



**Title:** Authorization to Approve a Contract Amendment for Permitting Program Alignment Engineering and Legal Services

**Resolution Number:** 22-044

**Prepared by:** Name: Kayla Westerlund  
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**Purpose:**

- Authorize contract amendments with Smith Partners and Stantec to support the ongoing permitting alignment and rule revision initiative.
- Amend the 2022 rule revision budget and authorize a fund transfer

**Reviewed by:** Becky Christopher, Policy Planning Manager

**Schedule:**

- Stakeholder engagement is expected to run September 2022-January 2023
- Rule revisions are expected to be completed in Q2 2023

**Budget Considerations:** Fund name and code: Rule Revisions, 2007  
Previously Authorized Contract Amount: \$78,827.10  
Requested amount of funding: \$72,250.50

- Stantec, Inc: \$41,650.50
- Smith Partners, PLLP: \$30,600

**Past Board Action:**

Res 19-081	Title: Authorization to contract with Smith Partners, PLLP and Wenck Associates, Inc. for program alignment and rule revisions support.
Res 21-050	Title: Authorization to Approve a Contract Amendment for Permitting Program Alignment Engineering Services

**Summary:**

Contract Background:

In September 2019, the Board authorized staff to enter contracts with Smith Partners, PLLP and Wenck Associates, Inc. (now Stantec) for support in aligning the Permitting Program, including assistance in developing revisions to MCWD rules. In part this initiative will support the alignment of the Permitting Program with the organization's strategy of partnering with the land-use community to develop projects that benefit the watershed and the broader community.

Pursuant to Board action, contracted support with Stantec and Smith Partners was provided in an amount of \$78,506 to review existing regulations, explore necessary alignment with the state's new municipal separate storm sewer system (MS4) permit, develop policy direction for the rule revisions with the Citizen Advisory Committee and the Board of Managers, draft revised regulations, support engagement of the District's technical advisory committee (TAC), develop a state of need and reasonableness (SONAR), and support the District through the statutorily required public comment period and adopt.

### Work To Date and Budget Expenditures:

Since the contract's adoption in 2019, staff have been working with Smith Partners and Stantec to advance and complete the work outlined in the contract. Following a transition in permitting leadership in August 2021, and subsequent transitions in permitting staff, emphasis has placed on baselining project status and generating project clarity with Smith Partners, Stantec, the Citizen Advisory Committee, and the Board of Managers. This involved synthesizing work to date and drafting clear policy directives for each rule for Board concurrence. This work was supported in part by technical analyses including, review of the shoreline rule erosion intensity calculation, evaluating the wetland protection rule's alignment with prospective state standards, single family home erosion control general permitting options, and updating MCWD's surety schedule based on market comparable construction cost data.

To date, the following work has been completed:

- Rules drafted and ready for TAC review include:
  - Erosion Control, Dredging, Illicit Discharge, Appropriations, and Floodplain
- Rules drafted in process of being finalized for TAC review include:
  - Shoreline Stabilization, Wetland Protection, Stormwater, and Waterbody Crossing
- Compliance Framework components in process of being finalized include:
  - Financial Assurance Policy, Inspection & Site Prioritization Policy, Enforcement Procedure Policy

Due to time spent early in the process synthesizing information, conducting technical analyses and setting direction, coupled with the transition in permitting staff and project management, the budget of \$78,506 has been fully utilized. Thereby requiring a contract amendment to complete the work.

### Work to Complete and Budget Needs:

To complete the rule revision process, the following work remains:

- Complete drafts of the following rules: Procedural, Variance, Definitions, Financial Assurance
- Process TAC comments and make associated revisions
- Finalize guidance documents to complement rule text
- Draft a statement of need and reasonableness (SONAR) and publish rules for public comment
- Update standard operating procedural documents including forms, checklists, reports, and orders
- Develop a framework for coordinating regulatory partnership across MCWD's mosaic of municipalities

Staff has worked closely with Smith Partners and Stantec to evaluate the original scope of work, spending to date, explore potential adjustments to process going forward, and estimate the scope of work and budget necessary to complete this initiative. Based on the attached letters of proposal (Attachment 1 and 2), consulting support is estimated to require a contract amendment in the amount of \$72,250.50:

- Stantec - \$41,650.50
- Smith Partners - \$30,600

This contract amount will require an amendment to the Rule Revision budget (Fund 2007), and a transfer in of \$75,506.40.

### Timeline:

Staff is on schedule to engage the TAC on rule revisions between September 2022-January 2023, with completion of the rule revision process by the end of Q2 2023.

### Recommendation:

Based on the remaining work needed to complete the rule revision process with the Technical Advisory Committee, and the associated public comment and rule adoption process, staff recommends that the Board of Managers:

1. Authorize a contract amendment in the total amount of \$72,250.50
  - a. Stantec - \$41,650.50
  - b. Smith Partners - \$30,600
2. Amend the Rule Revision (Fund 2007) budget, \$72,250.50
3. Authorize a transfer from Operations (1002) to Rule Revision (2007) in an amount of \$72,250.50

**Supporting documents:**

1. Letter of Proposal: Stantec Engineering Services
2. Letter of Proposal: Smith Partners Legal Services



**RESOLUTION**

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**Resolution number:** 22-044

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WHEREAS, between 2019 and 2021, the Board authorized staff to enter contracts with Smith Partners, PLLP and Wenck Associates, Inc. (now Stantec) for support in aligning the Permitting Program and the associated rule revision process in an amount of \$78,827.10; and

WHEREAS in August 2021, a transition in permitting leadership and project management required the re-baselining of the project to generate clarity and policy direction with the Citizen Advisory Committee and Board of Managers; and

WHEREAS that work, and other work to date under this contract, including the completion of key technical analyses and advanced the drafting of streamlined rules to support the engagement of MCWD's technical advisory committee, has expended the initial budget; and

WHEREAS staff has worked closely with Smith Partners and Stantec to evaluate the original scope of work, spending to date, explore potential adjustments to process going forward, and estimate the scope of work and budget necessary to complete this initiative (Attachment 1 and Attachment 2).

WHEREAS the total estimated cost for Engineering and Legal services is \$72,250.50; and

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the permitting alignment contract amendment request in an amount not to exceed \$72,250.50.

NOW THEREFORE, BE IT FURTHER RESOLVED that he Minnehaha Creek Watershed District Board of Managers hereby amends the Rule Revision Budget (2007) by \$72,250.50 and authorizes the transfer of funds in the same amount from Operations (1002).

Resolution Number 22- 044 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 8/11/2022

\_\_\_\_\_  
 Secretary Date: \_\_\_\_\_



**Stantec Consulting Services Inc.**

7500 Olson Memorial Highway  
Suite 300  
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August 8, 2022

Project/File: 227701344

**Kayla Westerlund**  
15320 Minnetonka Blvd  
Minnetonka, MN 55345

**Reference: Program Alignment and Rules Revision Budget Amendment**

## **Background**

As the Minnehaha Creek Watershed District (MCWD) works to streamline regulatory rules, District staff request technical support to evaluate and propose potential changes to the District rules, an effort which District Staff estimate is approximately 60% complete to-date. We understand that the primary goals of the rule revision process, as the policy directives relate to this scope of work, are to streamline the rules while maintaining (not increasing or decreasing) existing resource protections to the maximum extent feasible, to align MCWD rules with other local and state agencies, to create clarity and streamline the experience for permit applicants, and to improve efficiency and align staff time with natural resource risk/opportunity. Stantec Consulting, Inc. (Stantec) is pleased to submit a scope of work and schedule for continued support through the rule revision process.

We recognize that the rules revision process is an iterative process between MCWD staff, legal, and engineering, and that our scope is reactive to issues raised by MCWD staff, legal, the Technical Advisory Committee (TAC), Board of Managers, and public commenters. The following scope and budget estimate represents our best estimate for the level of effort that remains, to progress the rules revision process from this point to the adoption of revised rules, based on our experience to-date and conversations with MCWD staff and legal regarding remaining needs.

## **Task 1 - Technical Support to Progress to Technical Advisory Committee (TAC) Review:**

Technical support will be provided for four rules, to aid District Staff in drafting revised rules for consideration by the TAC. The rules that need further technical support are the Shoreline and Streambank Stabilization Rule, the Wetland Protection Rule, the Stormwater Management Rule, and the Waterbody Crossings and Structures Rule. The scope of services for this task that will be performed by Stantec, as requested by District staff, is outlined in the table below.

Reference: Program Alignment and Rules Revision Budget Amendment

	Review draft and scoping	Small group meetings	Input on comments from small group	Meetings with Engineering & Legal	Emails to address outstanding technical questions
Shoreline & Streambank Stabilization	-	Qty: 1	Yes	Qty: 1	Qty: 2
Wetland Protection	-	Qty: 1	Yes	Qty: 0	Qty: 1
Stormwater Management	Yes	Qty: 2	Yes	Qty: 2	Qty: 3
Waterbody Crossings and Structures	Yes	Qty: 1	Yes	Qty: 1	Qty: 3

**Outcomes:**

- Technical responses and recommendations to support drafting of the rule.

**Assumptions:**

- Meetings will be one hour long, and, as feasible, questions or discussion topics will be provided in advance of meetings. Verbal responses provided during meetings will be documented by District staff.
- Questions posed via email will be responded to in digital format (either email or comment tracking spreadsheet).
- We assume that the previously communicated District goal of streamlining the rules, while maintaining (not significantly increasing or decreasing) existing resource protections, will carry through this effort, and the scope of the rules will not be changed significantly.

**Deliverables and meetings:**

- Attendance at MCWD internal small group meetings (in person or virtual), per the quantity of small group meetings anticipated in Table 1 above.
- Attendance at meetings with Legal (in person or virtual), per the quantity of small group meetings anticipated in Table 1 above.
- Responses to technical questions posed via email in digital format (email or comment tracking spreadsheet), per the quantity of emails anticipated in Table 1 above.
- Responses to technical questions posed by the TAC in digital format (email or comment tracking spreadsheet).

Reference: Program Alignment and Rules Revision Budget Amendment

### **Task 1.1 - Technical Support to Progress to Technical Advisory Committee (TAC) Review (Completed Activities):**

Stantec has been providing technical support for rule revisions, in alignment with the drafting process outlined by MCWD staff. A budget amendment is requested to cover completed activities through July 8, 2022 to support drafting of the Erosion Control Rule, Floodplain Alteration Rule, Financial Assurance Rule, Shoreline & Streambank Stabilization Rule, and Illicit Discharge Rule. Technical support on these items has been in the form of meeting attendance, emails with engineering, and reviewing rule drafts.

### **Task 2 – Technical Support for Questions from the TAC & Public**

An important step in the Rules Revision process is obtaining and responding to input from the District's Technical Advisory Committee (TAC) and public input process. We are prepared to assist with technical responses to items raised by the TAC & public, and to provide technical support as requested by District staff to aid in any necessary revisions based on TAC & public comments. For scoping purposes, we have assumed that there will be a need for technical responses to TAC & public comments for ten (10) District rules (Floodplain Alteration, Dredging, Erosion Control, Variance, Appropriations, Illicit Discharge, Shoreline & Streambank Stabilization, Wetland Protection, Stormwater Management, and Waterbody Crossings & Structures).

#### **Outcomes:**

- Technical responses and recommendations to respond to and address comments by the TAC & public.

#### **Assumptions:**

- No further drafting or technical support, outside of what is identified in Task 1 of this scope, is required prior to the TAC meeting or public comment period.
- Stantec's attendance at TAC meetings is not included in this scope of work.
- Comments posed by the TAC & public will be screened by District staff, prior to transmittal to Stantec. Responses to comments will be clarifying in nature, and will not require re-drafting of rules, technical analysis, or consideration of any changes to policy.
- Comments will be responded to via email or other digital format such as a comment tracking spreadsheet.
- Meetings will be one hour long, and, as feasible, questions or discussion topics will be provided in advance of meetings. Verbal responses provided during meetings will be documented by District staff. For budgeting purposes, it has been assumed that one half-hour of time will be spent in meetings per rule.

#### **Deliverables and meetings:**

- Stantec attendance at up to five (5) meetings with District staff to review, discuss, and interpret TAC & public comments.
- Responses to technical questions posed by the TAC in digital format (email or comment tracking spreadsheet).

Reference: Program Alignment and Rules Revision Budget Amendment

### **Task 3 – Statement of Need and Reasonableness (SONAR)**

The Rules Revision process will require development of a Statement of Need and Reasonableness (SONAR), which would typically be drafted by Legal, in partnership with District staff. We are prepared to provide technical insight to support the drafting of the SONAR.

#### **Outcomes:**

- Technically sound SONAR.

#### **Assumptions:**

- District staff and Legal will be responsible for drafting the SONAR. Stantec will provide technical support.
- Meetings will be one hour long, and, as feasible, questions or discussion topics will be provided in advance of meetings. Verbal responses provided during meetings will be documented by District staff.

#### **Deliverables and meetings:**

- Stantec attendance at up to two (2) meetings with District staff and Legal.
- Responses to technical questions posed by the District Staff and Legal in digital format (email or comment tracking spreadsheet).

### **Task 4– Guidance Documents**

Through the Rules Revision process, District Staff, in partnership with Stantec, have identified several opportunities to add clarity and technical guidance to support and streamline the process for permit applicants as they work to develop application materials. While the regulatory rules themselves aren't necessarily the best place to include this type of guidance, Staff have proposed to develop guidance documents to supplement the rules. The vision is that these documents would accompany each rule, and would be a 1-2 page quick reference guide with technical references and tips for putting together a thorough and complete permit application.

#### **Outcomes:**

- One technically sound guidance document for each of the following rules: Floodplain Alteration, Dredging, Erosion Control, Shoreline & Streambank Stabilization, Wetland Protection, Stormwater Management, Waterbody Crossings & Structures, and Variances & Exceptions.

#### **Assumptions:**

- District staff will prepare draft guidance documents including an outline of what each document is to include and draft content. Stantec will provide technical references, brief technical guidance, and



Reference: Program Alignment and Rules Revision Budget Amendment

recommendations to ensure technically sound guidance. Technical analysis will not be provided under this scope.

- Each document will be 1-2 pages.
- There will be up to 2 iterations of technical responses / support provided for each document.
- Meetings will be one hour long, and, as feasible, questions or discussion topics will be provided in advance of meetings. Verbal responses provided during meetings will be documented by District staff.
- District staff will be responsible for verbiage tone and formatting of guidance documents.

**Deliverables and meetings:**

- Up to two (2) iterations of technical markup / responses to guidance documents drafted by District staff.
- Up to one (1) meeting per guidance document, for a total of 8 meetings.
- Questions will be responded to via email or other digital format such as a comment tracking spreadsheet.

**Fee Estimate**

Scope of Work	Hours Estimate	Fee Estimate
Task 1 – Technical Support to Progress to Technical Advisory Committee (TAC) Review	82.5	\$13,200
Task 1.1 – Technical Support to Progress to TAC Review (completed activities through July 8, 2022)	27.75	\$2,750.50 <small>(\$2,649.25 has been paid; 7/8/22 invoice for \$101.25 has not been paid)</small>
Task 2 – Technical Support for Questions from the TAC	83.5	\$13,500
Task 3 - Statement of Need and Reasonableness (SONAR)	12	\$1,900
Task 4 – Guidance Documents	62	\$10,300
<b>Total</b>	267.75	\$41,650.50

Reference: Program Alignment and Rules Revision Budget Amendment

The total cost above includes all reimbursable expenses including mileage, printing, and equipment costs.

## Schedule

We are prepared to continuously support the District's rules revision timeline, as needed.

Sincerely,

**STANTEC CONSULTING SERVICES INC.**



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## MEMORANDUM

**TO:** Kayla Westerlund  
**FROM:** Chuck Holtman  
**RE:** Rulemaking Project  
**DATE:** July 17, 2022

You've asked that we provide you a proposal for assistance to be rendered to the District's rulemaking project from this point to the conclusion. I've noted the difficulty in specifying fixed hours, as nearly all of our work is reactive to a rulemaking scope determined by staff, and to issues raised by the Technical Advisory Committee, the Board of Managers and public commenters. You've advised that it is agreeable, and suitable for budgeting purposes, to present to you our expected hourly requirements as a range.

The following are our best estimates for each of the listed tasks. The total estimate is 72-118 hours. Our 2022 rate is \$259/hour, and our proposed 2023 rate is \$269/hour.

1. Completing rule drafts for TAC review (finalize shoreline stabilization, wetland protection; draft stormwater management, waterbody crossings, variance, financial assurance, procedural, definitions).

30-42 hours

2. Preparing companion rule documents to present rule changes (redlines, side-by-sides, etc.).

10-16 hours

3. Revisions to proposed rules based on TAC, board of managers review.

8-16 hours

4. Preparing Statement of Need and Reasonableness (SONAR).

14-20 hours

5. Assisting in preparing responses to public comment and in general process matters.

4-6 hours

6. Completing inspection, enforcement, and financial assurance policies; assisting staff in preparing rule administration materials (policies, protocols, checklists, templates).

6-18 hours

Please let me know if you would like any further information or wish to discuss.