

MEETING DATE: March 12, 2015

TITLE: Authorization to Award Contract for 2015 Stormwater Pond Sediment Surveys

RESOLUTION NUMBER: 15-XXX

PREPARED BY: Laura Domyancich

E-MAIL: ldomyancich@minnehahacreek.org

TELEPHONE: 952-641-4582

REVIEWED BY: Administrator Counsel Program Mgr: Tiffany Schaufler
 Board Committee Engineer Director: James Wisker

WORKSHOP ACTION:

<input checked="" type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input type="checkbox"/> Other (specify):	

PURPOSE or ACTION REQUESTED:

Authorization to enter into a contract with Wenck Associates, Inc. for engineering services related to sediment surveys at ten ponds, including plotting, calculations, analysis of sediment samples, and development of a technical memo in the amount of \$54,152 and establish a not-to-exceed budget of \$59,567. (Contract budget amount is the maximum amount needed if all surveyed ponds need sediment analysis).

PROJECT/PROGRAM LOCATION: (See attached map.)

- Pamela Park Cells 1, 2, and 3, Edina
- Gleason Lake Ponds 1, 2, and 3, Plymouth
- Johnson/Rolling Hills Pond, Minnetrista
- Painter Marsh Pond, Minnetrista
- South Katrina Pond, Orono
- Steiger Wetland Pond, Victoria

PROJECT TIMELINE:

Sediment surveys to be completed during May with final completion of report by June 1, 2015.

PROJECT/PROGRAM COST:

Fund name and number: Operations & Maintenance, 2501
Current budget: \$466,000.00
Expenditures to date: \$17,298

Requested amount of funding: \$59,567

PAST BOARD ACTIONS:

- RES 10-002, January 7, 2010, Contract with Wenck Associates for sediment surveys of regional ponds
- RES 10-049, June 3, 2010, Contract with Wenck Associates for design and construction observation of stormwater pond dredging project
- RES 10-068, September 2, 2010, Contract for stormwater pond maintenance at Twin Lakes Pond and Amelia Pond
- RES 11-056, July 7, 2011, Authorization to Contract with Wenck Associates for Pond Sediment Surveys, to Solicit Bids for Regional Stormwater Pond Maintenance, and for Construction Management of Pond Maintenance
- RES 11-100, October 27, 2011, Authorization to Award Bid for the 2011-2012 Stormwater Pond Maintenance at Twin Lakes Pond, SW Calhoun Pond, and Gleason Lake Phase 2 Pond
- RES 13-045, April 25, 2013, Authorization to Award Contract to Wenck Associates, Inc. for Pond Sediment Surveys
- RES 14-045, May 8, 2014, Authorization to Award Contract for 2014 Pond Sediment Surveys

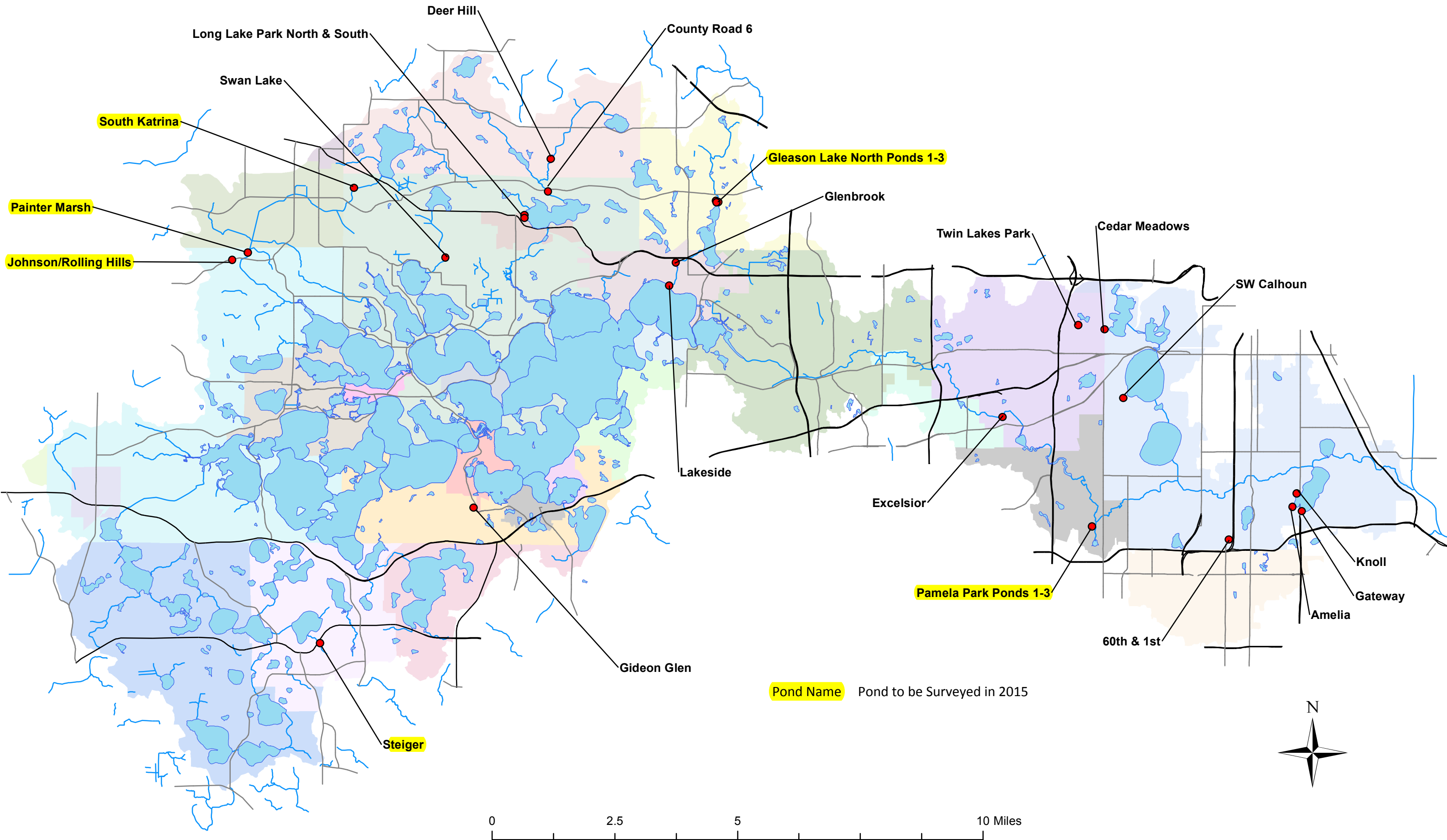
SUMMARY:

The District is responsible for the inspection and/or maintenance of 28 stormwater ponds through cooperative agreements (see **Attachment A**, map.) The MCWD Board of Managers has established a policy that dictates cyclical investigation and maintenance of its stormwater management infrastructure. In 2011, the Operations and Maintenance Program recommended pond sediment surveys of seven to ten ponds each year on a three-year rotation (see **Attachment B**, Pond Inventory / Status.) The Operations and Maintenance Program budgets approximately \$185,000.00 for annual investigation and maintenance of these stormwater facilities. This maintenance is needed to ensure that regional ponds function as designed. Past survey and associated maintenance of the stormwater ponds is detailed in **Attachment B**, Pond Inventory / Status.

Sample collection, handling, and sediment analysis will be done for ponds identified by the surveys to need maintenance. The not-to-exceed (\$59,567) amount covers costs to analyze sediments for up to all ten ponds. The proposal that lists the detailed tasks associated with performing the sediment surveys can be viewed in **Attachment C**.

ATTACHMENTS: **Attachment A:** Map, **Attachment B:** Pond Inventory / Status, **Attachment C:** Stormwater Pond Survey Scope and Estimate.

Attachment A: MCWD Stormwater Ponds



Attachment B: MCWD Stormwater Pond Inventory / Status

Subwatershed & Pond	Installed	Last Surveyed	Next Survey	Last Survey Results	Year(s) Dredged
Minnehaha Creek					
60th and 1st Pond	2000	2013	2016	N Bay: 0' sediment; SW Bay: ~3.1'; SE Bay: ~0.8'	
Cedar Meadows-Basin 1	1996	2007, 2010, 2014	2017	9% wet volume lost	2004
Excelsior Pond	2013		2016		
Nokomis-Amelia	2001	2010	2016	Maintenance needed	2011
Nokomis-Gateway	2001	2010	2016	2% wet volume lost	
Nokomis-Knoll	2001	2005, 2013	2016	W Bay: ~0.2' of sediment; Central Bay: ~0.2' ; E Bay: ~0.7'	
SW Calhoun-Cells 1	1999	2007, 2011, 2014	2017	9% wet volume lost	2004, 2012
SW Calhoun-Cells 2	1999	2007, 2011			2004
Pamela Park cell 1	2001	2015	2018		
Pamela Park cell 2	2001	2015	2018		
Pamela Park cell 3	2001	2015	2018		
Twin Lakes Pond	1996	2007, 2011, 2014	2017	11% wet volume lost	2004, 2012
Long Lake Creek					
County Road 6 Pond	1998	2005, 2011	2016		
Deer Hill Pond-North	1996	2007, 2013	2018	Insignificant amount	
Deer Hill Pond-South	1996	2007	2018	~0.4' depth of sediment	
Long Lake Park North	1996	2010, 2014	2017	20% wet volume lost	2004
Long Lake Park South	1996	2010, 2014	2017	29% wet volume lost	2006
Gleason Lake Creek					
Gleason Lake North 1	1995	2015	2018		2012
Gleason Lake North 2	2008	2015	2018		
Gleason Lake North 3	2008	2015	2018		
Glenbrook Pond	1994	2013	2016	W Pond: ~0.6' of sediment; Central Pond: ~1.0'; E Pond ~2.4'	
Lake Minnetonka					
Lakeside Pond	1994	2010, 2014	2017	42% wet volume lost	
Gideon Glen	2006		2016		
Swan Lake	2008	2014	2017	21% wet volume lost	
Painter Creek					
Johnson/ Rolling Hills	2008	2015	2018	~0.5 depth of sediment in 2013	
Painter Marsh	1985	2015	2018	Insignificant amount in 2010	
South Katrina Pond	1985	2015	2018	Insignificant amount in 2011	
Six Mile Creek					
Steiger Wetland Pond	1988	2015			

Attachment C

**AGREEMENT BETWEEN
MINNEHAHA CREEK WATERSHED DISTRICT and
Wenck Associates, Inc.**

2015 Stormwater Pond Sediment Surveys

This agreement is entered into by the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and Wenck Associates, Inc. a private Minnesota corporation (CONSULTANT). In consideration of the terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, MCWD and CONSULTANT agree as follows:

1. Scope of Work

CONSULTANT will perform the work described in the February 2015 Scope of Services attached as Exhibit A (hereinafter, the Services). Exhibit A is incorporated into this agreement and its terms and schedules are binding on CONSULTANT as a term hereof. The MCWD, at its discretion, in writing may at any time suspend work or amend the Scope of Services to delete any task or portion thereof. Authorized work by CONSULTANT on a task deleted or modified by the MCWD will be compensated in accordance with paragraph 5. Time is of the essence in the performance of the Services.

2. Independent Contractor

CONSULTANT is an independent contractor under this agreement. CONSULTANT will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute CONSULTANT as the agent, representative or employee of the MCWD in any manner. Personnel performing the Services on behalf of CONSULTANT or a subcontractor will not be considered employees of the MCWD and will not be entitled to any compensation, rights or benefits of any kind from the MCWD.

3. Subcontract and Assignment

CONSULTANT will not assign, subcontract or transfer any obligation or interest in this agreement or any of the Services without the written consent of the MCWD and pursuant to any conditions included in that consent. MCWD consent to any subcontracting does not relieve CONSULTANT of its responsibility to perform the

Services or any part thereof, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services.

4. Warranty and Indemnification

CONSULTANT warrants that it will perform the Services in accordance with national standards of professional care. CONSULTANT will indemnify, defend and hold harmless the MCWD, its officers, board members, employees and agents from any and all actions, costs, damages and liabilities of any nature arising from: (a) CONSULTANT's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by CONSULTANT to MCWD. For any claim subject to indemnification under this paragraph by an employee of CONSULTANT or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

The MCWD will indemnify, defend and hold harmless CONSULTANT, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any action or inaction by the MCWD that is the basis for the MCWD's liability in law or equity.

5. Compensation

The MCWD will compensate CONSULTANT for the Services on an hourly basis as outlined in Exhibit A and reimburse for direct costs in accordance with Exhibit A. Invoices will be submitted monthly for work performed during the preceding month. Payment for undisputed work will be due within 30 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the MCWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by CONSULTANT, will be reimbursed by the MCWD at the rate specified in the MCWD's written approval of the subcontract arrangement.

The total payment for the Services will not exceed \$59,567. Total payment means all sums to be paid whatsoever, including but not limited to fees and

reimbursement of direct costs and subcontract costs, whether specified in this agreement or subsequently authorized by the administrator.

CONSULTANT will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. CONSULTANT agrees that any authorized MCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

6. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until completion of services unless earlier terminated as set forth herein.

The MCWD may terminate this agreement at its convenience, by a written termination notice stating specifically what prior authorized or additional tasks or services it requires CONSULTANT to complete. CONSULTANT will receive full compensation for all authorized work performed, except that CONSULTANT will not be compensated for any part performance of a specified task or service if termination is due to CONSULTANT's breach of this agreement.

Insurance obligations; warranties; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

7. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, the MCWD waives no immunity in tort. This agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party.

8. Insurance

At all times during the term of this Agreement, CONSULTANT will have and keep in force the following insurance coverages:

- A. General: \$1.5 million each occurrence and aggregate, covering completed operations and contractual liability on an occurrence basis.
- B. Professional liability: \$1.5 million each claim and aggregate; coverage may be on a claims-made basis, in which case CONSULTANT must maintain the policy for, or obtain extended reporting period coverage extending, at least three (3) years from completion of the Services.
- C. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.
- D. Workers' compensation: in accordance with legal requirements applicable to CONSULTANT.

CONSULTANT will not commence work until it has filed with the MCWD a certificate of insurance clearly evidencing the required coverages and naming the MCWD as an additional insured with primary coverage for general liability on a noncontributory basis, along with a copy of the additional insured endorsement. The certificate will name the MCWD as a holder and will state that the MCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as CONSULTANT.

9. Compliance With Laws

CONSULTANT will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, CONSULTANT will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

10. Materials

All materials obtained or generated by CONSULTANT in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized, are the property of the MCWD. CONSULTANT hereby assigns and transfers to the MCWD all right, title and interest in: (a) its copyright, if any, in the materials; any registrations and copyright applications relating to the materials; and any copyright renewals and extensions; (b) all works based on, derived from or incorporating the materials; and (c) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and all causes of action in law or equity for past, present or future infringement based on the copyrights. CONSULTANT agrees to execute all papers and to perform such other proper acts as the MCWD may deem necessary to secure for the MCWD or its assignee the rights herein assigned.

The MCWD may immediately inspect, copy or take possession of any materials on written request to CONSULTANT. On termination of the agreement, CONSULTANT may maintain a copy of some or all of the materials except for any materials designated by the MCWD as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT only pursuant to written agreement with the MCWD specifying terms.

11. Data Practices; Confidentiality

If CONSULTANT receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) CONSULTANT possesses or has created as a result of this agreement, it will inform the MCWD immediately and transmit a copy of the request. If the request is addressed to the MCWD, CONSULTANT will not provide any information or documents, but will direct the inquiry to the MCWD. If the request is addressed to CONSULTANT, CONSULTANT will be responsible to determine whether it is legally required to respond to the request and otherwise

what its legal obligations are, but will notify and consult with the MCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes CONSULTANT's obligations under this agreement with respect to protection of MCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that CONSULTANT is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

CONSULTANT agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by the MCWD and so denominated by the MCWD. CONSULTANT will not use any such materials for any purpose other than performance of the Services without MCWD written consent. This restriction does not apply to materials already possessed by CONSULTANT or that CONSULTANT received on a non-confidential basis from the MCWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, CONSULTANT retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any CONSULTANT warranty under this agreement does not extend to any party other than the MCWD or to any use of the materials by the MCWD other than for the purpose(s) for which CONSULTANT is compensated under this agreement.

12. MCWD Property

All property furnished to or for the use of CONSULTANT or a subcontractor by the MCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of the MCWD and returned to the MCWD at the conclusion of the performance of the Services, or sooner if requested by the MCWD. CONSULTANT further agrees that any proprietary materials are the exclusive property of the MCWD and will assert no right, title or interest in the materials. CONSULTANT will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by the MCWD. Any property including but not limited to materials supplied to CONSULTANT by the MCWD or deriving from the MCWD is supplied to and accepted by CONSULTANT as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, CONSULTANT's warranty of professional care under paragraph 4, above,

does not extend to materials provided to CONSULTANT by the MCWD or any portion of the Services that is inaccurate or incomplete as the result of CONSULTANT's reliance on those materials.

13. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To MCWD:

Lars Erdahl
Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345

To CONSULTANT:

Chris Meehan
Wenck Associates
1800 Pioneer Creek Center
Maple Plain, MN 55359

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

14. Choice of Law, Venue and Jurisdiction

This agreement will be construed under and governed by the laws of the State of Minnesota.

15. Whole Agreement

The entire agreement between the two parties is contained herein and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto. The MCWD may amend this agreement only by action of the Board of Managers acting as a body.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this agreement.

CONSULTANT

By _____
Its _____

Date: _____

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its _____

Date: _____

APPROVED AS TO FORM & EXECUTION

MCWD Attorney

Exhibit A
Scope of Services

PROPOSAL

TO: Laura Domyancich, Project and Land Technician, Minnehaha Creek Watershed District

FROM: Chris Meehan, P.E. CFM
Kirby Templin, P.E.

DATE: February 26, 2015

SUBJECT: Scope of Services for 2015 Stormwater Pond Sediment Surveys

Scope of Work

In the interest of improving stormwater treatment throughout the Minnehaha Creek watershed, the District has implemented 28 stormwater ponds which it also manages. These ponds are surveyed for sediment depth and wet volume on a three-year rotation. Ponds are surveyed in the spring to determine the need for pond dredging to remove sediment, and sediment samples from those ponds with significant sediment accumulation are analyzed for specific parameters. If needed, ponds are scheduled for dredging during the following winter, which will increase their wet volume and capacity to manage stormwater.

Wenck Associates, Inc. has prepared the following Scope of Services to provide a cost estimate of the sediment surveys and subsequent sample analysis. In 2015, 10 ponds will be surveyed for sediment depth and sediment samples will be collected from each pond. The samples from ponds with significant sediment accumulation and a decrease in 50% wet volume will be analyzed for various compounds in preparation for pond dredging. Those ponds determined to have 50% or greater wet volume loss will be excavated in the winter of 2015-16.

The estimate cost for these services is provided in the table below. Each task includes the expected minimum level of effort using the most efficient discounted hourly rates that are currently used by MCWD along with direct expenses covering mileage, survey equipment, etc. It is anticipated the scope of work including reporting will be completed by June 1st, 2015.

Scope of Services for Sediment Surveys at Ten Ponds- February 2015

Task	Hours/Rate	Description	Cost
Grid surveys	148/\$113	Summer surveys of sediment depth, GPS coordinates for 10 sites	\$18,464*
Plot data, calculations, drawing	86/\$125	Volume calculations and drawings for 10 sites	\$10,800*
Technical report	10/\$175	Report on survey and sampling results, analysis of results to be completed by 6/1/2015**	\$1,750*
Sample collection, laboratory coordination	10.5/\$125	Sample collection, compositing, delivery, and handling	\$1,438*
Sieve analysis	\$100/Sample	Grain size analysis	\$100 per pond*
Sample analysis	\$660/Sample	Analytical work: testing for parameters listed below at ponds with significant sediment accumulation	\$2,000 per pond***
Total Cost		Not to exceed for project	\$54,152

* Estimated cost per task. The total payment for all tasks not to exceed the total cost.

** Technical report to supply sufficient data to develop scope of maintenance for bid.

*** All ponds assume 3 samples are taken, Painter Marsh will require 4 samples which is incorporated into the Total Cost

Parameter List for Task 6

Arsenic	Total Phosphorus
Cadmium	Nitrate + Nitrite
Chromium III	Ammonia-Nitrogen
Chromium VI	Total Kjeldahl Nitrogen
Copper	PCBs (Total)
Lead	Total Organic Carbon
Mercury	PAHs
Nickel	Zinc
Selenium	

Ponds to be Surveyed

Pamela Park Cell 1—Edina
 Pamela Park Cell 2—Edina
 Pamela Park Cell 3—Edina
 Gleason Lake North 1—Plymouth
 Gleason Lake North 2—Plymouth
 Gleason Lake North 3—Plymouth
 Johnson/Rolling Hills Pond—Minnetrista
 Painter Marsh Pond—Minnetrista
 South Katrina Pond—Orono
 Steiger Wetland Pond—Victoria

Wenck appreciates the opportunity to provide you with our proposal. If you have any questions or comments regarding this proposal, please call me at (763) 479-4244.

If this proposal is acceptable, please sign and return.

Sincerely,

WENCK ASSOCIATES, INC.



Chris Meehan, P.E.
Project Manager

ACCEPTED BY:

Minnehaha Creek Watershed District

Laura Domyancich, Project and Land Technician

(Date)