

MEETING DATE: 2/11/16

TITLE: Resolution 16-009 Approving Agreement with the US Army Corps of Engineers for Six Mile Planning Assistance through Federal Section 22: Planning Assistance to States; and Authorizing Technical Assistance Contract with Wenck Associates, Inc.

RESOLUTION NUMBER: 16-009

PREPARED BY: Anna Brown

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REVIEWED BY: Administrator Counsel Program Mgr. (Name): James Wisker
 Board Committee Engineer Other

WORKSHOP ACTION:

<input 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 checked="" type="checkbox"/> Other (specify): Approval at meeting	

PURPOSE or ACTION REQUESTED:

Staff is seeking approval of an agreement with US Army Corps of Engineers (USACE) to provide planning assistance to the Six Mile Subwatershed planning process through the Federal Section 22: Planning Assistance to States program.

Further, staff is seeking approval to contract with Wenck Associates on a complementary scope of work to provide technical assistance that will support Six Mile plan development in general and the US Army Corps scope in particular.

PROJECT TIMELINE:

- March 2016 – US Army Corps authorizes Section 22 fund disbursement
- March-October 2016 – District holds Six Mile stakeholder meetings to provide input for USACE watershed evaluation
- July-September 2016 - USACE conducts GIS analysis
- September-January 2017 – Results verified and study outputs finalized
- February 2017 – Project complete

PROJECT/PROGRAM COST:

Fund name and number: Capital projects - Six Mile Creek: 300-3139
 Current budget: \$175,000.00
 Expenditures to date: \$0.00
 Requested amount of funding: \$51,490.00

Is a budget amendment requested? no
Is additional staff requested? no

SUMMARY:

In adopting the Balanced Urban Ecology policy framework, the MCWD Board of Managers memorialized that the organization can accomplish greater natural resource benefit by working towards the integration of land use and water resources through partnership, flexibility, and sustained focus. The Six Mile Subwatershed was adopted as a priority focal geography in 2014. Staff have created a planning approach for the Six Mile Subwatershed that will advance the District's policy directive by building partnerships and engaging in collaborative planning with public and private stakeholders to align natural resource needs with the objectives of growing communities.

On January 14th, 2016, staff presented the Six Mile planning process to the Board of Managers. Staff proposed that the District host 4-5 meetings with committees of local stakeholders. With these committees, the District would engage in a four step planning process:

- Understand the natural resource needs
- Understand the plans, goals, and investments of other agencies
- Synthesize natural resource needs with the work of other agencies
- Develop a cross-agency and phased investment plan

The US Army Corps of Engineers has made funds available for 2016 to provide planning assistance to the District's work in Six Mile through its Section 22: Planning Assistance to States program. This is a funding mechanism under which the District would be responsible for 50 percent of planning work costs by means of cash and in-kind services. This Section 22 scope of work would be complementary to the planning process as laid out at the January 14th Board meeting. In particular, the scope of work before the Board will add value in two ways:

- USACE will perform its own watershed analysis and evaluate the results of MCWD's planning within Six Mile for potential aquatic ecosystem restoration and mitigation opportunities; and
- The USACE and District will collaborate to develop the watershed based analysis required for a Section 404 Programmatic General Permit (PGP) within the District, which would reduce duplication and facilitate efficiency in regulatory review for wetland impacts and enable resource-benefitting creativity in wetland mitigation.

Under the Section 22 planning assistance agreement, the USACE formally is given unilateral authority with respect to the scope of work. However, the parties have worked closely and cooperatively to develop the scope and staff does not believe there is a significant risk that the USACE would change the scope without consultation or in a way that would be contrary to the shared goals for the planning work.

In order to support the Six Mile Subwatershed plan development in general and the USACE-MCWD collaboration through the Section 22 program in particular, staff have developed a complementary scope of work with Wenck Associates to provide technical assistance. This work will include developing a baseline assessment of current water resources in the subwatershed and a "future conditions" layer based on input from committee. Further, Wenck will evaluate the outputs of the USACE planning work for consistency with District plans and priorities. The proposed engineering scope of work is \$51,490. District governance policy states that the administrator will obtain written quotes or bids, or use a Qualification Based Selection process, before recommending a contract for professional services in excess of \$25,000. Staff recommends an exception in this case in that Wenck Associates is uniquely qualified to support this work due to its understanding of past MCWD studies, current regulations, and ongoing program development. Its work both will be independently

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

valuable in plan development and will serve as in-kind contribution towards the 50% match required for Section 22.

Staff recommends approval of resolution 16-009 approving agreement with the US Army Corps of Engineers for Six Mile planning assistance through Federal Section 22: Planning Assistance to States; and authorizing technical assistance contract with Wenck Associates, Inc.

RESOLUTION

RESOLUTION NUMBER: 16-009

TITLE: **Resolution 16-009 Approving Agreement with the US Army Corps of Engineers for Six Mile Planning Assistance through Federal Section 22: Planning Assistance to States; and Authorizing Technical Assistance Contract with Wenck Associates, Inc.**

WHEREAS, On May 22, 2014, The Six Mile Subwatershed was adopted as a priority focal geography by the Minnehaha Creek Watershed District Board of Managers; and

WHEREAS, On January 14, 2016, Minnehaha Creek staff presented a planning approach for the Six Mile geography to the Board of Managers which emphasizes collaborative planning and partnership development; and

WHEREAS, The US Army Corps of Engineers (USACE) has made funds available to assist the Six Mile subwatershed planning work through its Section 22: Planning Assistance to States program, and has supplied a Planning Assistance to States Agreement that would be executed to establish the terms of planning assistance; and

WHEREAS, In order to support the District's Six Mile planning goals, the USACE work is being broken into two broad categories:

- USACE will perform its own watershed analysis and evaluate the results of MCWD's planning within Six Mile for potential aquatic ecosystem restoration and mitigation opportunities; and
- USACE and MCWD will perform the watershed based analysis required for the development of an MCWD-specific Programmatic General Permit that would assist in aligning DNR public waters, Wetland Conservation Act, MCWD and federal regulation; and

WHEREAS, Section 22 Planning Assistance requires a 50% match, to be made in cash or in-kind; and

WHEREAS, Wenck Associates, Inc. is uniquely qualified to provide technical assistance to support plan development and the US Army Corps scope;

WHEREAS, Wenck will provide input and review to the USACE scope as follows:

- Wenck will develop a baseline assessment of the Six Mile Creek watershed, for use in USACE analysis;
- Wenck will develop an analysis of future conditions in the watershed to predict the future extent of water resources;
- Wenck will review all outputs from the USACE analysis for consistency and concurrence with existing plans, data, and policies of the District; and

WHEREAS, MCWD staff will be developing a second scope of work to contract with Wenck for additional planning assistance in the Six Mile geography, for execution at a later date;

NOW, THEREFORE, BE IT RESOLVED that the Planning Assistance to States Agreement with the US Army Corp of Engineers, to support Six Mile plan development through the *Federal Section 22: Planning Assistance to States* program, is approved and the Board President and Treasurer, and District Administrator, as required, are authorized to execute the agreement and associated certifications on advice of counsel; and

BE IT FURTHER RESOLVED that the District Administrator is authorized, on advice of counsel, to execute a contract with Wenck Associates, Inc. to provide technical assistance to Six Mile Plan development, in an amount not to exceed \$51,490.

Resolution Number 16-009 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

Scope of Work for Minnehaha Creek Watershed

Six Mile Creek Subwatershed Mitigation Planning Assessment

Sponsor: Minnehaha Creek Watershed District (MCWD)

Authority: Planning Assistance to States and Tribes (Section 22 of the 1974 WRDA, as amended in 1990 and 2007)

Cost Share: 50/50

Background on Minnehaha Creek Watershed District's Local Planning Efforts:

Building on past planning and implementation success in the Minnehaha Creek Greenway, the Minnehaha Creek Watershed District (MCWD) has adopted a policy framework to guide its future water resource work, titled *In Pursuit of a Balanced Urban Ecology*. This local sponsor framework calls for the integration of land-use and water planning through multijurisdictional partnerships that align mission, authority, plans, and investment in geographic areas of high need and opportunity.

In 2014 the MCWD Board of Managers adopted the Six Mile subwatershed as a focal priority for planning and implementation due to the complexity of its 27 square mile geography. The subwatershed contains abundant and interconnected lake and wetland resources, an array of needed improvement strategies, wildlife corridors, and is anticipated to experience concentrated growth and development in the coming decades.

To advance its mission in this area, the MCWD is seeking to establish a multijurisdictional planning and implementation partnership with public and private stakeholders within this geography to address natural resource needs in ways that complement the goals of growing communities. In the first quarter of 2016 the District will initiate a planning process in partnership with local community stakeholders that will combine and align financial and human resources across partners to produce enhanced implementation strategies that support a comprehensive restoration program, achieving the goals of multiple agencies.

To align MCWD's goals and work with those of other public agencies, the District is proposing to host 4-5 meetings of local stakeholder committees (policy and technical) in 2016. This committee process will be used to map how water resource implementation strategies may intersect with the objectives of agencies such as Carver County, Carver County Soil and Water Conservation District, Hennepin County, Victoria, Minnetrista, St. Bonifacius, Laketown Township, 3 Rivers Park District, etc.

This process will map project partnership opportunities where MCWD's work can be integrated with others to create additional value and develop natural resource projects that would not be feasible if MCWD were to work alone. These mapped opportunities will then be evaluated against a diverse pool of potential funding sources at local, regional, state and federal levels, to develop an integrated investment framework that will more clearly depict how work can be financed over time within the Six Mile subwatershed.

As MCWD prepares to embark on this multijurisdictional planning and implementation partnership in the Six Mile subwatershed, District staff have initiated a partnership with the USACE through Section 22 – Planning Assistance to States.

Understanding that the goal of the MCWD is to develop an integrated investment framework for natural resource restoration in Six Mile, and the District's past success using streamlined regulation as a proactive partnership tool, the Section 22 work is being broken into two general areas of concentration.

- USACE will perform its own watershed analysis and evaluate the results of MCWD's planning within Six Mile for potential aquatic ecosystem restoration and mitigation opportunities; and
- Evaluate the potential to develop a MCWD specific Programmatic General Permit that could assist in streamlining DNR public waters, Wetland Conservation Act, MCWD and federal regulation.

General Scope

Given the understanding of the District's planning efforts within the Six Mile Subwatershed, the scope herein provides a framework for the MCWD and USACE to collaborate on:

1. Evaluating aquatic ecosystem restoration and mitigation opportunities in the subwatershed and
2. Develop the watershed based analysis required for the development of a Programmatic General Permit which will support the MCWD's efforts to streamline regulation as a strategy to generate natural resource partnerships with the land-use community that exceed regulatory compliance

Evaluating Ecosystem Restoration Opportunities:

In order to evaluate project opportunities, the USACE will use a GIS process to create maps of priority restoration areas entitled **SWAMPS (Spatially-explicit Watershed-based Approach to Mitigation Positioning and Selection)**. This process, developed by the US Army Engineer Research and Development Center's Environmental Laboratory (ERDC-EL), will be informed by the stakeholder engagement process led by the District. As part of that stakeholder engagement, the committees will be asked to provide feedback on the inputs and their relative importance in determining restoration project sites. The committees will further contribute to the SWAMPS process by evaluating the outputs for consistency with landscape conditions, ensuring that opportunities identified by the Corps align with known watershed stressors.

Development of the Watershed Based Analysis Required for a Programmatic General Permit:

A Programmatic General Permit (PGP) is a type of general permit that is issued to avoid unnecessary duplication of regulatory control exercised by another federal, state, or local agency. A PGP offers an expedited review process for the applicant, based on a previously determined process and conditions. In an August 27th, 2015 letter from the US Army Corps Regulatory Branch, the USACE expressed support for the development of a programmatic approach to protect and enhance water resources on a subwatershed level by pursuing solutions to wetland mitigation that keep wetland acres in the District.

In order to evaluate wetland mitigation opportunities and the viability of a programmatic general permit (PGP), the USACE and District will evaluate existing wetland evaluation mechanisms used by the District – The 2003 Functional Assessment of Wetlands (FAW) and the Ecosystem Evaluation Program (E-Grade)

currently in development – DNR public waters, and the Wetland Conservation Act for consistency with federal regulatory criteria for identifying sites unsuitable for fill. The federal standard for identifying sites unsuitable for fill is the advance identification of disposal areas (ADID) which involves spatially analyzing information on the value and functions of existing water resources in the target watershed to better understand what water resource types or areas should be protected and which water resource types and areas can sustain impact. Should the existing evaluation criteria used by the District be determined to be inconsistent with USACE Regulatory Program requirements to support a PGP, the USACE and the District will discuss modification to meet the USACE requirements. The USACE will further provide guidance on steps to pursue a PGP, should the District decide to pursue that option.

TASK 1: Identification of Aquatic Ecosystem Restoration and Mitigation Opportunities

The assessment will utilize a watershed-based approach to identification of restoration sites that incorporates spatially explicit information into long-term regulatory and planning activities using a geographic information system (GIS). To accomplish this, the U.S. Army Corps of Engineers, St. Paul District (Corps) will utilize the **SWAMPS** (**S**patially-explicit **W**atershed-based **A**pproach to **M**itigation **P**ositioning and **S**election) tool developed by the US Army Engineer Research and Development Center’s Environmental Laboratory (ERDC-EL). The SWAMPS process will be further informed by watershed stakeholder input including local policy makers, City engineers, planners, and natural resource professionals, and state and regional natural resource agencies. The MCWD will engage these stakeholders in a series of meetings to evaluate local priorities and anticipated phasing and timing of landscape changes. Anticipated SWAMPS outputs include a watershed sensitivity assessment (further defined under 3.b), identification of wetland restoration opportunities and identification of stream restoration opportunities.

The ultimate goal is to proactively address complex resource management issues (restoration prioritization) in a quantitative manner, yet incorporate valuable professional judgment (qualitative) into the process. The initial scoping for this study identified that the SWAMPS analysis will focus on identification of landscape restoration opportunities through multiple independent SWAMPS analyses. A sample output map generated during SWAMPS application in the Sunrise River watershed in south central Minnesota is attached.

The Subtasks are as follows:

1. **Conduct Baseline Assessment and Gather Existing Datasets**
 - a. **Determine the Historical Extent of Aquatic Resources in the Six Mile Creek subwatershed.** A geospatial data set will be developed that identifies, to the greatest extent practicable, the historic extent of aquatic resources in the watershed. Previous efforts for this type of analysis have used early twentieth century as the approximate baseline depending on the quality and availability of historical data. Information to be included in this step includes historic air photographs, original land survey maps, U.S. Department of Agriculture soil mapping, National Wetland Inventories, and other state and local government surveys and reports. The historic analysis of aquatic resources in the watershed will be completed by the Corps.

- b. Determine the Current Extent of Aquatic Resources in the Six Mile Creek subwatershed.** Currently available information on aquatic resources will be used to generate a geospatial data set identifying, to the greatest extent practicable, the extent of aquatic resources in the watershed. The baseline for this analysis is anticipated to be 2015 contingent on the availability of existing information. The analysis of the current extent of aquatic resources in the watershed will be completed by the MCWD, building from its robust dataset.
 - c. Compile existing geospatial data for the Six Mile Creek subwatershed and build SWAMPS framework.** The SWAMPS framework will be produced through the compilation of existing and obtainable geospatial data. The geospatial data that will drive the analysis will either be readily available from public sources in Minnesota (such as the MNDNR data deli) or will be provided by the MCWD. The MCWD and the Corps will collaborate on development of the SWAMPS framework to ensure outputs track known watershed needs. This will require a meeting between the ERDC-EL support staff and MCWD’s technical consultants early in the process to ensure consistency between SWAMPS methods and emerging best practices at the District, such as the E-Grade Program. The building of the framework will be a collaborative approach to determining inputs to the SWAMPS process based on available data and known local priorities and issues.
- 2. Conduct Stakeholder outreach.** The purpose of the stakeholder input process is to incorporate local knowledge in the SWAMPS analysis and, once the analysis is complete, verify the results based on known impairments and priorities. This process, led by the District in consultation with the USACE, will provide context to elevate outputs from solely determining project areas based on geophysical factors to specific project proposals that reflect local conditions and preliminary feasibility based on public and private interests in the area.
 - a. Determine the Predicted Extent of Aquatic Resources in the Six Mile Creek subwatershed based on Reasonably Foreseeable Future Actions.** Anticipated changes to the landscape impacting ecological integrity in the Six Mile Subwatershed will be forecasted taking into consideration known but not initiated projects, local planning and zoning information, and other anticipated actions that would affect natural resources in the Six Mile Creek subwatershed. Permit data from the Corps Section 404 program and the Minnesota Wetland Conservation Act will also be reviewed to evaluate or identify high impact areas, trends, or other patterns relevant to a cumulative effects analysis (CEA) (See Task 2, Subtask 3). This stakeholder input process will provide a framework to interpret partner interests in the subwatershed. The analysis of the future extent of aquatic resources in the watershed will be completed by the MCWD in coordination with local stakeholders.
- 3. Conduct SWAMPS analysis.** The SWAMPS analysis will be conducted by the Corps with technical support provided by ERDC-EL. The preliminary SWAMPS results will be coordinated with the MCWD and stakeholder committees as outlined in 3c below.
 - a. Establish priorities and develop weighting mechanism for the landscape prioritization tool.** As a component of the District’s subwatershed committee process, the District will

solicit information that will be used to validate the SWAMPS framework and prioritize variables/factors used in the identification of restoration opportunities. The objective is to determine which factors, if any, should be weighted more heavily in considering restoration based on local priorities. The Corps and MCWD will coordinate to determine the best use of the information provided through the stakeholder input process.

- b. **Generate Outputs.** In a collaborative approach, the MCWD and the Corps will review and evaluate the SWAMPS outputs and identify any necessary refinements or modifications to the approach. Anticipated SWAMPS outputs include a watershed sensitivity assessment, identification of wetland restoration opportunities and identification of stream restoration opportunities. The watershed sensitivity assessment will be developed in SWAMPS analysis. In general, this is completed by analyzing the weighted criteria developed from stakeholder engagement in each Six-Mile Creek Watershed catchment. Each catchment is given a score for each criteria. The SWAMPS process then develops a rank of catchments based on sensitivity to water resource impacts. The District can use this information to determine which catchments to target or to avoid for restoration and impacts. The general outputs will include GIS files and static maps, and will be available to the District upon project completion. Each party has the full right to use, format and publicly distribute the data produced under the agreement for any purpose within its authority.
- c. **Preliminary Validation of SWAMPS outputs.** Following the completion of the initial SWAMPS analysis, MCWD will present the results to the stakeholder groups and solicit input to ensure consistency with local priorities. This step will be used to validate the maps and data produced by SWAMPS, ensuring that the project areas identified align with known natural resource priorities. The stakeholder groups will also assist with developing more specific project proposals from the project areas identified through the SWAMPS analysis.
- d. **SWAMPS Report.** Once the joint quality assurance review is completed a report summarizing the methods, data utilized, and results will be prepared by the Corps. The MCWD shall be responsible for coordination of the SWAMPS outputs with the watershed stakeholders.

TASK 2: Development of Programmatic Approach to Protect and Enhance Water Resources

The District has recently experienced substantial success in pursuing a proactive regulatory model which seeks creative solutions to projects with a substantial environmental impact to achieve greater outcomes than through regulatory enforcement alone. In 2008, the US Army Corps and Environmental Protection Agency adopted a new compensatory mitigation rule that requires a watershed approach to planning and design of mitigation projects in order to improve the environmental benefit and viability of mitigation sites. Further, a guidance document issued jointly by the Minnesota Board of Water and Soil Resources (BWSR) and The USACE in December of 2015 outlined guidance on performance standards and credit release schedules for mitigation projects, reflecting an objective of streamlining and adding clarity to compensatory mitigation projects. There is also interest at the state level in examining prior identification of priority replacement areas, a concept that would greatly advance the District's objectives of generating a proactive mitigation model in Six Mile.

The planning process in Six Mile will proactively evaluate potential impacts to natural resources requiring mitigation and prioritize mitigation areas based on biophysical characteristics and projected development trends. The watershed plan may then serve as the basis for a Programmatic General Permit which would reduce duplication in the permitting process and recognize the Six Mile Plan as a guiding document for regulatory compliance. The purpose of Task 2 is to develop the watershed based analysis required for a PGP in the Six Mile Subwatershed.

The subtasks are as follows:

1. **Evaluate MCWD wetland classification criteria for consistency and concurrence.** In 2003, the MCWD completed its Functional Assessment of Wetlands (FAW), which established an inventory of all wetlands in the District greater than .25 acres and developed management classifications for each based on its function and integrity. The District is currently in the process of further refining its grading systems for aquatic resources, including wetlands, by assessing ecosystem health based on a resource's ability to perform ecosystem services through the Ecosystem Evaluation Program (E-grade). The USACE will evaluate these resource classification systems for consistency with federal classifications for wetland permitting and therefore applicability for a PGP. Should there be substantial inconsistencies that render current evaluation methods incompatible with a PGP, the USACE and MCWD will adjust the evaluation method to fit the requirements of a PGP.
2. **Advanced Identification of Aquatic Resources Unsuitable for the Discharge of Dredged or Fill Material (ADID).** The ADID process involves collecting and distributing information on the values and functions of wetlands in the watershed. ADID is an informal tool and the outputs will not represent formal findings that bind later permitting or other USACE/EPA decisions. It serves as a preliminary indication of factors likely to be considered during review of a Section 404 permit application. Pursuit of this step is contingent upon the outcome of subtask 1. The MCWD and Corps shall jointly develop the ADID methodology. The Corps will be responsible for coordinating the draft methodology with the regulatory agencies. The MCWD will be responsible for conducting the ADID analysis and generating the draft and final reports.
3. **Cumulative Impact Analysis.** The outputs from Task 1, Subtask 1a, 1b, and 2a will be jointly evaluated as a Cumulative Impact Assessment. The purpose of this step is to consider the impact of foreseeable future actions resulting from land use change and project the role of a PGP in mitigating these impacts. This step should further evaluate the outputs of step 2a to project future demand for wetland impact mitigation opportunities. The USACE will consult with MCWD on any procedural requirement for validating this process as a PGP.
4. **Review of MCWD PGP Suitability.** Upon completion of subtasks 1-3, a final report will be compiled detailing the methods used and recommended next steps regarding the pursuit of a PGP. The Corps will provide a detailed outline of steps involved should the District choose to pursue a PGP. The report itself will be developed jointly as a means to evaluate the merits of pursuing a PGP, given the results of subtasks 1-3. Should the District decide to pursue a PGP further coordination with the USACE Regulatory Branch will be required following the completion of this analysis.

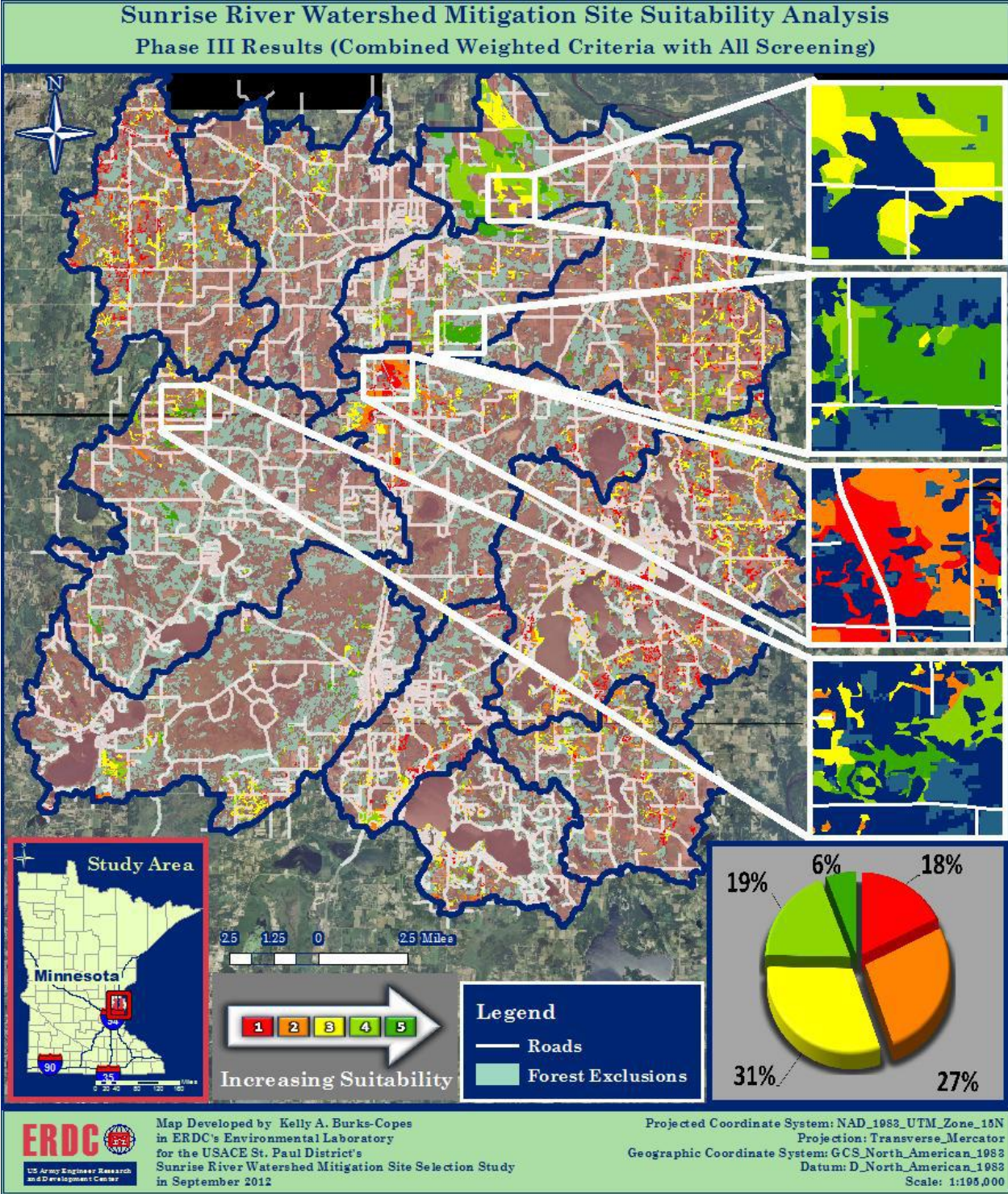


Figure 1: Sample SWAMPS Output

PLANNING ASSISTANCE TO STATES AGREEMENT BETWEEN

THE DEPARTMENT OF THE ARMY AND

THE MINNEHAHA CREEK WATERSHED DISTRICT

FOR THE

SECTION 22 SIX MILE CREEK SUB-WATERSHED MITIGATION PLANNING
ASSESSMENT

THIS AGREEMENT is entered into this _____ day, of _____, 20____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Minnehaha Creek Watershed District (hereinafter the "Sponsor"), represented by the President executing the Agreement.

WITNESSETH, that

WHEREAS, Section 22 of the Water Resources Development Act (WRDA) of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the States, as therein defined, in the preparation of comprehensive plans for the development, utilization and conservation of water and related resources of drainage basins, watersheds or ecosystems located within the boundaries of such State;

WHEREAS, section 319 of the WRDA of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect fees from States and other non-Federal governmental entities for the purpose of recovering 50 percent of the cost of the program established by WRDA of 1974, Section 22;

WHEREAS, the Sponsor has reviewed the State's comprehensive water plans and identified the need for planning assistance as described in the Scope of Work incorporated into this agreement;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to

participate in the study cost-sharing and financing in

accordance with the terms of this Agreement; and

WHEREAS, the Sponsor may provide up to 100 percent of its required contribution of Study Costs by the provision of services, materials, supplies or other in-kind services.

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers **St. Paul District** of initial Federal funds following the execution of this Agreement and ending when the **St. Paul District** provides the planning report to the Sponsor.

D. The term "Scope of Work" (SOW) means a description of the work to be performed. The SOW is not considered binding on either party and is subject to change by the Government in consultation with the Sponsor.

E. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, subject to receiving funds appropriated by the Congress of the United States (Congress), using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Articles III.A., III.B., and III.C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs. If agreeable to all parties, in-kind services may comprise up to 100 percent of the Sponsor's contributions. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the Scope of Work. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of the Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of the Article or the obligations concerning payment specified in Article III of this Agreement.

D. No Federal funds may be used to meet the Sponsor's share of Study Costs under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the Study."

E. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of the Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

F. Notwithstanding any provision of this Agreement, this Agreement and the Government's obligations hereunder shall not be effective and will not commence until Federal funds have been appropriated and allocated to the District Engineer, U.S. Army Corps of Engineers **St. Paul District** for the implementation of this study. In the event that Federal funds are allocated to the District Engineer for this study after the date that the parties hereto execute this Agreement, the effective date of this Agreement shall be the date that funding approval is provided to the District Engineer.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$130,000, and the Sponsor's share of estimated Study Costs is \$65,000. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$0. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the SOW, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. No later than 30 days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its share of Study Costs. No later than 15 days thereafter, the Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, **St. Paul District**" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house financial obligations attributable to the Study as they are incurred.

3. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 60 days after receipt of such notice, the Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

C. Within 90 days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs.

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

To provide for consistent and effective communication, the Government's Project Manager for the Study and the Sponsor's designated representative shall communicate regularly until the end of the Study Period.

ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party

acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of 3 years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon 30 days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon the failure of the parties to extend the study under Article II.D. of the Agreement, or upon failure of the Sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

ARTICLE XI - LIMITATION ON GOVERNMENT EXPENDITURE

In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative

preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$2,000,000 in any one year in any one State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which, subject to the provisions of Article II.G. of this Agreement, shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, **St. Paul** District.

DEPARTMENT OF THE ARMY

MINNEHAHA CREEK WATERSHED
DISTRICT

BY: _____
DANIEL C. KOPROWSKI
Colonel, US Army
District Engineer

BY: _____
Sherry Davis White
President
Minnehaha Creek Watershed
District Board of Managers

Attachments

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **Minnehaha Creek Watershed District** and that the **Minnehaha Creek Watershed District** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and **Minnehaha Creek Watershed District** in connection with the Section 22 **Six Mile Creek Sub-watershed Mitigation Planning Assessment**, and that the person who has executed this Agreement on behalf of the **Minnehaha Creek Watershed District** has acted within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of _____, 2____.

Charles B. Holtman
Legal Counsel, Minnehaha Creek Watershed District

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, _____, do hereby certify that I am the Administrator of the **Minnehaha Creek Watershed District** of the ("Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the **Six Mile Creek Sub-watershed Mitigation Planning Assessment**; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the **Planning Assistance to States Agreement Between the Department of the Army and the Minnehaha Creek Watershed District for the Section 22 Six Mile Creek Sub-watershed Mitigation Planning Assessment.**_

IN WITNESS WHEREOF, I have made and executed this certification this ____ day of _____, 20 .

BY: _____

TYPED NAME: **Lars Erdahl**

TITLE: **Administrator, Minnehaha Creek Watershed District**

DATE: _____

CERTIFICATION OF LEGAL REVIEW

The Cost Sharing Agreement for the **Six Mile Creek Sub-watershed Mitigation Planning Assessment** has been fully reviewed by the Office of Counsel, St. Paul District and the agreement is legally sufficient.

Joseph M. Willging,
District Counsel

Date: _____

Scope of Work Summary

Section 22 of the Water Resources Development Act of 1974, as amended, authorizes the Corps of Engineers to provide assistance to States and Indian tribes in the preparations of plans to manage water and related land resources within their boundaries. The purpose of this Section 22 work is to assist the Minnehaha Creek Watershed District (MCWD) with a planning level information and analyses to support watershed based management of aquatic resources in the Six Mile Creek sub-watershed. The results will provide the MCWD with specific wetland and stream restoration opportunities, advanced identification of sites generally determined to be unsuitable for the discharge of dredged or fill material, and a cumulative impact assessment of aquatic resource impacts. All work is expected to be completed in FY16.

Six Mile Creek Project Tasks		Cost of Task	Sponsor WIK	USACE Funds
Task 1	Identification of Aquatic Ecosystem Restoration and Mitigation Opportunities	\$100,000	\$50,000	\$50,000
Task 2	Programmatic Approach to Protect and Enhance Water Resources in Six Mile Creek Watershed	\$30,000	\$15,000	\$15,000
Cumulative Total		\$130,000	\$65,000	\$65,000

**Reference Document: Scope of Work for Minnehaha Creek Watershed
Six Mile Creek Sub-watershed Mitigation Planning Assessment**

Encl 5

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or

entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sherry Davis White
President
Minnehaha Creek Watershed
District Board of Managers

DATE: _____

Encl 6

**AGREEMENT BETWEEN
MINNEHAHA CREEK WATERSHED DISTRICT and
WENCK ASSOCIATES, INC.**

Six Mile Subwatershed Mitigation Planning Assistance

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 January 15, 2016 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. 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 MCWD will be compensated in accordance with paragraphs 5 and 6. 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 MCWD in any manner. Personnel performing the Services on behalf of CONSULTANT or a subcontractor will not be considered employees of MCWD and will not be entitled to any compensation, rights or benefits of any kind from 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 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 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.

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 MCWD that is the basis for MCWD's liability in law or equity.

5. Compensation

MCWD will compensate CONSULTANT for the Services on an hourly 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 MCWD at the rate specified in MCWD's written approval of the subcontract arrangement.

The total payment for the Services will not exceed \$51,590. 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 June 1, 2017 unless earlier terminated as set forth herein.

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, 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 MCWD a certificate of insurance clearly evidencing the required coverages and naming MCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing coverage for CONSULTANT's work and completed operations as primary coverage on a noncontributory basis. The certificate will name MCWD as a holder and will state that 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 MCWD. CONSULTANT hereby assigns and transfers to 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 MCWD may deem necessary to secure for MCWD or its assignee the rights herein assigned.

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 MCWD as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT only pursuant to written agreement with 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 MCWD immediately and transmit a copy of the request. If the request is addressed to MCWD, CONSULTANT will not provide any information or documents, but will direct the inquiry to 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 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 MCWD and so denominated by 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 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 MCWD or to any use of the materials by 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 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 MCWD and returned to MCWD at the conclusion of the performance of the Services, or sooner if requested by MCWD. CONSULTANT further agrees that any proprietary materials are the exclusive property of 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 MCWD. Any property including but not limited to materials supplied to CONSULTANT by MCWD or deriving from 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 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
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

To CONSULTANT:

Chris Meehan
Wenck Associates, Inc.
1800 Pioneer Creek Ctr.
P.O. Box 249
Maple Plain, MN 55359-0249

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. 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: _____

Approved as to Form and Execution

MCWD Attorney

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its _____

Date: _____

Exhibit A
Scope of Services



Responsive partner.
Exceptional outcomes.

January 15, 2016

Anna Brown

Planner/Project Manager
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345

Dear Ms. Brown:

On behalf of Wenck Associates, Inc., thank you for the opportunity to support the Minnehaha Creek Watershed District (MCWD or the District) and the Army Corps of Engineers (ACOE) in the development of a Six Mile Creek Watershed Mitigation Planning Assessment.

PROJECT UNDERSTANDING

It is our understanding that MCWD is currently working with ACOE to develop a Mitigation Planning Assessment for the Six Mile Creek watershed. The purpose of the assessment is to support the District's planning process by systematically identifying opportunities to protect and enhance natural resources in the watershed. To accomplish the assessment, the District will first convene with local agencies to quantify natural resources in the watershed, identify areas of future growth, and develop opportunities for protection and enhancement based on where these two intersect. Next, the District intends to use this information to align local, state and federal regulation at a watershed level to develop relationships with the land use partners in the watershed resulting in greater resource protection on the watershed scale.

Wenck understands our role is to provide technical resources in the development of the assessment including support for the data collection process, development of a future conditions GIS layer including a list of stakeholder issues and desired outcomes, validate the SWAMPS output with other MCWD goals and tools (MCRAM, E-Grade, Wetland Conservation), and provide comments on the overall programmatic approach for resource management in the Six Mile Creek watershed.

SCOPE OF SERVICES

Following is a scope of services based on our understanding of the project.

Task 1. Support the development of a baseline assessment of wetlands in the Six Mile Creek watershed.

Wenck will provide support for the development of a baseline assessment of wetlands in the Six Mile Creek watershed. The majority of the effort in this task is getting up to speed on the SWAMPS framework, comparing SWAMPS to current District efforts and providing ideas on how to utilize these data sets in the analysis framework. Secondly, this task allow time for packaging data sets to provide to the District and ACOE in an easily useable format.

Wenck sees these tasks as a supporting role for the District. Tasks include:

1. Support data collection including old aerial photos, land surveys, soil mapping, MCRAM, or any other wetland data for the Six Mile Creek watershed.
2. Provide input on the results of aquatic resource mapping developed by the District and other GIS tasks as outlined. For example, Wenck will work with District staff to ensure that the Floristic Quality Assessments are reasonably represented in the assessment.
3. Provide input and support on the development of the SWAMPS framework including local issues, available data, E-Grade outputs, and other pertinent issues.

Deliverable: GIS layers for inclusion in the analysis; other databases as identified in the assessment. A technical memorandum summarizing comments and direction on the aquatic resource mapping. Verbal and written input on the SWAMPS framework as it relates to MCWD programs.

Completion date: April 1, 2016 OR 30 days after execution of USACE PAS Agreement

Task 2. Develop a "Future Conditions" GIS layer to predict the condition and extent of aquatic resources in Six Mile Creek.

The purpose of this task is to reasonably describe the future conditions in Six Mile Creek at some point in the future based on planning documents, District and WCA rules, known development priorities, and other planning documents. Wenck will complete the following subtasks to develop the "Future Conditions" layers.

1. In close consultation with MCWD staff, compile planning layers that project future land use in the watershed. The layer will be updated with known developments or other planning documents identified by the District.
2. Overlay the land use layer with wetlands in the watershed to identify wetlands with the greatest potential for impacts.
3. Develop a set of rules to predict the future conditions of the wetlands based on current permitting guidelines, stakeholder interests, E-Grade outcomes, and other information provided by the District or stakeholders. Wenck will develop a list of stakeholder interests and possible outcomes based on the interests to support the development of the rules.
4. Develop a future conditions map with the rules applied. This may be a series of maps depending on the rules developed since there may be multiple possible outcomes depending on future decisions.

Deliverable: A series of future condition GIS layers and maps and a technical memorandum outlining the methods and results of the analysis.

Completion date: June 1, 2016

Task 3. Provide preliminary validation of the SWAMPS output.

Wenck will provide an initial validation of the SWAMPS output alignment with stakeholder interests as well as District desired outcomes. Wenck will compare the output to E-Grade outputs, MCRAM, and other MCWD developed tools to determine consistency with District and stakeholder objectives.

Deliverable: Technical memorandum summarizing the results of the preliminary validation.

Completion date: September 1, 2016

Task 4. Provide review of the SWAMPS programmatic approach to protect and enhance water resources in the Six Mile Creek watershed.

Wenck will provide a review and comments on the programmatic approach using current District goals and programs as context for desired outcomes. Wenck will provide the following subtasks.

1. Provide comments on the consistency between the SWAMPS output and MCWD watershed goals such as E-Grade.
2. Provide comments on the ADID process and approach developed by the District and the ACOE
3. Provide comments on the Cumulative Impacts Assessment especially as it relates to the "future conditions" layer developed in task 2.

Deliverable: Technical Memorandum providing comments on the proposed programmatic approach developed by the ACOE.

Completion date: August 1, 2016

Task 5. Meetings

Wenck budgeted a total of 6 meetings assuming 2 staff members present at each meeting. Below is a description of the meetings and the associated previously described task.

1. Three meetings with District staff and ACOE staff during the development of the baseline assessment and SWAMPS framework (Task 1).
2. Three meetings to develop the future conditions map including two with stakeholders and one with District staff (Task 2).
3. One meeting with District staff to review results of the validation (Task 3).
- 4.

Deliverable: Preparation and attendance at 7 meetings as directed by the District.

Completion date: February 1, 2017

BUDGET AND TIMELINE

Table 1 below outlines Wenck's proposed costs to complete the scope of services presented in this proposal.

Table 1. Proposed tasks and budgets.

Task	Description	Hours	Labor	Direct ¹	Total
1	Support the development of a baseline assessment of wetlands in the Six Mile Creek watershed	90	\$14,870	\$240	\$15,110
2	Develop a "Future Conditions" GIS layer to predict the condition and extent of aquatic resources in Six Mile Creek.	60	\$9,700	\$480	\$10,180
3	Provide preliminary validation of the SWAMPS output	60	\$9,240	\$180	\$9,420
4	Provide review of the SWAMPS programmatic approach to protect and enhance water resources in the Six Mile Creek watershed.	36	\$6,180	\$0	\$6,180
5	Meetings	60	\$10,350	\$250	\$10,600
				TOTAL	\$51,490

¹Mileage and software charges.

We look forward to working with the Minnehaha Creek Watershed District in 2016. As always, please feel free to contact me with any questions or concerns at 763-252-6829 or jbischoff@wenck.com.

Sincerely,

Wenck Associates, Inc.



Joe Bischoff
Principal Aquatic Ecologist



Chris Meehan
Principal/District Engineer