158. In the event JTS is found liable to MCWD, JTS is entitled to judgment over and against SRF, by way of contribution for such proportion of any such judgment as the Court and jury determine attributable to the fault of JTS.

COUNT X
FRAUDULENT MISREPRESENTATION
(against MCWD & SRF)

159. JTS restates and re-alleges each of the allegations set forth in the preceding paragraphs as though set forth in full herein.

160. MCWD and SRF made false representations of a past or existing material fact susceptible of knowledge by representing to JTS that certain portions of its performance on the Project and certain materials used were sufficient and approved.

161. MCWD and SRF were on-site nearly every day that JTS performed work on the Project.

162. Each day, JTS completed multiple 12-foot sections of the Boardwalk and repeated its process the next day.

163. During the early stages of the Project, MCWD, SRF, and JTS discovered that certain specifications identified in the Contract Documents were not feasible.

164. Thereafter, MCWD and SRF made representations to JTS that it could perform the work and leave greater than 1/8-inch gaps between the joist and pile caps throughout Boardwalk.

165. MCWD and SRF continuously directed, inspected, authorized, and otherwise approved JTS's performance in this way, and represented that such performance was sufficient.

166. MCWD and SRF made these representations without knowing whether they were true or false.

167. MCWD and SRF made these representations with the intent that JTS rely on its representations and continue performing its work on the Project in a manner that MCWD and SRF authorized and approved.

168. JTS acted in reliance on MCWD and SRF's representations by performing work on the Project in a way that SRF authorized, directed, and/or approved.

169. After JTS substantially completed its work on the Project, MCWD, SRF, and/or SLP informed JTS that its work was allegedly deficient and/or contained defects and required JTS re-construct several portions of the Project.

170. JTS expended substantial work and money in re-constructing certain portions of the Project that MCWD and SRF had previously directed, supervised, authorized, and approved.

171. As a direct and proximate result of SRF's representations described herein, JTS has suffered damages and is entitled to just compensation, in an amount exceeding \$50,000.00, the exact amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff JTS Construction, Inc. seeks the following relief:

1. Judgment against Minnehaha Creek Watershed District, for its breaches of contract, negligence, failure to promptly pay bills, violation of the duties of good faith and fair dealing, unjust enrichment, and fraudulent misrepresentations, in an amount greater than \$50,000.00 to be determined at trial, plus additional interest, attorneys' fees, costs, and disbursements.

2. Declaratory Judgment ordering that the Project is compliant with the Contract Documents, JTS Construction, Inc. is not required to furnish any additional work on the Project,

as such work would constitute economic waste, and JTS is entitled to immediate payment pursuant to Payment Application Number 4 and MCWD's withholding of this amount was not in good faith;

3. Judgment against SRF Consulting, Inc., holding that SRF was negligent, indemnifying JTS Construction, Inc., and holding SRF liable for contribution (if applicable), in an amount greater than \$50,000.00 to be determined at trial, plus attorneys' fees, costs, and disbursements;

4. For such other and further relief as this Court deems just and equitable.

HELLMUTH & JOHNSON, PLLC

Dated: April __, 2025.

By: /s/

Thomas H. Priebe, ID #0395187
John P. Golbranson, ID #0505663
8050 West 78th Street
Edina, Minnesota 55439
Telephone: (952) 941-4005
Fax: (952) 941-2337
E-mail: tpriebe@hjlawfirm.com
jgolbranson@hjlawfirm.com

ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in this pleading are asserted.

Dated: April __, 2025.

By: /s/

Thomas H. Priebe, ID #0395187



250 Marquette Avenue South
Suite 250
Minneapolis, MN 55401
(612) 344-1400 tel
www.smithpartners.com

May 12, 2025

Dina Smith, President
JTS Construction, Inc.
5756 230th Street East
Elko MN 55020

Granite Re, Inc.
14001 Quailbrook Drive
Oklahoma City OK 73134

FORMAL NOTICE of CONSIDERATION of DEFAULT

Minnehaha Creek Preserve Boardwalk Reconstruction
Performance Bond GRMN46531A

Dear Ms. Smith:

This letter constitutes notice that the Minnehaha Creek Watershed District (MCWD) is considering declaring JTS Construction, Inc. ("Contractor") to be in default of the contract between Contractor and MCWD with respect to the Minnehaha Creek Preserve Boardwalk Reconstruction ("Project"). Notice is given under paragraph 3.1 of Performance Bond GRMN46531A ("Bond"), and under General Condition (GC)¹ 16.02 of the Contract.

In accordance with paragraph 3.1 of the Bond, MCWD requests a conference with Contractor and Granite Re, Inc. ("Surety") no later than 15 days after receipt of this notice.²

Background

The Contract is for trail and boardwalk reconstruction, bituminous, timber and excavation. The work that has not been performed to contract requirements, so as to prompt this notice, is the reconstruction of boardwalk elements consisting of timber pile caps, joists, decking, railing and appurtenances onto existing helical piles within a stream and wetland environment in the City of St. Louis Park, Hennepin County, Minnesota ("City"). The Contract required that work conform to City

¹ EJCDC C-700 Standard General Conditions of the Construction Contract, 2013 Edition

² Counsel for Surety advises that he will be unavailable the week of May 26. MCWD is agreeable to scheduling a conference for May 23, or for the week following counsel's return.

requirements, which includes conformance to a City building permit incorporating city building code.

Contractor executed the Contract on November 8, 2022, as a unit price contract, in the amount of \$1,858,182.00. There have been no change orders adjusting the contract price. The completion date was June 30, 2023. As of April 29, 2023 and to the present, pursuant to three pay requests, MCWD has disbursed to Contractor payment in the amount of \$1,573,959.15, and has approved an additional \$90,567.85 that is being held as retainage. On May 9, 2023, Contractor transmitted a fourth pay request, in the amount of \$146,830.01. This pay request remains outstanding.

Contractor began work in January 2023 and prosecuted the work over the following three months. On April 18 and May 4, 2023, MCWD, by the project engineer, SRF Consulting Group ("Engineer"), and the City of St. Louis Park ("City") performed substantial completion inspections and discovered numerous and widespread instances of deviation from contract specifications, including city building code, in the methods by which Contractor's crews joined joists to pile caps, and supported joists.

On June 9, 2023, pursuant to GC 14.03.C, MCWD by Engineer transmitted a defective work notice to Contractor. MCWD completed inspection of all visually accessible pile caps (joist headers) on June 15, 16 and 26, 2023. On June 30, 2023, it transmitted a supplemental defective work notice (SDWN) reflecting additional inspection. The notices, together, identify 11 categories of defective work methods requiring correction:

1. Installation of joist hangers without maximum fastener condition.
2. Gaps between joists and pile caps exceeding specifications of joist hanger fabricator, MiTek.
3. Square joist hangers used to support skewed joists, contrary to MiTek skew tolerance.
4. Hangers installed too low, resulting in unsupported joists, low joists, unapproved use of wood shims and hanger deformation due to use of shims.
5. Interior hangers improperly modified and installed for exterior use.
6. Missing or improperly installed helical pile plates.
7. Hanger fasteners not fully installed.
8. Hangers improperly modified and incompletely fastened to accommodate skewed joists, and at intersection with helical pile plates.
9. Skewed joist hangers used to support straight joists, contrary to MiTek skew tolerance.
10. Absence of hangers at joist/pile cap junction.
11. Absent or improper nailing of hangers, resulting in failure to meet MiTek fastening requirements, joist damage/splitting, and improper horizontal alignment.

The SDWN noted that defective work was observed at essentially all headers inspected, and that about 60 headers were not inspected as they are not visually accessible. The SDWN directed Contractor, without delay, to submit an uncovering plan for the uninspected headers and to undertake the corrective work. The SDWN noted Contractor's prerogative under the contract to propose alternatives, but expressed its preference that Contractor correct to specification and emphasized that Contractor retained full access to the site to perform corrective work.

Thereafter, Contractor did not submit an uncovering plan or undertake corrective work, but advised that it would correct nine categories of defective work to specification. Regarding gaps and low hanger installation (categories 2 and 4, above), Contractor proposed to use extension and shim hardware custom-fabricated by MiTek to meet structural requirements of the specifications. MCWD invested extensive staff time to support Contractor's preparation of its application for alternatives.

On March 25, 2024, MCWD Administrator James Wisker advised Contractor that the Engineer was able to accept the proposed alternatives, subject to a field test to demonstrate correction means and methods, and a satisfactory installation plan reflecting the field test experience. On April 18, 2024, on the basis of an MCWD presentation, the city building official indicated that the City was favorably disposed to approve the alternatives, conditioned on the field test, and advised Contractor to submit the required application. Contractor submitted the application on August 6, 2024. In a September 20, 2024 meeting, the building official affirmed his prior view that City approval of the alternatives was likely, on the condition of a successful field test.

The parties thereafter finalized a field test plan. On December 19, 2024, Contractor performed a day of work to demonstrate how it would uncover and raise the work and correct defects. A number of issues arose during the test, including jacking of boardwalk sections in a manner deviating from the field test plan, with damage to railings and joists; incorrect installation of custom hardware; failure to fasten hangers per MiTek specification; and questions about availability of timber to address damage to materials during the work. Since that date, the parties have communicated toward MCWD's desire to obtain a final, satisfactory installation plan that demonstrates Contractor's commitment to performing the work completely and diligently. Most recently, on April 23, 2025, MCWD transmitted comments on the most recent draft plan, including the need for the plan to memorialize coordination so that the Engineer and the City may inspect the uncovering and the corrections efficiently and in a way that doesn't impede Contractor's progress.

On April 1, 2025, Contractor, by its attorney Mark Kemper, transmitted a demand on Contractor's behalf. Contractor stated that it will not perform the corrective work until MCWD has: (a) paid Contractor the amount of \$237,397.86 (\$146,830.01 as presented on Pay Request #4 and

\$90,567.85 in retainage) that Contractor believes to be outstanding under the contract; and (b) agreed to pay Contractor the additional sum of \$250,000.00 when the corrective work is complete.³

On May 5, 2025, MCWD, by the undersigned, noted in reply that Contractor is entitled, on completing the work, to the outstanding contract price, offset however by some \$112,000 in consultant costs MCWD has incurred to respond to the defective work, staff costs, some \$67,000 in liquidated damages, and further costs and damages to accrue to completion. MCWD advised that it would consider waiving liquidated damages and staff costs in a negotiated agreement with conditions.

Also on May 5, 2025, Mr. Kemper wrote again, with inclusion of a draft complaint, to state that Contractor would file suit if MCWD and Engineer did not agree to mediation within 10 days. In the letter, Mr. Kemper referred to MCWD's efforts to obtain a satisfactory installation plan as "nitpicking and overly meticulous."

Basis for Default

Pursuant to paragraph 12.3 of the Bond, and to GC 16.02.A of the Contract, the following, individually and together, constitute a basis for MCWD to find a contract default.

1. Contractor's widespread failure to perform the work in accordance with the Contract specifications, including the requirement to conform to terms of applicable city permits.
2. Contractor's failure to perform corrective work promptly when directed by the Engineer in the June 2023 defective work notice and SDWN, and continuing since then.
3. Contractor's failure to complete the work by June 30, 2023.
4. Contractor's disregard of the code requirements of the City of St. Louis Park.
5. Contractor's failure to supply sufficient skilled workers, and suitable materials and equipment, to perform the work, and thereafter to perform the corrective work.

MCWD reserves and does not in any respect waive: (a) the right to assert other bases for material breach of the Contract; and (b) all rights and remedies it possesses under the Contract and applicable law with respect to Contractor's performance.

Representatives of JTS Contruction and Granite Re are requested to contact me by email (holtman@smithpartners.com) to coordinate scheduling the requested conference. Thank you.

Yours truly,

³ Until receipt of this letter, MCWD representatives were not aware of Pay Request #4. At the time, the MCWD project manager (who left the MCWD in early 2024) advised Contractor's president that it would hold the pay request pending resolution of the wide-ranging defective work issues that had just been discovered. Contractor apparently did not object, at the time, to MCWD's holding the pay request, and made no further mention of the outstanding pay request until the April 1, 2025 letter.



Charles Holtman

Counsel, Minnehaha Creek Watershed District

Enclosures (transmitted only to cc's below):

- Contract (November 8, 2022)
- Performance Bond GRMN46531A
- Defective Work Notice (June 9, 2023)
- Defective Work Notice punch list
- Supplemental Defective Work Notice (June 30, 2023)
- Supplemental Defective Work Notice punch list
- Letter, Mark Kemper to James Wisker (April 1, 2025)
- Email, Chuck Holtman to Mark Kemper (April 16, 2025)
- Letter, Chuck Holtman to Mark Kemper (May 5, 2025)
- Letter, Mark Kemper to Chuck Holtman (May 5, 2025) (with draft complaint)

cc:

Mark Kemper, Kemper Law (by electronic mail; with enclosures)

Counsel to JTS Construction Inc.

Dan Gregerson, Gregerson, Rosow, Johnson & Nilan (by electronic mail; with enclosures)

Counsel to Granite Re, Inc.

James Wisker, Administrator, MCWD

MINNEHAHA PRESERVE BOARDWALK

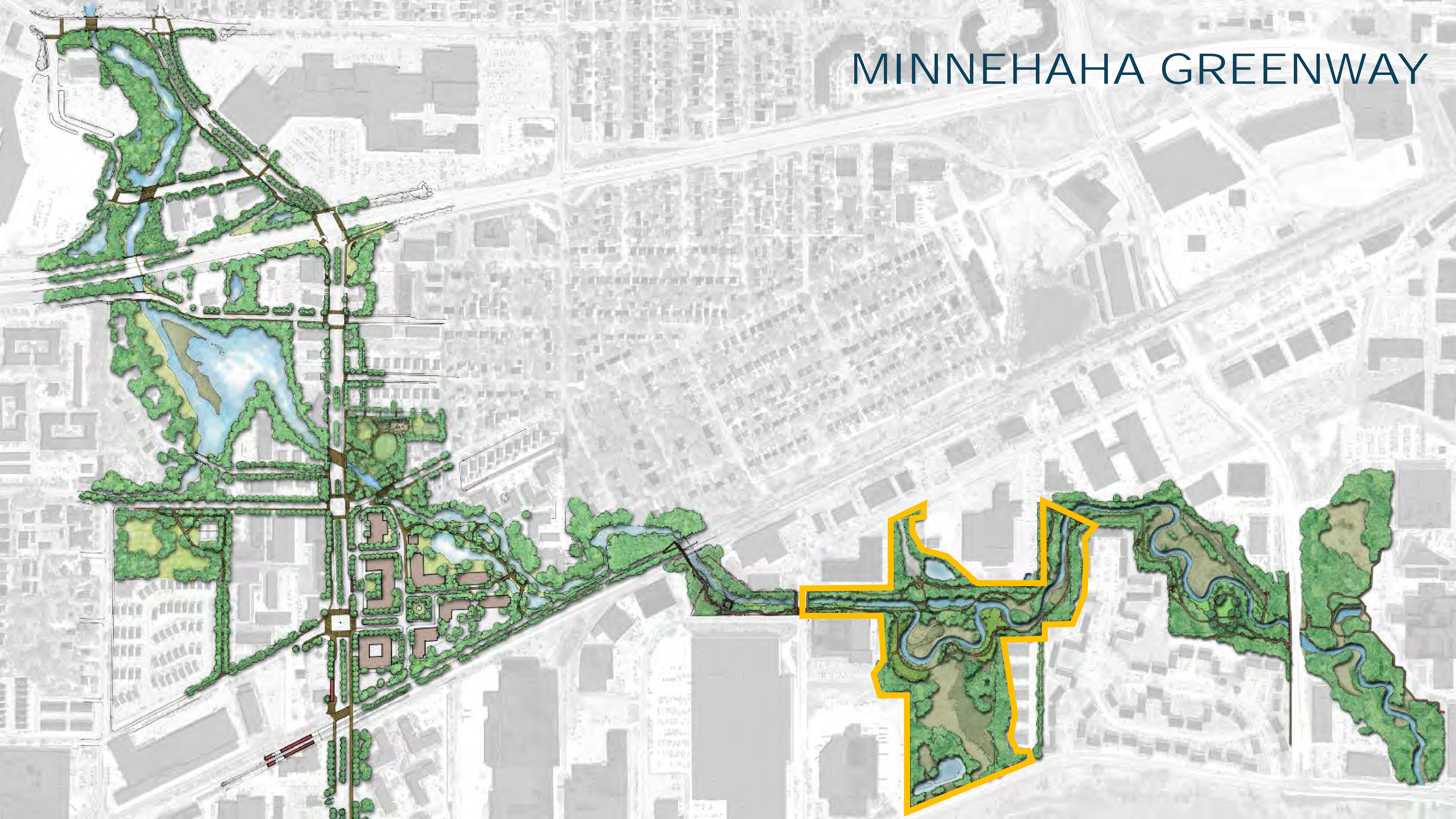
Attachment 11

June 3, 2025
Granite Re Conference

PROJECT SUMMARY



MINNEHAHA GREENWAY



MINNEHAHA PRESERVE BOARDWALK

LEGEND

CONSTRUCTION LIMITS

SILT FENCE, TYPE MS AND OR SEDIMENT CONTROL LOG TYPE STRAW

BR

SEDIMENT CONTROL LOG TYPE STRAW

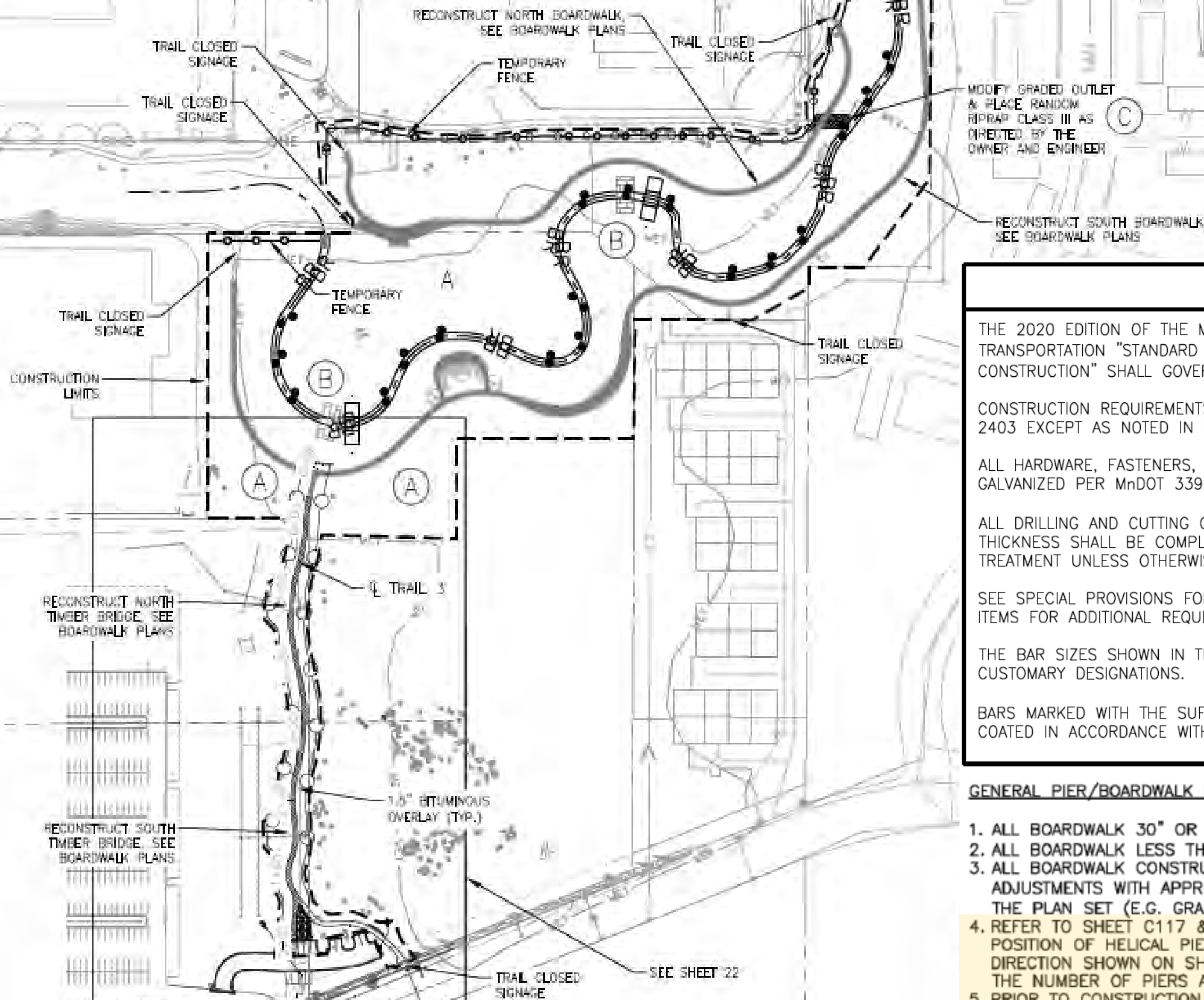
FLOTATION SILT CURTAIN

REMOVE TIMBER BOARDWALK/BRIDGE. HELICAL PILES TO REMAIN.

WILL BITUMINOUS SURFACE (1.5")

STORM DRAIN INLET PROTECTION

CULVERT END CONTROLS



CONSTRUCTION NOTES

THE 2020 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" SHALL GOVERN.

CONSTRUCTION REQUIREMENTS SHALL CONFORM TO SPEC. 2403 EXCEPT AS NOTED IN SPECIAL PROVISIONS.

ALL HARDWARE, FASTENERS, AND CLIPS ARE TO BE GALVANIZED PER MnDOT 3392.

ALL DRILLING AND CUTTING OF TIMBER EXCEEDING 2" IN THICKNESS SHALL BE COMPLETED BEFORE PRESSURE TREATMENT UNLESS OTHERWISE AUTHORIZED BY ENGINEER.

SEE SPECIAL PROVISIONS FOR ALL XXXX.6XX SERIES PAY ITEMS FOR ADDITIONAL REQUIREMENTS.

THE BAR SIZES SHOWN IN THIS PLAN ARE IN U.S. CUSTOMARY DESIGNATIONS.

BARs MARKED WITH THE SUFFIX "E" SHALL BE EPOXY COATED IN ACCORDANCE WITH SPEC. 3301.

PLANS OF IN PLACE BOARDWALKS AND BRIDGES ARE AVAILABLE IN THE ATTACHMENTS TO THE BID DOCUMENTS.

NO REMOVALS WILL BE PERMITTED UNTIL REMOVAL LIMITS HAVE BEEN OUTLINED BY THE CONTRACTOR AND APPROVED BY THE ENGINEER.

DIMENSIONING AND STATIONING OF THE IN PLACE STRUCTURES AS SHOWN IN THE PLANS ARE APPROXIMATE AND BASED ON THE ORIGINAL 2013 AND 2017 PLANS. CONTRACTOR SHALL TAKE SUFFICIENT MEASUREMENTS TO FIELD VERIFY COMPATIBILITY BETWEEN IN PLACE STRUCTURE AND PROPOSED WORK.

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

REFER TO THE SPECIAL PROVISIONS FOR ADDITIONAL REQUIREMENTS ON ALL PROJECT WORK.

GENERAL PIER/BOARDWALK NOTES:

1. ALL BOARDWALK 30" OR MORE ABOVE FINISHED GRADE SHALL CONTAIN HAND RAILING.
2. ALL BOARDWALK LESS THAN 30" ABOVE FINISHED GRADE SHALL CONTAIN A TOE RAIL.
3. ALL BOARDWALK CONSTRUCTION SHALL BE FIELD VERIFIED BY CONTRACTOR AND MAY REQUIRE POSITIONING ADJUSTMENTS WITH APPROVAL BY OWNER/ENGINEER TO ACCOMMODATE EXISTING CONDITIONS NOT REFLECTED IN THE PLAN SET (E.G. GRADE AND VEGETATION).
4. REFER TO SHEET C117 & C119 FOR ALL BOARDWALK SURVEY POINTS. BOARDWALK SURVEY POINTS INDICATE THE POSITION OF HELICAL PIERS. CONTRACTOR SHALL VERIFY THAT POSITIONS OF HELICAL PIERS COMPLY WITH THE DIRECTION SHOWN ON SHEET S501 BEFORE THE CONSTRUCTION OF ANY PIER. CONTRACTOR SHALL VERIFY THAT THE NUMBER OF PIERS ARE PLACED ACCORDING TO THE HELICAL PIER SPACING SHOWN IN DETAIL 9 SHEET S501.
5. PRIOR TO CONSTRUCTION CONTRACTOR SHALL FIELD VERIFY HELICAL PIER LOCATIONS AND MAKE ADJUSTMENTS PER OWNER/ENGINEER APPROVAL.

SCOTT SMITH 10/2/2022 10:52:16 AM
2023 10/2/2022 10:52:16 AM
C:\SRF-PW\0119249\10470_CPD1\DWG_CPD1-1

NO	DATE	BY	CHK	APPR

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.
Print Name: **CASEY E. BLACK**
Date: **09/02/2022** License #: **49183**

DRAWN BY
S. SMITH
DESIGNED BY
C. BLACK
CHECKED BY
E. FRANCEN
COMM. NO. **15470**



MINNEHAHA CREEK WATERSHED DISTRICT
MINNEHAHA CREEK PRESERVE BOARDWALK RECONSTRUCTION
CONSTRUCTION PLAN

SHEET
21
OF
27

DISCOVERY OF DEFECTIVE WORK



DISCOVERY OF DEFECTIVE WORK

March 2023 – CONSTRUCTION BEGINS

DISCOVERY OF DEFECTIVE WORK

March 2023 – CONSTRUCTION BEGINS

April 2023 - INSPECTIONS

- April 12 – City inspection reveals missing nails and large gaps between joists and hangers
- April 13 - JTS notified of code concerns
- April 18 – SLP, MCWD, SRF, JTS joint inspection
- April 28 – SRF, MCWD meet with MiTek to review hanger issues against specifications
- May 4 – SLP, MCWD, SRF, JTS joint inspection of 8 random locations

DISCOVERY OF DEFECTIVE WORK

March 2023 – CONSTRUCTION BEGINS

April 2023 - INSPECTIONS

- April 12 – City inspection reveals missing nails and large gaps between joists and hangers
- April 13 - JTS notified of code concerns
- April 18 – SLP, MCWD, SRF, JTS joint inspection
- April 28 – SRF, MCWD meet with MiTek to review hanger issues against specifications
- May 4 – SLP, MCWD, SRF, JTS joint inspection of 8 random locations

June 2023 – DEFECTIVE WORK NOTICE ISSUED

- June 9 – Defective Work Notice Issued to JTS
- June 15,16 & 26 – Additional MCWD inspections
- June 30 – Supplemental Defective Work Notice Issued to JTS

CATEGORIES OF DEFECTIVE WORK



DEFECTIVE WORK CATEGORIES

1. Hangers not installed to maximum fastener schedule
2. Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap
3. Square hangers installed on skewed joists
4. Hangers installed too low causing the joist to be installed too low.
5. Standard interior hangers modified and installed in place of exterior inverted flange hangers
6. Pile bents are missing helical plates
7. Hangers attached with fasteners that are not fully installed
8. Interior hangers modified to install a skewed joist and interior hangers modified at intersection of helical plates
9. Square joist installed in skewed hanger
10. Missing hangers
11. Standard hangers installed without toe-nail through diamond dimple hole

DEFECTIVE WORK CATEGORIES – Fix to Specification

1. Hangers not installed to maximum fastener schedule
2. Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap
3. Square hangers installed on skewed joists
4. Hangers installed too low causing the joist to be installed too low.
5. Standard interior hangers modified and installed in place of exterior inverted flange hangers
6. Pile bents are missing helical plates
7. Hangers attached with fasteners that are not fully installed
8. Interior hangers modified to install a skewed joist and interior hangers modified at intersection of helical plates
9. Square joist installed in skewed hanger
10. Missing hangers
11. Standard hangers installed without toe-nail through diamond dimple hole



Defective Work Category 1

Hangers not installed to maximum fastener schedule

- Will be repaired to meet specifications
- Corrected to maximum fastener schedule

Defective Work Category 7:

Hangers attached with fasteners that are not fully installed

- Will be repaired to specifications
- Corrected to maximum fastener schedule





Defective Work Category 3

Square hangers installed on skewed joists

- Will be repaired to specifications
- Correct skewed hangers to be installed
- Screwed to maximum fastener schedule

Defective Work Category 5

Standard interior hangers modified and installed in place of exterior inverted flange hangers

- Will be repaired to specifications
- Will be replaced with correct hardware
- Screwed to maximum fastener schedule



Correct exterior hangers





Defective Work Category 6

Pile bents are missing helical plates

- Will be repaired to specifications
- All helical plates will be installed at missing locations

Correct installation



Defective Work Category 8

Interior hangers modified to install a skewed joist and interior hangers modified at intersection of helical plates

- Will be repaired to specification
- Correct hangers meeting installation requirements



Defective Work Category 9

Square joist installed in skewed hanger

- Repair will be made to meet specifications
- Correct square hangers will be installed
- Screwed to maximum fastener schedule



Defective Work Category 10

Missing hangers

- Repair will be made to meet specifications
- Correct hanger will be installed
- Screwed to maximum fastener schedule



Defective Work Category 11A

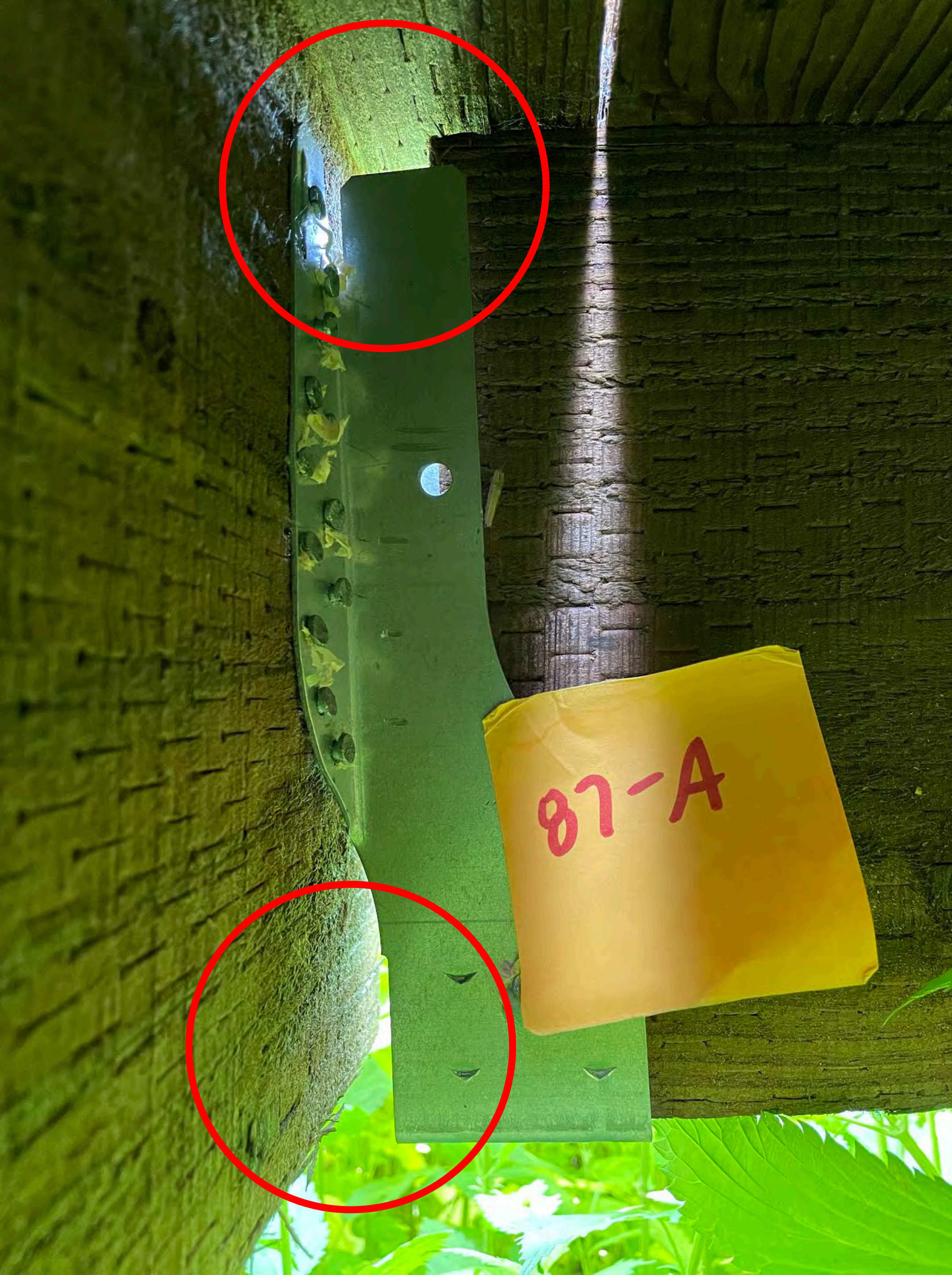
Standard hangers installed without toe-nail through diamond dimple hole



- Repair will be made to meet specifications
- All missing toe-nails will be installed

DEFECTIVE WORK CATEGORIES – Proposed Alternatives

- | | |
|--|--|
| 1. Hangers not installed to maximum fastener schedule | 7. Hangers attached with fasteners that are not fully installed |
| 2. Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap | 8. Interior hangers modified to install a skewed joist and interior hangers modified at intersection of helical plates |
| 3. Square hangers installed on skewed joists | 9. Square joist installed in skewed hanger |
| 4. Hangers installed too low causing the joist to be installed too low. | 10. Missing hangers |
| 5. Standard interior hangers modified and installed in place of exterior inverted flange hangers | 11. Standard hangers installed without toe-nail through diamond dimple hole |
| 6. Pile bents are missing helical plates | |

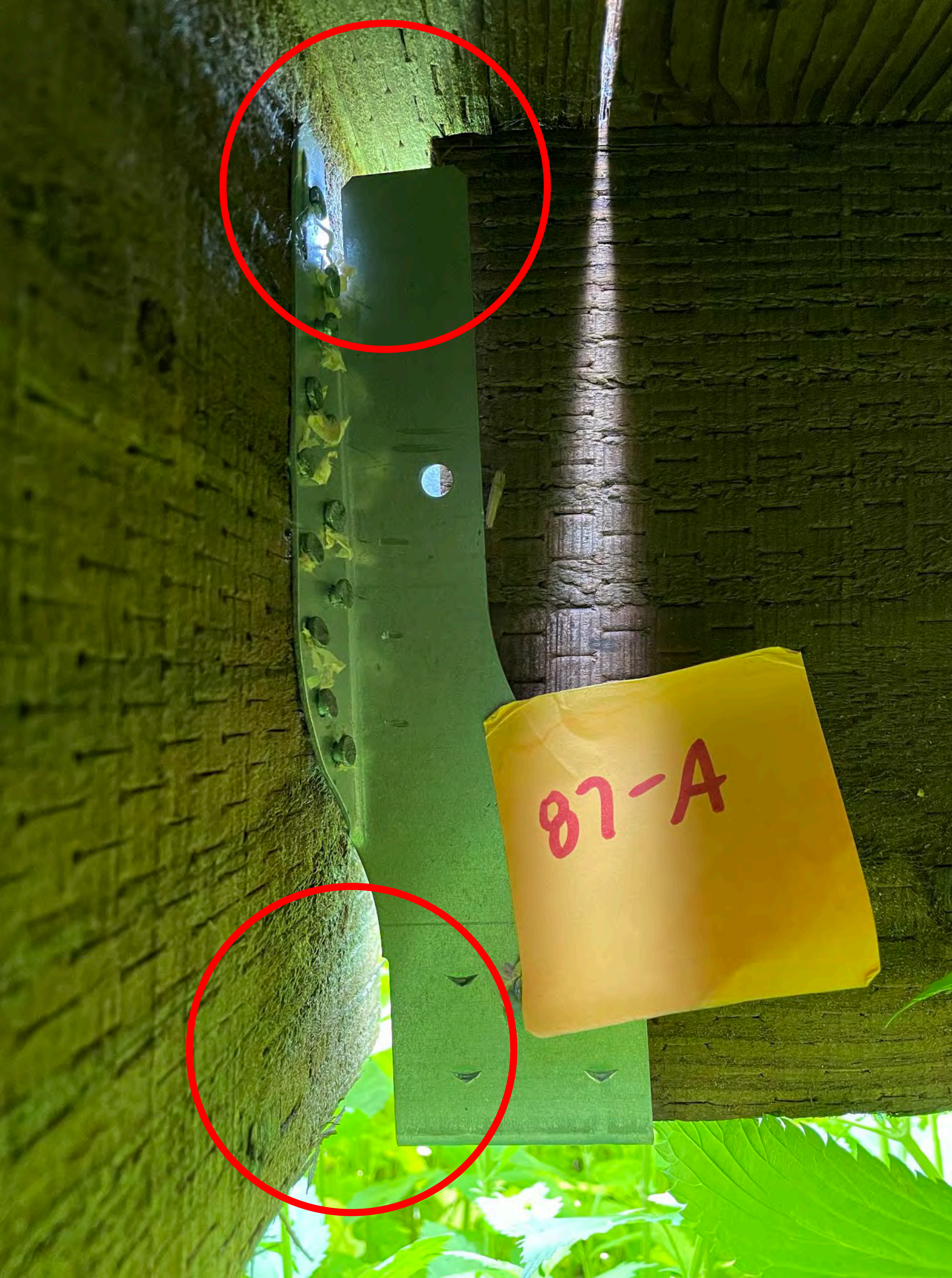


Defective Work Category 2:

Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap

Subcategory 2A - Gaps between 1/8" and 5/8"

- MiTek lab testing simulation to meet load requirements



Defective Work Category 2:

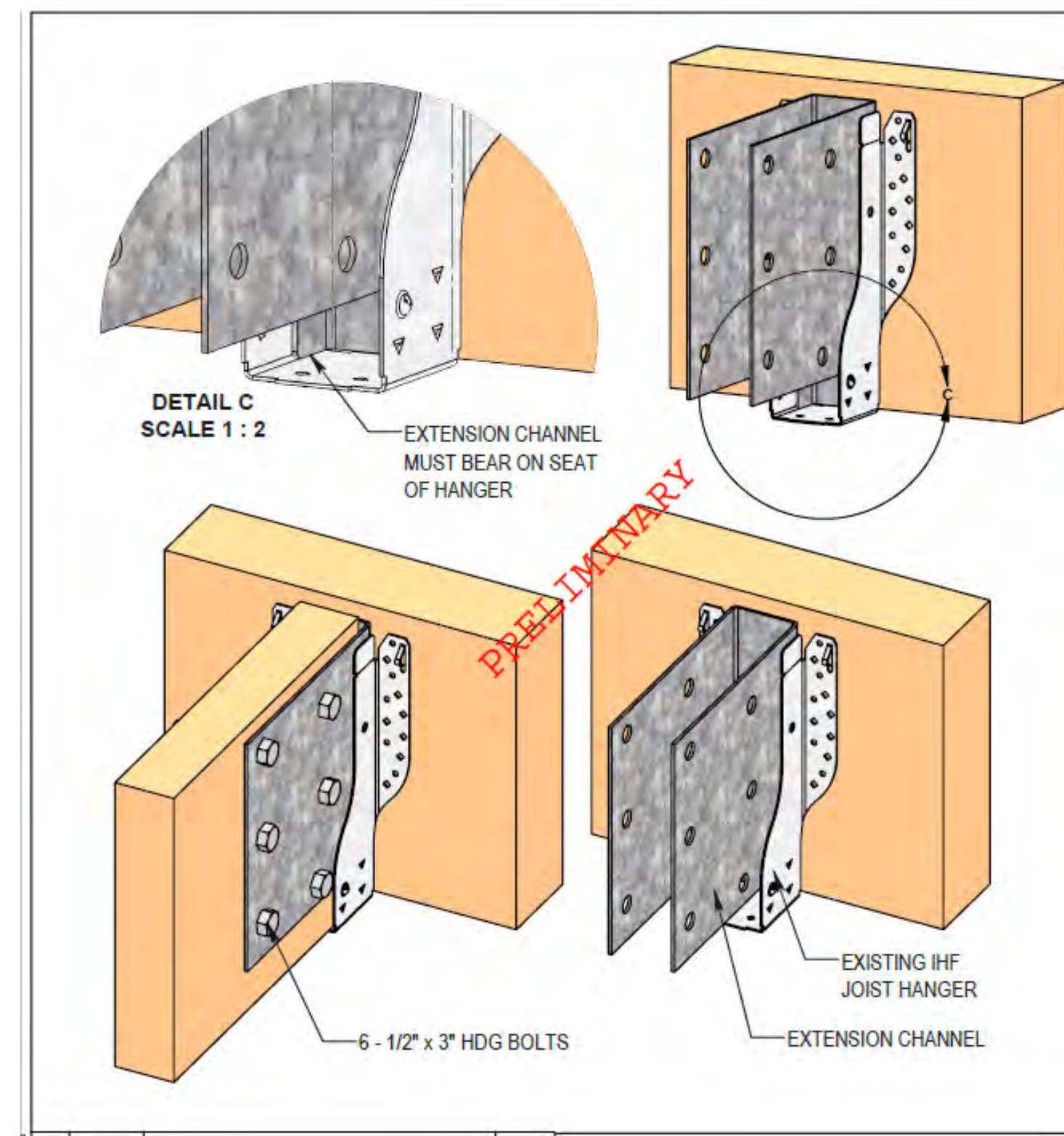
Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap

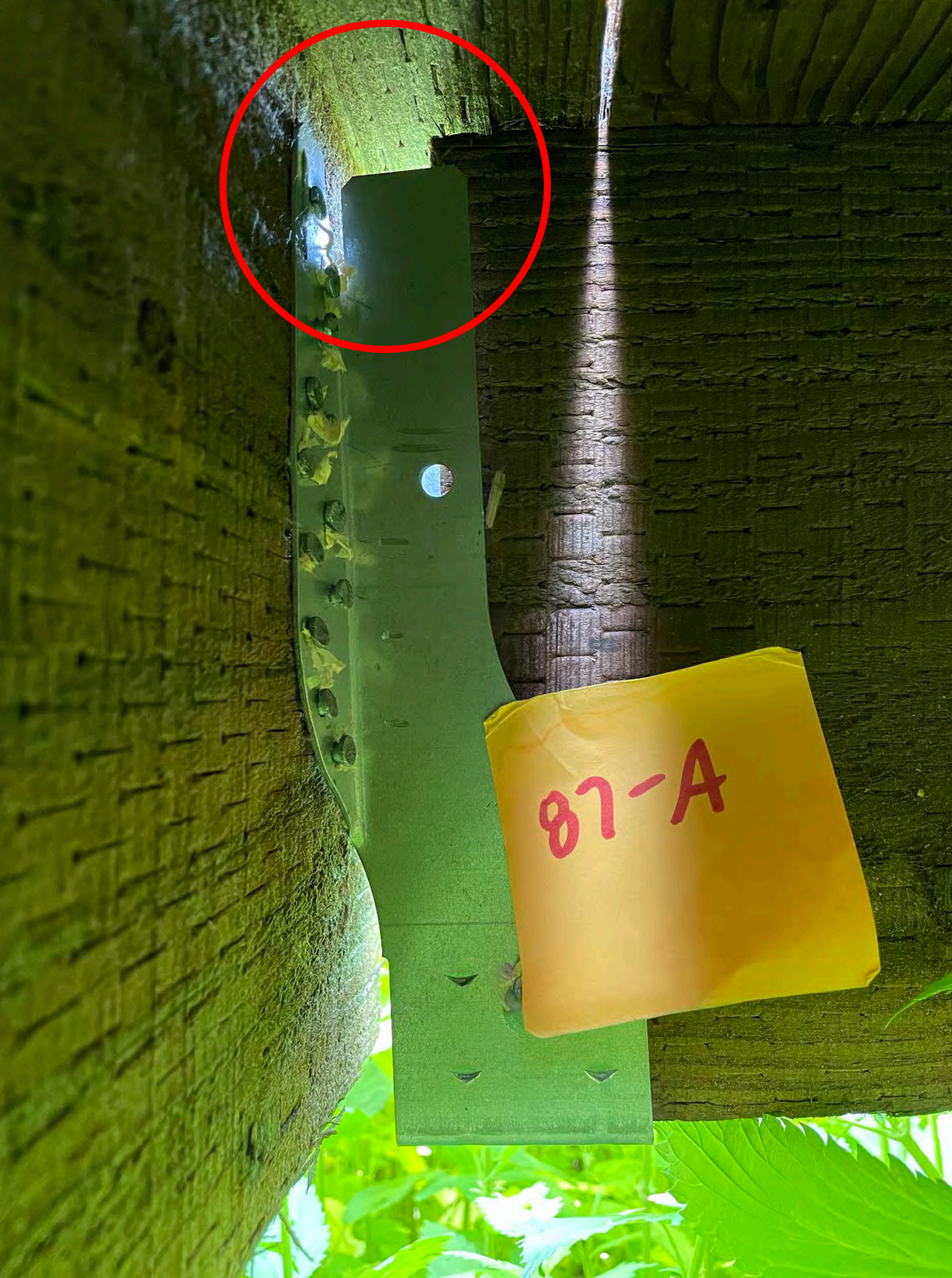
Subcategory 2A - Gaps between 1/8" and 5/8"

- MiTek lab testing simulation to meet load requirements

Subcategory 2B - Gaps between 5/8" and 1 1/4"

- Joist extension bracket





Defective Work Category 2:

Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap

Subcategory 2A - Gaps between 1/8" and 5/8"

- MiTek lab testing simulation to meet load requirements

Subcategory 2B - Gaps between 5/8" and 1 1/4"

- Joist extension hanger

Subcategory 2C - Gaps greater than 1 1/4"

- Replace joist timber to meet specifications



Defective Work Category 4

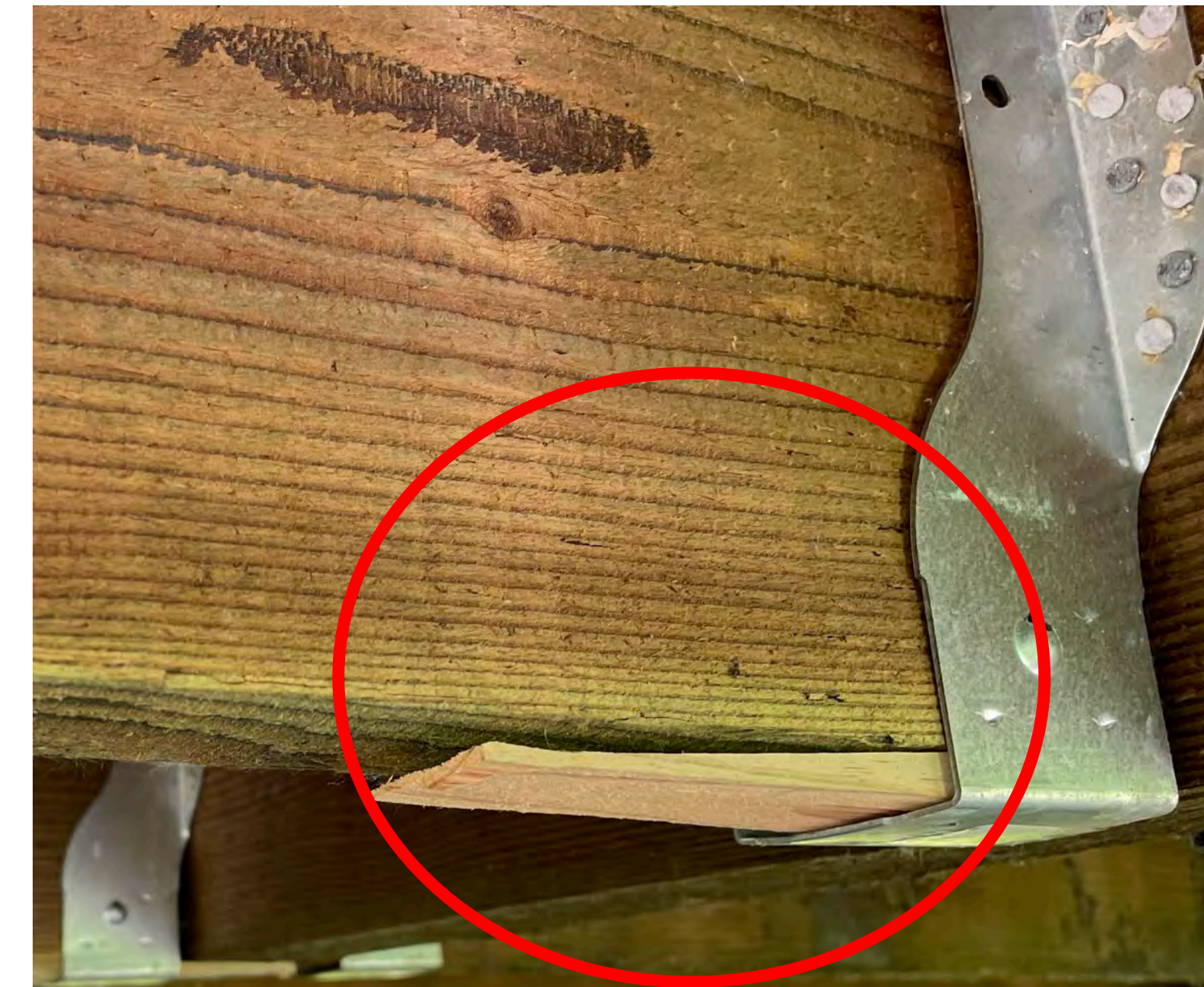
Hangers installed too low causing the joist to be installed too low

Subcategory 4A - Joists raised with shims

Subcategory 4B - Joists elevated from hanger

Subcategory 4C - Hangers damaged by shimming

Subcategory 4D - Hangers set too low resulting in uneven deck surface



Defective Work Category 4

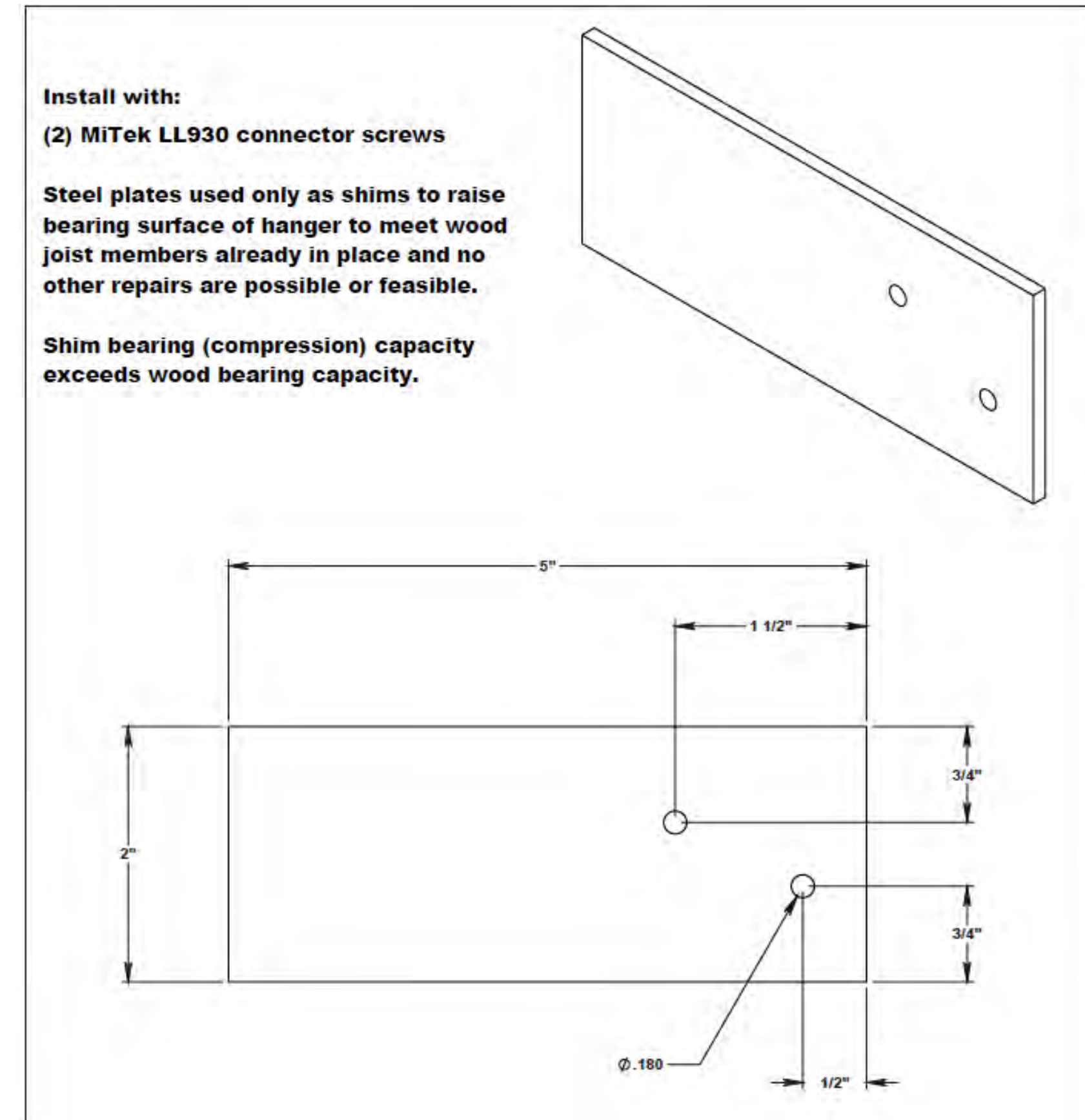
Hangers installed too low causing the joist to be installed too low

Subcategory 4A - Joists raised with shims

Subcategory 4B - Joists elevated from hanger

Subcategory 4C - Hangers damaged by shimmiing

Subcategory 4D - Hangers set too low resulting in uneven deck surface



DEFECTIVE WORK CATEGORIES – Proposed Alternatives

1. Hangers not installed to maximum fastener schedule
2. Gaps between the end of the joist and pile bents exceed MiTek installation specifications of 1/8" maximum gap
3. Square hangers installed on skewed joists
4. Hangers installed too low causing the joist to be installed too low.
5. Standard interior hangers modified and installed in place of exterior inverted flange hangers
6. Pile bents are missing helical plates
7. Hangers attached with fasteners that are not fully installed
8. Interior hangers modified to install a skewed joist and interior hangers modified at intersection of helical plates
9. Square joist installed in skewed hanger
10. Missing hangers
11. Standard hangers installed without toe-nail through diamond dimple hole

PROCESS & TIMELINE ON DEFECTIVE WORK



CORRECTIONS PROCESS TO DATE

June 2023 – November 2023 – NO PROGRESS

- JTS retained legal counsel and made no progress

CORRECTIONS PROCESS TO DATE

June 2023 – November 2023 – NO PROGRESS

- JTS retained legal counsel and made no progress

November 2023 – March 2024 – SOLUTION EXPLORATION

- MCWD leadership engaged JTS & organized a series of meetings with JTS to explore solutions

CORRECTIONS PROCESS TO DATE

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Q2 – Q3 2024 (April – June) – MCWD ENGAGES CITY OF SLP

- MCWD leadership engaged St. Louis Park Building Officials

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Q2 – Q3 2024 (April – June) – MCWD ENGAGES CITY OF SLP

- MCWD leadership engaged St. Louis Park Building Officials

August 2024 – JTS SUBMITS ALTERNATIVES

- JTS submits Proposal for Alternative Material, Design or Method to City of SLP

CORRECTIONS PROCESS TO DATE

June 2023 – November 2023 – NO PROGRESS

- JTS retained legal counsel and made no progress

November 2023 – March 2024 – SOLUTION EXPLORATION

- MCWD leadership engaged JTS & organized a series of meetings with JTS to explore solutions

Q2 – Q3 2024 (April – June) – MCWD ENGAGES CITY OF SLP

- MCWD leadership engaged St. Louis Park Building Officials

August 2024 – JTS SUBMITS ALTERNATIVES

- JTS submits Proposal for Alternative Material, Design or Method to City of SLP

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- JTS, JTS Attorney, St. Louis Park, SRF, MCWD meet at City Hall. Agree on Field Test

CORRECTIONS PROCESS TO DATE

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December 19, 2024 – JTS FIELD TEST

- JTS developed Field Test Plan and conducted Field Test on December 19, 2024

FIELD TEST OF ALTERNATIVES









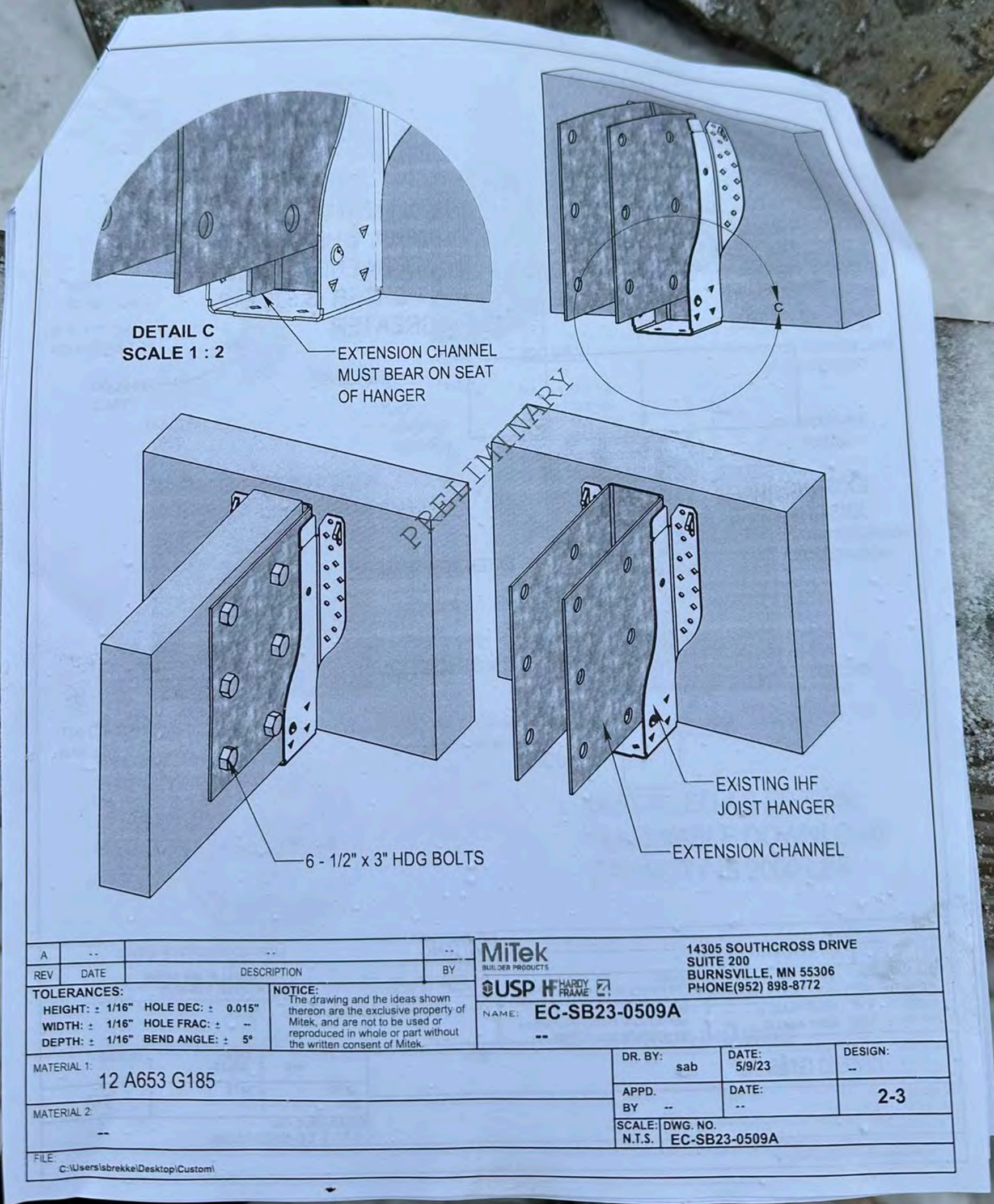














POST FIELD TEST

January 2025 – FIELD TEST DEBRIEF

- JTS, JTS Attorney, St. Louis Park, SRF, MCWD meet at City Hall, January 13, 2025

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- Field Test Debrief Notes, Outline Implementation Plan February 3, 2025
- Issued Change Order #2, February 20, 2025

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MARCH - MAY

- JTS issues demands and objects to MCWD feedback on implementation plan

EXECUTIVE SUMMARY

- **JTS DEFECTIVE CONSTRUCTION**

- Doesn't conform to plans/specs/contract
- Doesn't conform to building code
- Doesn't confirm to JTS selected hanger specs

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- **MCWD EXERCISED EXTREME PATIENCE**
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- **CHALLENGING FINANCIAL STATUS**

PROJECT ACCOUNTING*

Contract Price	\$1,858,182
Paid (thru Pay Request #3)	\$1,573,959

BALANCE of CONTRACT PRICE

Retainage held (thru Pay Request #3)	\$ 90,568
Payment outstanding for work performed	\$ 146,830
Price of remaining work	\$ 10,000
Remaining contract price (total)	\$ 247,398

SET-OFFS

Engineering fees (thru March 2025)	\$ 68,000
Legal fees (thru April 2025)	\$ 74,000
Liquidated damages (thru April 2025)	\$ 70,000
Staff costs	\$ undetermined
Add'l fees, damages & costs to completion	\$ undetermined
Set-offs (total)	\$ 212,000+

JTS 4-1-25 DEMAND:

MCWD pay remaining contract price plus \$240,000
MCWD waive all set-offs

Total remaining payment to JTS: \$ 487,398

MCWD 5-5-25 REPLY:

MCWD pay remaining contract price, minus set-offs, with waiver of liquidated damages and staff costs (subject to conditions)

Total remaining payment to JTS: \$ 105,398 minus fees to complete

*All figures subject to rounding/final accounting

FRAMEWORK FOR A POTENTIAL AGREEMENT

- Proposed agreement by June 24. JTS, Granite Re, SRF approve by June 26 MCWD Board of Managers meeting.
- By June 26, JTS provides final installation plan and signed change order. Plan addresses items MCWD requested in April.
- MCWD receives the project for the balance of contract price, and is reimbursed for engineering and legal fees thru completion.
- Agreement contains one or more interim deadlines to ensure project on schedule for winter completion. Any financial concession rests on meeting deadlines.

MINNEHAHA PRESERVE BOARDWALK

An aerial photograph of the Minnehaha Preserve Boardwalk. The boardwalk is a long, winding wooden path that curves through a lush green landscape. It starts in the lower left, curves around a small pond, and then continues through a dense forest of tall trees. The surrounding area is filled with green grass and shrubs. In the background, there are some buildings and a parking lot with many cars.

June 3, 2025
Granite Re Conference

From: [Chuck Holtman](#)
To: [Michael Hayman](#)
Subject: FW: Rule 408 Settlement Discussion / JTS - Minnehaha Preserve
Date: Monday, June 23, 2025 1:34:08 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

From: Chuck Holtman
Sent: Monday, June 23, 2025 1:34 PM
To: mkemper@kemperlaw.com
Cc: Dan Gregerson <dangregerson@grjn.com>; James D. Kremer <jdk@dewittllp.com>
Subject: Rule 408 Settlement Discussion / JTS - Minnehaha Preserve

Mark:

Thank you for your reply. The framework the MCWD board of managers has expressed for a negotiated agreement to complete the work is the one that I communicated by email on the morning of the June 3 conference, and during the conference. The financial concessions the board has offered as a part of such an agreement are liquidated damages and MCWD's entitlement to set-off for staff costs, conditioned on JTS meeting deadlines and other appropriate terms. By the time the work would be completed, liquidated damages might accrue to \$90,000. I don't know what staff costs might be. I'm not in a position to suggest that the board would consider a further concession.

From MCWD's standpoint, the complicating element has been the failure of the work to move forward. From the beginning and over the past two years, JTS repeatedly has asked MCWD staff to engage the board on the subject of MCWD waiving certain financial remedies to which the contract, on its face, entitles it. On each occasion, MCWD staff offered the advice that the board would not be disposed toward such a request while the work remained in the April 2023 condition with no progress on correction, and urged JTS to advance the work in a definitive way before approaching the board. By September 2023, JTS had resolved how it wished to perform the corrections, and had identified the custom hardware to do so. Over the considerable period since then, JTS's communication, responsiveness and progress have been halting, and MCWD staff and the MCWD engineer have invested considerable time and energy to push the matter forward by engaging the city, advancing JTS's alternatives proposal with MiTek, and generating draft content for JTS's field test and installation plans. As of September 2024, SRF and the city building official indicated that they concurred in JTS's corrections alternatives, conditioned on a field test of methods, and an installation plan that incorporates field test results and covers logistics and coordination of the corrections work. (Note: I don't understand your statement below that the city requires rebuilding from the pile caps; the city has indicated it would approve the JTS proposal.) In the nine months since then, all that has transpired is that JTS performed the field test, poorly, and MCWD continues to await a final installation plan.

In short, MCWD has been and remains frustrated by JTS's failure to demonstrate that it is committed to delivering the project it contracted to deliver, and that it has assessed the

logistics and cost of doing so as a foundation for its commitment. JTS's recent demands, communicated in your April 1 and May 5 correspondence, that MCWD negotiate financial concessions before JTS will even begin the corrective work - work that it was obligated to perform "promptly" after June 2023 - regrettably only reinforces MCWD's perception. Even if JTS were to propose to complete the work without demanding a financial concession, the board might find there to be enough uncertainty as to whether JTS was prepared to efficiently and diligently prosecute the work, so as to be disinclined to embark on the task together.

To respond to your specific questions below:

- To MCWD's view, JTS's assertion that it relied on statements of MCWD's project manager has no legal weight. As an established construction firm, JTS is aware of the procedures for work changes. It's aware of the allocation of responsibilities under the General Conditions, that owner doesn't authorize changes to the technical specifications, and that any such changes must be in writing. It also must concur in the complete unworkability of a contract relationship where the contract specifications, the manufacturer's specifications, and the requirements of city code may be ignored provided the contractor is prepared to offer testimony later as to something the contractor thinks or alleges it heard the project manager say. It's implausible to think that JTS would abandon specifications and sound methods across the project site based on something said by an MCWD employee without engineering or technical credentials, and who has no authority over technical review or work methods under the contract, without requesting written clarity from the engineer. If JTS has done work for public owners, it also knows that any work change within owner's authority must be approved by the owner's governing body: the project manager has no actual authority, and the doctrine of apparent authority is inapplicable.
- As regards the engineer, if JTS believes it has a cause of action against SRF and evidence to support it, it may seek to engage SRF in negotiation, or may bring its cause of action against SRF. Asking MCWD to make a financial concession on the basis of alleged actions or words of the engineer is to ask MCWD to indemnify JTS for the acts of the engineer. MCWD doesn't have that obligation.
- As to project accounting, if JTS were to complete the project, it would be entitled to the contract price, adjusted for quantities, including retainage; this would be offset by MCWD costs incurred to respond to the defective work and liquidated damages. Additional details would include permit fee and field test hardware cost reimbursements.

As you're aware, this matter is on the June 26 board agenda. Your recent correspondence, including your email below, will be provided to the managers. Please feel free to connect with James if you would like to ask to address the board at the meeting.

Chuck

Charles B. Holtman
smith

partners

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From: mkemper@kemperlaw.com <mkemper@kemperlaw.com>

Sent: Friday, June 20, 2025 11:49 AM

To: Chuck Holtman <Holtman@smithpartners.com>

Cc: Dan Gregerson (dangregerson@grjn.com) dangregerson@grjn.com

Subject: Rule 408 Settlement Discussion / JTS - Minnehaha Preserve

Chuck –

Thank you for your message and acknowledgment concerning the building permit fee. I will advise JTS of same. You are also correct about agreement on 11/11 Defective Work Conditions. In my letter, I meant to convey that there was disagreement on 2/11 DWCs based upon costs and who was paying for it, not the actual proposed resolution work itself. My apologies for the confusion.

I have discussed possible resolutions to this matter with JTS repeatedly over the past year, as well as with James Wisker, as you know. Over the course of this time, JTS has offered flexibility and is willing to perform work on the project to satisfy MCWD, but there has been no flexibility on behalf of MCWD to date. As Jeff has oftentimes said to James Wisker, “I’m not going to bleed alone” on this project. MCWD appears to take the position that JTS must re-do nearly all of the joist hangers on the project on its own dime and then also pay for all legal fees and engineering fees incurred to date, plus liquidated damages. Please correct me if I am wrong. The City of SLP appears to take the position that JTS must take this project back to square one and start all over again at the pile caps. Again, all at the expense of JTS. Neither of these options are very appetizing to JTS.

There appears to be no appreciation for JTS’s assertion that onsite representatives of MCWD and SRF orally approved changes implemented by JTS which MCWD and SLP complain of now. According to Jeff, these comments by MCWD and SRF were made in the presence of JTS’s entire work crew. Does MCWD take the position that no such conversations ever took place or is it taking the position that onsite representatives did not have authority to approve such changes? Or other? In retrospect, I am sure JTS would have preferred to have everything reduced to writing at the time, but also in the field while work is being completed is typically not a good time to stop and do paperwork while the crew is standing around waiting. With litigation, I would expect MCWD to argue that JTS did not follow the contract terms by getting any changes in writing and JTS will argue that it was reasonable for it to rely upon the onsite representatives of the owner and engineer when such changes were made. We have argued this point for nearly a year without either side blinking. One

option is spending another year litigating it and spending tens of thousands of dollars more just to prove a point, that in the end, neither of our clients will be satisfied with considering the extra time and cost wasted. Another option is to settle this dispute.

I know that JTS would be willing to compromise, but I am not certain that MCWD would be willing to compromise. If I can get JTS to perform work to the satisfaction of MCWD, can you get MCWD to waive its claim for attorney and engineering fees, as well as liquidated damages? If JTS provides the labor for additional work, would MCWD be willing to pay for the materials? If JTS completes the work, will MCWD then make payment on Pay Application No. 4 and all retention due? I do not have authority to agree to anything yet, I am just proposing solutions from lawyer to lawyer that could lead to a resolution short of trial if our clients agreed. JTS is still interested in discussing settlement if MCWD is as well. Can you advise whether MCWD would consider or accept any of these proposals (or others) to resolve this matter short of litigation? Alternatively, do you have any proposals I can take back to JTS?

I look forward to your response.

Mark J. Kemper

Attorney - MN & WI
Kemper Law LLC

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🔗 Litigation | Construction | Real Estate

From: Chuck Holtman <Holtman@smithpartners.com>

Sent: Monday, June 16, 2025 4:28 PM

To: mkemper@kemperlaw.com

Cc: Dan Gregerson (dangregerson@grjn.com) <dangregerson@grjn.com>; James D. Kremer <jdk@dewittllp.com>

Subject: JTS - Minnehaha Preserve

Mark:

I'm responding to your June 5, 2025 letter (attached) that, in turn, was in response to the Formal Notice of Consideration of Default transmitted to JTS Construction, Inc., and Granite Re, Inc., on May 12, 2025, by the Minnehaha Creek Watershed District (MCWD). You reiterate in your letter the elements of your client's position: that the defective work occurs in "a handful of instances" and isn't widespread; that the work achieved substantial completion despite its defective condition; and that the engineer and MCWD staff verbally approved the deviations from specification in the field.

JTS has advanced these previously, and MCWD has replied to them. It wouldn't seem fruitful to engage them again here, in any extended way. As to the scope of the defective work, MCWD has inspected all joist/header connections that don't require uncovering, about 200 headers out of a total of about 350 for the boardwalk installation as a whole (not counting viewing platforms and similar features). MCWD has documented and catalogued hundreds of instances of defective work, distributed across the site. I wouldn't advise my client to give credence to a claim of verbal approvals, for several reasons I've offered previously. There's no evidence that such "approvals"

were tendered; it's implausible that SRF would presume to verbally advise JTS that the technical specifications could be ignored, or that JTS would proceed on such an authorization without written documentation; and even if the facts were as asserted, this wouldn't legally shift from JTS its responsibility to conform to the contract.

You suggest third-party mediation. I'm not inclined to recommend that to MCWD at this time. In the present setting, mediation would be about mutual financial concessions relating to work not yet performed. MCWD has advised of a substantial concession it is willing to make, solely to preserve the relationship between the two parties and move the project forward. If it perceived a factual or legal basis for further concessions, it would offer to negotiate those in good faith, without the need for a mediator. It finds urgency in moving forward, in the hope of avoiding the loss of another winter season to complete the work. Mediation would mean further delay and expense, with little prospect of being productive.

At the June 3 conference, and in my email preceding the conference, I communicated MCWD's willingness to negotiate an agreement for JTS to complete the work, and the four conditions for that negotiation. If JTS, with or without the participation of Granite Re and SRF, wishes to talk within that framework, MCWD is prepared to do so. If not, your June 5 letter will be presented to the Board of Managers at its June 26 meeting, and the Board will decide how it wishes to proceed.

Two specific notes:

- You state the parties "have substantially ... agreed upon" the means of correcting nine of the 11 Defective Work Categories. It would seem accurate to say that in September 2024, JTS, MCWD, SRF and the City of St. Louis Park reached agreement on all 11 Defective Work Categories. The nine months since then have been a slow-moving process for JTS to determine and demonstrate its methods for the work, and for it to complete a plan, for SRF approval, that describes these methods, logistics for lumber and hardware supply, and uncovering/covering protocols.
- You're correct that under the contract, MCWD was responsible to pay for the City building permit. In the contract accounting, MCWD will credit JTS for the payments that JTS made to the City.

Yours truly,

Chuck

Charles B. Holtman

smith

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