



Title:	Minnehaha Preserve Boardwalk
Resolution number:	20-040: Authorization to Retain Contractor for Partial Decking and Rail Replacement 20-041: Authorization for Limited Engagement of Construction Litigation Counsel
Prepared by:	Name: Michael Hayman Phone: (952) 641-8226 mhayman@minnehahacreek.org
Reviewed by:	Name/Title: Chuck Holtman, District Counsel
Recommended action:	1) Authorize a boardwalk repair contract with Blackstone Contractors for selective replacement of decking and railing materials, ensuring the District maintains the boardwalk structure in accordance with its inspection and repair policy; 2) Retain construction litigation counsel to assist in evaluating the District's legal claims for the cost of replacing boardwalk materials.
Schedule:	May 2020: Repair Minnehaha Preserve boardwalk May-June, 2020: Complete review of boardwalk material replacement options; review viability and cost of asserting legal claims for costs June 2020: Present staff recommendation to Board
Budget considerations:	Fund name and code: Project Maintenance and Land Management, 2003 Fund budget: \$854,762 Expenditures to date: \$23,231 Requested amount of funding: Not-to-exceed \$25,000 repairs (Blackstone) Not-to-exceed \$7,500 for litigation counsel
Past Board action:	Res # 13-074 Authorization to enter into project with St. Louis Park Res # 17-028 Approval of Minnehaha Preserve Operations and Maintenance Plan Res # 19-094 Adoption of an Interim Maintenance Protocol for the Minnehaha Preserve Boardwalk

Summary:

The Minnehaha Creek Preserve Boardwalk was constructed in 2014 as part of the Minnehaha Preserve (Reach 20 Stream Restoration) capital project. In April of 2017, the Minnehaha Preserve Operations and Maintenance Plan (Plan) was approved by the Board to fulfill conditions of the Second Cooperative Agreement between Minnehaha Creek Watershed District (District) and the City of St. Louis Park. The Plan outlines specific roles and responsibilities for the periodic and long-term maintenance of project elements associated with the project. Maintenance of the boardwalk is solely the responsibility of the District, as owner.

As outlined in the Plan, Project Maintenance and Land Management (PMLM) staff inspect the boardwalk bi-annually in the spring and fall, and after storm events. The Plan also dictates that boardwalk surfaces are to be replaced as necessary. Regular safety inspections, associated documentation, and maintenance on an as needed basis is conducted to reduce the risk of hazards and prevent future liability claims.

In approximately June 2018, routine staff inspections revealed the need to replace selected boardwalk decking boards and subsequently, throughout the summer, approximately 240 boards were replaced with the excess material that the District had stored since construction of the system. This excess material was available after the District cancelled the construction of one overlook during the installation of the system in 2014, but after materials were purchased. In anticipation of constructing the Minnehaha Preserve Enhancement trail connection, and knowing that future maintenance would be necessary, the District worked with Blackstone Contractors to safely store the material at their shop in Corcoran. Throughout the duration of storage, the materials remained elevated from ground contact and covered with a tarp to protect from weather. The replacement of decking in 2018, and the installation of the Minnehaha Preserve Enhancement Project, exhausted the replacement materials being stored.

In 2019, staff and partner inspections revealed additional boardwalk surfaces failing, at a higher rate than anticipated, suggesting a materials issue. Due to the observed deterioration in materials, staff began inspecting the boardwalk twice per month to ensure appropriate attention was being paid to user experience while recording the apparent expedited rate of material deterioration. Staff directed immediate replacement maintenance on four occasions in 2019 to ensure user safety was upheld. In total, 167 deck boards and three handrail boards were replaced in 2019 to address materials that were clearly failing (rot, holes, splintering).

As material failures continued throughout the 2019 season staff began marking boards with bright colored spray paint to alert users to potential hazards prior to repairs being completed. It was observed and recorded that an additional 400 boards would likely require replacement due to degradation, but said boards did not pose an immediate risk to users and the repairs were delayed once frozen conditions set in.

On November 7, 2019 the Board of Managers adopted an interim maintenance protocol to address ongoing concerns regarding material issues at the Minnehaha Preserve. The interim protocol calls for bi-weekly inspections of the surface structures, marking of failed boards with fluorescent orange spray paint, and replacement of decking and handrail with holes within an approximate two week period of observed failure. The interim maintenance protocol also establishes a record of the District's efforts to determine and implement a long term resolution of the Minnehaha Preserve boardwalk materials failure, while balancing the nature and extent of the materials failure, public use of the boardwalk, and public safety risk along with the options to manage the issue until resolved.

Resolution 20-040 – Authorization to Retain Contractor for Partial Decking and Rail Replacement

In accordance with the District's adopted maintenance protocol, staff continued inspections throughout winter 2019-2020, and with the spring thaw upon us, have now been able to document and count the number of boards requiring replacement. Consistent with observations in late 2019, over 400 boards are demonstrating softness (internal rot), which has been a leading indicator of holes and splinters in the coming weeks and months. To ensure the District is maintaining the boardwalk in a useable, enjoyable and also safe condition, staff is recommending replacement of these boards.

The boardwalk is constructed of grade 1 southern yellow pine, above ground contact (UC3B), treated with micronized copper azole (MCA). In 2017, the American Wood Protection Association revised its standard to specify lumber treated to "ground contact" thresholds (higher retention levels of MCA) for boardwalk systems constructed in wetland environments - specifically, to upgrade from UC3B to UC4A. The District will upgrade to standard UC4A for replacement decking. We will collect detailed data for all replaced material (photos, type, size and segment location) and, in accordance with direction of litigation counsel, materials will be retained for additional investigation and testing, and availability to other parties, in the event that a claim is filed (see resolution 20-041).

In addition, staff continues to work with the District engineer to develop options for repairs and replacement of the boardwalk system. This information will be provided to the Board of Managers to assist in its deliberations regarding future repairs and potential litigation, but the present repairs are recommended to be completed pursuant to the District's protocol, and pursuant to staff evaluation with input from the District engineer and general counsel. It is the opinion of staff that the benefit of proceeding with the work now – ensuring the District adheres to its protocol and maintaining a safe system which continues to provide public amenity – outweighs what staff considers to be a limited likelihood that the incurred cost will be judged to have been unnecessary.

Staff recommends Blackstone Contractors (Blackstone) for completion of the repairs. As the original construction contractor, and the subcontractor for installation of boardwalk elements for the Minnehaha Preserve Enhancement Project and Arden Park, Blackstone has demonstrated an ability to build the designed system used in these settings. Further, Blackstone completed repairs for the District in 2018 and 2019, and was able to do so while safely keeping the boardwalk open to users, and integrating the repairs seamlessly into the original design. Blackstone has provided a quote to the District for the replacement of 475 boards to the 2017 AWP standard (grade 1 SYP UC4A) for a not to exceed amount of \$25,000 (\$23,868 + approx. 5% contingency). We do not presently have evidence to indicate that the materials condition of the boardwalk is due in any respect to an inadequacy in Blackstone's work.

At the April 23, 2020 Board meeting, staff will provide the Board with a maintenance and repair presentation, and will provide a brief update on the status of the evaluation of long term replacement options. This information should provide useful context for the subsequent discussion concerning potential litigation or other claim resolution routes.

Resolution 20-041: Authorization for Limited Engagement of Construction Litigation Counsel

Smith Partners, as the District's general counsel, is separately transmitting to you a memorandum outlining the purpose of engaging construction litigation counsel and recommending a limited engagement of counsel at this time. Staff concurs in this recommendation. The proposed resolution would authorize the Administrator to retain counsel at an hourly rate, in a total amount not to exceed \$7,500.



RESOLUTION

Resolution number: 20-040

Title: Authorization to Retain Contractor for Partial Decking and Rail Replacement

- WHEREAS the Minnehaha Creek Watershed District (MCWD) engages in regional capital improvement projects as described in its Water Resources Management Plan and in 2013-2014 constructed the Minnehaha Preserve project ("Project") on the Minnehaha Greenway in St. Louis Park;
- WHEREAS these facilities require routine inspection and regular maintenance to continue functioning as designed and to limit loss of public use and prevent safety hazard in areas with public access;
- WHEREAS MCWD entered into a cooperative agreement with the City of St. Louis Park to maintain the Project, and the 2017 Operations and Maintenance Plan assigns specific maintenance responsibility and frequency of inspection and maintenance to each entity;
- WHEREAS the Project Maintenance and Land Management (PMLM) Program annually budgets for, inspects, and maintains District projects, infrastructure, and lands;
- WHEREAS through the PMLM Manual, regular maintenance is guided by inspection of specific project elements and annualized costs associated with this maintenance is budgeted through the annual PMLM budget process;
- WHEREAS beginning in approximately June 2018, routine staff inspections revealed the need to replace selected boardwalk decking at the Project and subsequently, throughout the summer, approximately 240 decking and rail boards were replaced;
- WHEREAS in 2019, staff and partner inspections revealed additional boardwalk surfaces failing, at a higher rate than anticipated, resulting in staff initiating inspections of the boardwalk at a greater frequency to ensure appropriate attention was being paid to user experience and safety, while recording the apparent expedited rate of material deterioration;
- WHEREAS on four occasions in 2019, a total of 167 deck boards and three handrail boards were replaced at the Project to address materials that were clearly failing (rot, holes, splintering);
- WHEREAS on November 7, 2019 the Board of Managers adopted an interim maintenance protocol to address ongoing concerns regarding material issues at the Minnehaha Preserve, which calls for bi-weekly inspections of the surface structures, marking of failed boards with fluorescent orange spray paint, and replacement of decking and handrail with holes within an approximate two week period of observed failure;
- WHEREAS the interim maintenance protocol also establishes a record of the District's efforts to determine and implement a long term resolution of the Minnehaha Preserve boardwalk materials failure, while balancing the nature and extent of the materials failure, public use of the boardwalk, and public safety risk along with the options to manage the issue until resolved;

WHEREAS during early 2020 inspections, staff has identified over 400 boards demonstrating softness (internal rot), which has been a leading indicator of holes and splinters in the coming weeks and months and, to ensure the District is maintaining the boardwalk in accordance with its interim protocol, is recommending replacement of all apparently degraded materials to the 2017 AWPA lumber standard of grade 1 southern yellow pine with UC4A treatment (ground contact);

WHEREAS staff is recommending Blackstone Contractors for completion of the repairs, in an amount not-to-exceed \$25,000, due to its experience constructing several boardwalk systems for MCWD and its experience in completing repairs at the Project in 2018 and 2019;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator, on advice of District Counsel, to enter into a contract with Blackstone Contractors for the repair of approximately 475 decking and railing elements for an amount not to exceed \$25,000.

Resolution Number 20-040 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 4/23/2020

Secretary Date: April 23, 2020



RESOLUTION

Resolution number: 20-041

Title: Authorization for Limited Engagement of Construction Litigation Counsel

WHEREAS the Minnehaha Creek Watershed District (MCWD) engages in regional capital improvement projects as described in its Water Resources Management Plan and in 2013-2014 constructed the Minnehaha Preserve project ("Project") on the Minnehaha Greenway in St. Louis Park;

WHEREAS the MCWD's recent inspection and maintenance experience indicates that certain wood materials used to construct the boardwalk may have been inadequate in specification, treatment or handling, and that the MCWD may incur a substantial cost to repair or replace such materials;

WHEREAS to ensure the Project retains its full integrity and availability as a public amenity, and to properly manage public funds allocated to Project maintenance, it is important that the MCWD, without delay, determine its approach to the replacement of inadequate materials and consider whether firms involved in Project design, material supply or construction may be responsible for replacement costs;

WHEREAS the MCWD Board of Managers finds that the MCWD will benefit from engagement of construction litigation counsel to assist it in determining its course of action, and in taking the necessary steps to keep MCWD legal claims from becoming barred by the passage of time;

WHEREAS the MCWD Administrator and Counsel recommend retention of Thomas Radio, of the Felhaber Larson firm, for his knowledge and experience in construction litigation, and the Board concurs in this recommendation and finds that Mr. Radio's fee is competitive;

THEREFORE BE IT RESOLVED that the Administrator, on advice of MCWD Counsel, is authorized to retain Thomas Radio of Felhaber Larson for an hourly fee not to exceed \$320, and total fees and expenses not to exceed \$7,500.

Resolution Number 20-041 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 4/23/2020

 Secretary Date: April 23, 2020