



Title:	Minnehaha Preserve: Engineering Services for Design and Construction Procurement
Resolution number:	25-066
Prepared by:	James Wisker, Administrator Phone: (952) 641-4509 Jwisker@minnehahacreek.org
Reviewed by:	Chuck Holtman, MCWD Counsel; Michael Hayman, Director of Project Planning; James McDermond-Spies, Project Maintenance Manager
Recommended action:	Authorize the District Administrator to amend the design services contract with SRF Consulting, to prepare design documents and perform bid administration services for the letting of repairs to the Minnehaha Preserve Boardwalk, in an amount not to exceed \$56,628.00
Schedule:	Nov – Dec 2025: Prepare bid documents Jan – Feb 2026: Board authorizes bidding Apr – May 2026: Board awards contract Jun – Sept 2026: Material procurement and prep for city coordinated inspection Nov – Mar 2027: Boardwalk repairs
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: \$56,628.00
Past Board action:	Res # 25-039 Minnehaha Preserve: Work Status, Contract Termination, Use of Bond

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. In April and May 2023, during substantial completion inspection by SRF Consulting Group (SRF) as the MCWD's project engineer and the City of St. Louis Park ("City"), 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.

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. SRF issued a Supplemental Defective Work Notice (SDWN) on June 30, 2023, which expanded the defective work categories to 11 such categories. The SDWN identified 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.

Over the following two years, JTS represented that it would correct nine of the 11 defective work categories to specification, and with the support of MCWD, SRF and the hardware manufacturer, sought approval to correct the other two categories by means of customized alternatives. SRF accepted the alternatives conditioned on JTS preparation of an installation plan describing appropriate methods, and the City building official advised that the City was prepared to approve them pending formal completion of its review process. At that time, JTS advised that it would not commence corrective work until MCWD either:

- a) Paid JTS \$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.

On May 12, 2025, after further communications between JTS and MCWD failed to achieve progress, MCWD, through counsel, transmitted written notice to JTS and its performance bond issuer, Granite Re, Inc., that it was considering declaring JTS to be in default of the contract. In the notice, MCWD asserted and outlined the ways in which JTS had failed to comply with material terms of the contract.

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 defective work categories 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 specified conditions.

As of June 26, 2025, those conditions had not been satisfied. At its meeting on that date, the Board adopted Resolution 25-039, directing MCWD legal counsel to terminate the contract for the Minnehaha Preserve Boardwalk reconstruction; declare a contractor default; initiate a claim against the performance bond; and take all other actions counsel deemed necessary and prudent under the contract and bond to protect MCWD's legal and financial interests. On July 2, 2025, counsel notified JTS that the contract was terminated, and submitted MCWD's claim on the performance bond to Granite Re.

Under the bond terms, Granite Re could elect to cooperate in MCWD's hiring of a contractor to perform repairs, could itself hire a contractor, or could investigate the bond claim and proffer to MCWD an amount representing its assessment of its liability under the bond. Granite Re advised MCWD that it would elect the last of these. In early August, the parties met at the site with a representative of Encompass, Inc., an engineering firm that Granite Re retained to investigate the claim and the necessary corrective work. Granite Re has not yet made a proffer to MCWD on its claim.

JTS Lawsuit Against MCWD:

On September 30, 2025, JTS served on MCWD a summons and complaint, seeking payment of sums alleged due under the contract under a number of theories including breach of contract, violation of prompt payment required by statute, breach of good faith and fair dealing, unjust enrichment, and fraudulent misrepresentation. MCWD presented a claim to the League of Minnesota Cities Insurance Trust, which appointed counsel to represent MCWD in the litigation. MCWD subsequently filed its answer to the complaint. The answer includes cross-claims against SRF for indemnification and professional negligence, and against Granite Re demanding that it fulfill its obligations under the performance bond. Simultaneously, MCWD litigation counsel is negotiating tolling agreements with SRF and Granite Re. These agreements would preserve MCWD's claims against the two parties, and any claims they may have in response, but put these on hold pending MCWD defense against the JTS claims, orderly procedures under the bond claim and, potentially, completion of the repair work. As of now, the claims between JTS and MCWD will proceed in a normal fashion.

Design and Bid of Preserve Boardwalk Repairs:

Separately from the JTS lawsuit and Granite Re's processing of the MCWD bond claim, MCWD may proceed to retain a contractor to perform the corrective work and otherwise complete the Minnehaha Preserve Boardwalk Reconstruction

Project. MCWD's interest is to complete the work as soon as possible, for two reasons. The first is to secure an installation that conforms to the design warranted by the engineer and avoids the need to interrupt public use due to structural safety or liability concerns; at this time, SRF advises that the boardwalk remains sound for public use, but at a certain point it will not be able to render that professional opinion. The second is to facilitate resolution of outstanding legal and bond claims by allowing the parties to fix the total cost of the defective work corrections, and the project as a whole. However, because of the site environment, construction during cold season is highly preferred.

Accordingly, MCWD staff desired a timeline that would allow construction during Winter 2025-26. However, on consultation among MCWD staff, SRF and MCWD counsel, priority was given to ensuring a careful contract solicitation process by which MCWD can be confident that the selected contractor is adequately skilled, understands the condition of the work, and has given careful thought to the materials procurements, and to the methods and procedures by which it will move through the site and perform the corrective work. Specifically, at this time staff intends to utilize a "Best Value" solicitation method, by which the Board will select the contractor on not only bid price, but also a qualitative assessment of the contractor's qualifications and proposed methods to perform the work. This solicitation process likely will require more time than a standard sealed bid process. As a result, staff proposes a solicitation and selection process to occur in Spring 2026, which will ensure adequate time for the contractor to order and obtain lumber and custom hardware while still being prepared to initiate work as soon as cold-weather conditions allow.

With an intent to return to the Board in January or February 2026 to request authorization to solicit bids, MCWD staff asked SRF to prepare a scope of work to prepare the design plans and specifications for the corrective work, and to assist in administering the solicitation process. Board policy requires a competitive process in obtaining professional services exceeding \$25,000. Staff here recommends an exception to this policy, on the basis of SRF's familiarity with the project and the design documents to date; the benefits of continuity for cost, work quality, and coordination with the City; and the disruption of design warranty that would result if the corrective work were designed by a second consultant firm. Staff makes this recommendation, as well, in the context of MCWD's dissatisfaction with SRF's observation and administration of the prior JTS work. MCWD and SRF have worked well and professionally together in responding to the defective work, and staff is comfortable that the earlier performance issues don't bear on SRF's capacity to provide sound and professional work here.

The SRF scope of work, dated October 31, 2025, accompanies this memorandum in the packet. Task 1, titled "Bid Documents and Administration," encompasses preparing design plans and specifications and associated bid documents, and assisting in the solicitation. The proposed not-to-exceed for this work is \$56,628.00. Task 1 will produce plans, specifications and cost estimates at 75% and 100% design. SRF will prepare a construction bid items list and support bid publication, pre-bid meetings, response to bid questions, bid opening and tabulation and award.

Note that this does not include construction observation. The format and intensity of construction observation will depend importantly on the contractor's methods and procedures, and on the need to understand and coordinate with City inspection requirements. Both of these will be given content during the Best Value process, and staff would intend to negotiate an observation scope from SRF at that time.

The attached scope also includes a Task 2, titled "Supplemental Construction Administration Support." This task memorializes services provided to date in responding to the JTS defective work, in the amount of \$72,889.37, and budgets up to an additional \$27,110.63 for such work, for a total not-to-exceed of \$100,000.

As the Board is aware, since Spring 2023, SRF has tracked but not billed Task 2 expenses. The scope clarifies that SRF will continue this practice, and that both parties maintain their rights with respect to these costs, continuing the status quo until one or both parties wish to resolve the attendant issues. While MCWD will pay invoices for Task 1 work in the usual manner, this project expense as well is in greater or lesser measure a consequence of the defective work, and MCWD would retain its options to seek recovery of these costs in accordance with the relevant contract and bond terms.

Attachments:

- SRF Consulting Scope of Services, dated October 31, 2025



RESOLUTION

Resolution: 25-066

Title: Minnehaha Preserve Boardwalk: Engineering Services for Design and Construction Procurement

WHEREAS 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 ("Project"), located in the City of St. Louis Park ("City").

WHEREAS SRF Consulting Group (SRF) as the MCWD's project engineer and the City, during substantial completion inspection, observed numerous defects in the construction and joining of underlying pile caps and joists throughout all parts of the project where the underlying structure could be visually accessed, which observations were supplemented in subsequent additional inspections.

WHEREAS In June 2023, SRF issued a Defective Work Notice and a Supplemental Defective Work Notice, identifying 11 categories of defective work and directing that JTS correct the work to project specifications.

WHEREAS JTS represented that it would correct nine of the 11 defective work categories to specification, and with the support of MCWD, SRF and the hardware manufacturer, sought approval to correct the other two categories of defective work by means of customized alternatives, following which SRF accepted the alternatives conditioned on JTS preparation of an installation plan describing appropriate methods, and the City building official advised that the City was prepared to approve them pending formal completion of its review process.

WHEREAS Thereafter, JTS was unwilling to prosecute the corrective work and on June 26, 2025, after notice and procedures specified in the contract and the performance bond issued for the work by Granite Re, Inc., the Board of Managers ("Board") directed MCWD counsel to terminate the contract and proceed to a claim against the performance bond, which counsel effected on July 2, 2025.

WHEREAS Pursuant to the terms of the performance bond, Granite Re has elected not to participate in the selection of a contractor to complete the contract, but is investigating the MCWD bond claim and will notify the MCWD as to the amount it believes it is obligated to pay under the bond.

WHEREAS MCWD therefore may proceed independently to retain a contractor to complete the work, and it is in the interest of the Board that the work be completed without undue delay, so that MCWD is able to provide for public use a facility under designer warranty for structural soundness and so that the amount to which it is entitled under the performance bond and the contract is determined.

WHEREAS SRF, in consultation with MCWD staff, has presented a scope of work, dated October 31, 2025, to prepare design plans and specifications and assist in solicitation of bids for the completion work.

WHEREAS It is Board policy that a competitive process be used to obtain professional services exceeding \$25,000, however it is appropriate to deviate from this policy on the basis of SRF's familiarity with the project and the design documents to date; the benefits of continuity for cost, work quality, and coordination with the City; and the disruption of design warranty that would result if the corrective work were designed by a second consultant firm.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the MCWD Administrator to enter into an amendment to the SRF professional services contract for the Project to incorporate the October 31, 2025, scope of work, with any non-substantive changes and on advice of counsel.

Secretary _____ Date: _____



October 31, 2025

James Wisker
District Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345
jwisker@minnehahacreek.org

Subject: Amendment Number 02 to Proposal for Professional Services for Preserve Boardwalk
2026 Construction Repairs, in the City of St. Louis Park, Hennepin County, Minnesota.

Dear James Wisker:

Based on your request, SRF Consulting Group, Inc. ("SRF") is submitting this Amendment Number 02 ("Amendment") to the Proposal, which was signed by Minnehaha Creek Watershed District (MCWD) on April 19, 2022.

Scope of Services

SRF will provide the following additional services as further detailed in Attachment B-2:

Task 1 – Bid Documents & Administration: MCWD requested that SRF prepare a new set of bid documents and perform bid administration services similar in nature to the original contract scope for a new letting for Preserve Boardwalk Repairs to be performed under a new construction contract with a new contractor. This letting is planned to occur in early 2026, or earlier if possible. Our proposed scope of services for this task are detailed in Attachment B-2.

We understand that a new construction contract and letting is desired as a result of the MCWD having recently entered default proceedings with the original construction contractor, JTS Construction (JTS). The MCWD is prepared to engage a new contractor to correct/repair defective work completed by JTS in 2023. To date, JTS has not corrected the defective work.

Task 2 – Supplemental Construction Administration Support (JTS): SRF has supported MCWD since 2023 to address defective work performed by JTS which has resulted in additional SRF staff involvement beyond the scope of the current contract since the time JTS stopped work in 2023. As of August 31st, 2025, the value of SRF's additional efforts is \$72,889.37, above the current approved contract value of \$135,555.50.

By understanding of SRF and MCWD, since 2023 SRF has documented but not invoiced payment for services under what is defined here as Task 2. At this time, SRF intends to continue the practice of deferring invoicing, and the parties intend to determine payment to SRF in the

context of project completion, and resolution of JTS contract claims and the Granite Re bid claim. SRF and MCWD each reserve all rights under the agreement with respect to these services and payment for them. Each recognizes the other party's reservation of rights. We understand that Task 2 support may continue to be on-going until the default process between MCWD and JTS is resolved. Additionally, we understand that these costs are subject to examination by Granite Re as part of MCWD's submittal of the bond claim, a process which SRF will continue to cooperate with.

Task 3 – Construction Administration Support (New Contractor): We anticipate MCWD may request professional services from SRF for construction administration and inspection support related to work to be performed by the new contractor. We propose to scope and negotiate this potential effort separately with MCWD at a future date when the schedule and inspection need is better defined and with input from the City of St. Louis Park's inspection staff.

Basis of Payment/Budget

Task 1 –Based on SRF's understating of the amended Scope of Services, the estimated cost for Task 1 is \$56,628.00 for services and \$140.00 in direct expenses, in accordance with the Fee Estimate attached hereto as Attachment B-2 and incorporated into this Amendment.

Task 2 – Based on SRF's understating of the amended Scope of Services, the estimated cost for Task 2 is \$100,000.00, in accordance with the Fee Estimate attached hereto as Attachment B-2 and incorporated into this Amendment. The \$100,000.00 includes \$72,889.37 for services already complete and an additional potential not to exceed \$27,110.63 for future services.

Total – The total fee for Tasks 1 and 2 is \$156,768.00 with \$72,889.37 for Task 2 services already completed, further Task 2 services, in an amount not to exceed \$27,110.63, to be documented but invoicing deferred as noted above, and \$56,768.00 for Task 1 services and direct expenses to be invoiced as the services are performed.

The allowance includes SRF fees and direct expenses, and any fees incurred by SRF from our professional liability insurance provider and legal counsel. SRF's insurance provider and legal counsel have had limited engagement as of May 2025 resulting from the Rule 408 Communication letter MCWD and SRF received from JTS' legal counsel, Kemper Law, dated May 5, 2025.

Amendment

Except as modified by this Amendment, all terms and conditions of the Proposal and any previous amendments shall remain in full force and effect.

Acceptance/Notice to Proceed

A signed copy of this Amendment, mailed or emailed to Casey Black at the address on the first page of this document or at cblack@srfconsulting.com, will serve as acceptance of this Amendment and SRF's notice to proceed.

We appreciate your consideration of this Amendment and look forward to continuing to work with you on this project. Please contact us if you have any questions or need additional information.

Sincerely,

SRF Consulting Group, Inc.



Casey Black, PE
Project Director – Structures

(CEB)



Kevin Swelha, PE
Vice President

Attachment(s):

Attachment B-2: Work Tasks and Fee Estimate

Approved: Minnehaha Creek Watershed District

(signature)

Name _____

Title _____

Date _____

This cost proposal is valid for a period of 90 days. SRF reserves the right to adjust its cost estimate after 90 days from the date of this proposal.

15470.02_Amend 02_Repairs Bidding.docx

SRF Consulting Group, Inc.

Client: Minnehaha Creek Watershed District (MCWD)

Project: Minnehaha Creek Preserve Boardwalk Design - Amendment 02, 2026 Repairs Bid Support

Subconsultants: n/a

Attachment B-2: Work Tasks and Fee Estimate

Work Tasks and Person-Hour Estimates



15470.02

<u>TASK NO.</u>	<u>SUMMARY OF TASKS</u>	
1.0	Bid Support	Project Overview: The project overview should provide information pertinent to the intent of the project and help define project outcomes. Items to be considered are: Existing Conditions, Funding Sources, Anticipated Proposed Conditions, Standards to be Applied, Timeline/Schedule Funding: Local Funds (MCWD) Schedule: 2026 Letting 2026 Construction (or into 2027 depending on start and seasonal rain)
2.0	Supplemental Construction Administration Support (JTS)	
3.0	Construction Administration Support (New Contractor)	

SRF Consulting Group, Inc.

Client: Minnehaha Creek Watershed District (MCWD)

Project: Minnehaha Creek Preserve Boardwalk Design - Amendment 02,

Subconsultants: n/a

Attachment B-2: Work Tasks and Fee Estimate

Work Tasks and Person-Hour Estimates



15470.02

TASK NO.	TASK DESCRIPTION	PROF. VIII-VII	PROF. VI	PROF. V	PROF. IV	PROF. III	PROF. II	PROF. I	TECH.	SUPPORT	TOTALS	EST. FEE
1.0	Bid Support <u>Assumptions:</u> - Plans - Assume up to 6 sheets. - Sheet 1: TITLE SHEET - Sheet 2: STATEMENT OF ESTIMATED QUANTITIES - Sheets 3-6: CONSTRUCTION & SOIL NOTES - May include descriptions of special contractor activities (i.e. jacking operations, MiTek repair substitutions, etc...) - 2022 plans and technical special provisions (Division S & SB) will be reference documents in the plan set (FOR INFORMATION) or available as attachments in the project manual. - It is assumed the following plans will not be required. If required, added scope may be needed for additional plan sheet development & QC - MnDOT STANDARD PLANS (EROSION CONTROL) - STORM WATER POLLUTION PREVENTION PLAN (SWPPP) - EROSION CONTROL & TURF ESTABLISHMENT PLANS - Each sub-task in Task 1.1 includes quality control (QC) review - Hours in Task 1.2 are equal to the effort from the original contract in each sub-task. <u>Client Deliverables:</u> - Timely review and comment of deliverables. Assumes (1) round of comments per submittal.											

SRF Consulting Group, Inc.

Client: Minnehaha Creek Watershed District (MCWD)

Project: Minnehaha Creek Preserve Boardwalk Design - Amendment 02,

Attachment B-2: Work Tasks and Fee Estimate

Work Tasks and Person-Hour Estimates



Subconsultants: n/a

15470.02

TASK NO.	TASK DESCRIPTION	PROF. VIII-VII	PROF. VI	PROF. V	PROF. IV	PROF. III	PROF. II	PROF. I	TECH.	SUPPORT	TOTALS	EST. FEE
1.1	Bid Documents											
1.1.1.1	75% Design Phase											
1.1.1.2	Develop 75% boardwalk plans and details. - Assume (1) review by MCWD staff & legal counsel (concurrent)	8	-	16	-	-	-	-	32	-	56	\$10,688.00
1.1.1.2	Develop 75% project specifications. - Assume (1) review by MCWD staff & legal counsel (concurrent)	42	-	-	-	-	-	-	-	-	42	\$11,592.00
1.1.1.3	Provide 75% construction cost estimate.	4	-	8	-	-	-	-	-	-	12	\$2,720.00
1.1.2	100% Design Phase											
1.1.2.1	Prepare final boardwalk plans and details. - Assume (1) review by MCWD staff & legal counsel (concurrent)	4	-	8	-	-	-	-	20	-	32	\$6,000.00
1.1.2.2	Prepare final project specifications. - Assume (1) review by MCWD staff & legal counsel (concurrent)	19	-	-	-	-	-	-	-	-	19	\$5,244.00
1.1.2.3	Prepare final cost estimate.	4	-	8	-	-	-	-	-	-	12	\$2,720.00
1.2	Bid Administration											
	Hours in Task 1.2 are equal to the effort from the original contract assuming all activities in each sub-task will occur again.											
1.2.1	Development of specifications and bid documents for construction contracting	8	-	-	-	-	-	-	-	-	8	\$2,208.00
1.2.2	Development of 90% plan specifications / Bid Manual	8	-	-	-	-	-	-	-	-	8	\$2,208.00
1.2.3	Development of construction bid items list	4	-	-	-	-	-	-	-	-	4	\$1,104.00
1.2.4	Support during project bidding	10	-	-	-	-	-	-	-	-	10	\$2,760.00
1.2.5	Coordinate bid publication	8	-	-	-	-	-	-	-	-	8	\$2,208.00
1.2.6	Participate in pre-bid meeting, respond to requests for information from prospective contractors	8	-	-	-	-	-	-	-	-	8	\$2,208.00
1.2.7	Lead bid opening and tabulate bids	8	-	-	-	-	-	-	-	-	8	\$2,208.00
1.2.8	Make award recommendation	10	-	-	-	-	-	-	-	-	10	\$2,760.00
	<u>SRF Deliverables:</u>											
	- Plans - 75% & 100%											
	- Technical Specifications (Div. S & SB) - 75% & 100%											
	- Construction Cost Estimates - 75% & 100%											
	- Specifications/Project Manual - 75% & 100%											
	- Construction bid items list											
	- Bid publication											
	- Pre-bid meeting attendance											
	- Responses to bid questions											
	- Bid opening and tabulation											
	- Award recommendation											
SUBTOTAL - TASK 1		145	0	40	0	0	0	0	52	0	237	\$56,628.00

SRF Consulting Group, Inc.

Client: Minnehaha Creek Watershed District (MCWD)

Project: Minnehaha Creek Preserve Boardwalk Design - Amendment 02,

Subconsultants: n/a

Attachment B-2: Work Tasks and Fee Estimate

Work Tasks and Person-Hour Estimates



15470.02

TASK NO.	TASK DESCRIPTION	PROF. VIII-VII	PROF. VI	PROF. V	PROF. IV	PROF. III	PROF. II	PROF. I	TECH.	SUPPORT	TOTALS	EST. FEE
2.0	Supplemental Construction Administration Support (JTS)											
	<u>Assumptions:</u>											
	- Supplemental construction support for non-conforming work completed by JTS which may continue into 2026.											
	<u>Client Deliverables:</u>											
	- Lead construction administration											
2.1	Allotment for:	100	100		126	-	-	-	-	-	326	\$72,889.37
	- Support from June 2023 - August 2025											
2.2	Allotment for:	60	20	-	34	-	-	-	-	-	114	\$27,110.63
	- Support September 2025 forward as needed											
	- Effort beyond this scope if required may be subject of a future amendment											
	<u>SRF Deliverables:</u>											
	- Continued supplemental support up to allotted effort scoped.											
	SUBTOTAL - TASK 2	160	120	0	160	0	0	0	0	0	440	\$100,000.00
3.0	Construction Administration Support (New Contractor)											
	<u>Assumptions:</u>											
	- Construction support for repairs performed for the new contractor for work in 2026 may be scoped and negotiated at a future date.											

