

MEETING DATE: August 24, 2017

TITLE: Authorization to Execute Contract for Laketown 9th Wetland Restoration Management

RESOLUTION NUMBER: 17-054

PREPARED BY: Anna Brown

E-MAIL: abrown@minnehahacreek.org

TELEPHONE: 952-641-4522

REVIEWED BY: Administrator Counsel Program Mgr. (Name): _____
 Board Committee Engineer Other - Laura Domyancich

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 type="checkbox"/> Other (specify): _____	

PURPOSE or ACTION REQUESTED:

Contract with Stantec for management of the Laketown 9th wetland restoration through the end of 2017

PROJECT/PROGRAM LOCATION:

City of Victoria, Carver County

PROJECT TIMELINE:

Contract provides for management through 2017.

PROJECT/PROGRAM COST:

Fund name and number:	Project Maintenance and Land Management 200-2003-4320
Current Budget:	\$683,310
Expenditures to date:	\$98,686
Requested amount of funding:	\$13,500

PAST BOARD ACTION:

August 27, 2015	Approval of permit 15-266 for Laketown 9 th Development in Victoria
May 26, 2016	Agreement with US Homes for project specific wetland mitigation
July 14, 2016	District acquisition of easement for Laketown 9 th wetland restoration

SUMMARY:

The 2007 Comprehensive Plan identified the wetland complexes along Six Mile Creek between Marsh and Wassermann lakes as opportunities for restoration to reduce phosphorus pollution. Wassermann Lake, which receives inflow from Marsh Lake, is on the State List of Impaired Waters due to excessive nutrients. Two capital improvement projects were identified in the Marsh-Wassermann corridor in the 2007 plan which were not advanced beyond feasibility.

In the spring of 2015 Lennar submitted a permit application to the District to complete a 99 unit residential development on 164 acres in the City of Victoria. The development as proposed includes the improvement of an old farm road on the southern end of the property which fulfills the Victoria's connectivity plans. The road as proposed would impact .87 acres of wetland and would therefore trigger replacement requirements under the Wetland Conservation Act (WCA). Lennar initially proposed fulfilling its regulatory obligation through the purchase of bank credits. Given that the District does not have any wetland banks within its boundaries, the proposal would have resulted in a net loss of wetland acreage in the District.

Working in coordination with Victoria City staff and Lennar, the District identified an opportunity to restore 12 acres of wetland on an adjacent 59-acre parcel and an additional 5 acres of upland buffer as a project specific mitigation. The partnership will result in 6-8 acres of restored wetland beyond what is necessary to meet Lennar's regulatory requirements. The approach has been met with substantial support from other regulatory agencies, receiving letters of support from the Department of Natural Resources, the US Army Corps of Engineers, the Carver County Soil and Water Conservation District, the MN Board of Water and Soil Resources, and the City of Victoria.

On May 26, 2016, The District Board of Managers approved an agreement with Lennar to partner on the restoration. Under the agreement framework, the District is responsible for acquiring property rights necessary to complete the restoration and for performing maintenance and monitoring requirements under WCA through the five year establishment period. Lennar is responsible for completing the replacement plan application, including the outlet and restoration design, and for construction. The District acquired easement rights on July 14, 2016, and the replacement plan was approved by the Board of Water and Soil Resources on September 1, 2016.

Lennar contracted with Stantec to perform wetland establishment work including invasive species management, seeding, and buffer establishment. All establishment work will be completed in the 2017 calendar year. While some installation work will be underway through the spring, interim management is needed to bridge the period between Lennar's establishment obligations at the District's 3-5 year management contract.

District staff recommend contracting with Stantec through the end of 2017 to perform this interim management work based on their past performance and familiarity with this site. Upon completion of this one-year contract, a 3-5 year management contract will be executed following standard District practice.

RESOLUTION

RESOLUTION NUMBER: 17-054

TITLE: Authorization to Execute Contract for Laketown 9th Wetland Restoration Management

WHEREAS, Lennar Corporation submitted an application under permit 15-266 for Wetland Conservation Act sequencing for a 99 unit residential development in the City of Victoria in Carver County that would impact 0.87 acres (37,840 square feet) of one wetland in one location for the improvement of an existing farm road; and

WHEREAS, through advanced coordination between Lennar, the City of Victoria, and the District an alternative, preferred strategy to bank credit purchase was identified to meet USACE, MN DNR, WCA and MCWD wetland replacement requirements through a partnership with MCWD to restore degraded wetlands adjacent to the development, portions of which are on a property owned by a third party (the Property); and

WHEREAS, on May 26, 2016, the Board authorized District staff to execute an agreement with Lennar Corporation to complete the wetland restoration as a project specific mitigation and the agreement has been duly executed by the parties; and

WHEREAS, the agreement assigned the follow responsibilities to each party;

- Lennar designs and constructs the restoration project;
- MCWD acquires the land-use rights necessary to complete the restoration project and performs the necessary maintenance, monitoring and reporting for the restoration project;

and

WHEREAS, on September 1, 2016, the District issued a Notice of Decisions approving a project-specific mitigation under the Wetland Conservation Act that would restore 12 acres of wetland on the property, establish upland buffers, and construct an outlet control structure for hydrologic maintenance of the wetland;

WHEREAS, Lennar has contracted with Stantec to perform wetland establishment work as outlined in the wetland restoration plan; and

WHEREAS, Stantec is uniquely qualified to perform interim management activities through 2017 required for successful wetland establishment because of their experience with and proven success restoring the site;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to enter into a contract with Stantec for the amount of \$13,500 for maintenance of the Laketown 9th Wetland Restoration, with any further revisions as the Administrator finds appropriate, on advice of counsel, regarding document management and contract remedies.

Resolution Number 17- was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____



Stantec Consulting Services Inc.
2335 Highway 36 West, St. Paul MN 55113-3819

August 21, 2017

Attention: Anna Brown, Planner-Project Manager

Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345

Dear Anna,

Reference: Laketown Wetland Mitigation 2017 Vegetation Management

Thank you for the opportunity to provide a proposal for vegetation management through the end of 2017 at the Laketown Wetland Mitigation Site in Victoria, Minnesota. Please find below a summary of the recent on-site field meeting you had with Tony Rieger-Borer of Stantec, followed by our proposal.

General conditions.

Six Mile Creek had virtually no water flow in creek bed at the time of the field meeting. Areas that were under water when Stantec originally seeded, have virtually no standing water present, a condition suitable for seeding. Most areas are dominated by rice cut grass (*Leersia oryzoides*) and jewelweed (*Impatiens capensis*). Crop fields (**H**) plantings had been negatively impacted by late herbicide treatments to agricultural crops. MCWD/Anna will be discussing timing and type of herbicide with farmer to answer questions about whether sites need reseeding. MCWD will also discuss with farmer his ability and willingness to chop current crop for silage. Removing corn plants from the field with a chop-and-capture process is a better option than flail mowing, which could leave residue that would suppress the new planting.

Credit Zones A, E – were previously seeded. Native plant growth is good and weed pressure minimal. Both zones will need some management to stay on top of reed canary grass and broadleaf weeds. Both zones are dominated with rice cut grass and oats (cover crop from native seeding).

Credit Zone H – was previously seeded into newly planted crops. It appears glyphosate was sprayed over ag crops since last visit and may have had a negative impact on new prairie seeding. It was determined that a mowing would be helpful to delineate the restoration area in this zone.

Credit zones C and D – are doing much better than originally observed. During the previous visit, rice cut grass was mistaken as young reed canary grass. At the most recent visit, reed canary grass was observed to be minimal and in sporadically distributed clumps. It was decided by all that it was a good time to broadcast remaining seed and to spot treat reed canary grass clumps as well as any other unwanted perennial weed species. Stantec will perform these tasks after authorization from MCWD to proceed.

Design with community in mind



August 21, 2017
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Credit Zone B (Cattails) – was dry enough to broadcast seed mix. Seeding will be performed by Stantec as soon as practicable.

Proposed 2017 management and cost breakdown to bridge Installation period under Lennar with MCWD management.

- In all **I2** or woodland areas, Krenite (Bud inhibitor) will be sprayed on regrowth to control buckthorn, honeysuckle and other invasive woody species.
- Spot spraying of invasive, nonnative weeds will be performed throughout all credit zones to control invasive wetland and upland grass and broadleaf species, not including Cattails.
- Spot mowing and flail mowing of annual and biennial weeds in all credit zones will be performed as appropriate throughout the 2017 growing season.

Cost Breakdown

Woodland management (<i>Krenite treatment on buckthorn regrowth</i>).		\$ 4,000
Spot treatments	2 visits / 1 day	\$ 5,500
Spot mowing	1 visit / .5 day	\$ 1,500
Flail mowing	1 visit / 1 day	\$ 2,500
		<hr/>
	Total	\$13,500

Thank you for the potential to partner with MCWD on natural resources planning and management projects.

Best regards,

STANTEC CONSULTING SERVICES INC.

Paul Bockenstedt
Ecologist/Project Manager
Phone: (651) 604-4812
Fax: (651) 636-1311
Paul.Bockenstedt@stantec.com

**AGREEMENT BETWEEN
MINNEHAHA CREEK WATERSHED DISTRICT and
STANTEC**

**LAKETOWN 9TH WETLAND RESTORATION
Victoria, Carver County, MN**

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 Stantec a private Minnesota corporation (CONTRACTOR). 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 CONTRACTOR agree as follows:

1. Scope of Work

CONTRACTOR will perform the work described in the SCOPE OF SERVICES attached as Exhibit A, thereto (hereinafter, the Services). Exhibit A is incorporated into this agreement and its terms and schedules are binding on CONTRACTOR as a term hereof. MCWD, at its discretion, in writing may at any time suspend work or amend the Quote Sheet (attached as Exhibit B) to delete any task or portion thereof. Authorized work by CONTRACTOR on a task deleted or modified by MCWD will be compensated in accordance with paragraphs 5 and 6.

2. Independent Contractor

CONTRACTOR is an independent contractor under this agreement. CONTRACTOR will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute CONTRACTOR as the agent, representative or employee of MCWD in any manner. Personnel performing the Services on behalf of CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR 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

CONTRACTOR warrants that it will perform the Services in accordance with due professional care. CONTRACTOR will indemnify, and hold harmless MCWD, its officers, board members, and employees from any and all actions, costs, damages and liabilities to the extent caused by: (a) CONTRACTOR'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 CONTRACTOR to MCWD. For any claim subject to indemnification under this paragraph by an employee of CONTRACTOR 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 CONTRACTOR or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

MCWD will indemnify, defend and hold harmless CONTRACTOR, 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 CONTRACTOR for the Services listed in Exhibit B: Quote Sheet, on a lump sum basis not to exceed per task amounts listed in Exhibit B. 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 B will not be reimbursed except with prior written approval of the MCWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by CONTRACTOR, 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 \$AMOUNT. 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.

MCWD will not make final payment until CONTRACTOR has provided proof of compliance with state income tax withholding requirements pursuant to Minnesota Statutes section 270C.66.

CONTRACTOR 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. CONTRACTOR 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 December 31, 2019 unless earlier terminated as set forth herein.

MCWD may terminate this agreement at its convenience, by providing thirty (30) days' written termination notice stating specifically what prior authorized or additional tasks or services it requires CONTRACTOR to complete. CONTRACTOR will receive full compensation for all authorized work performed, except that CONTRACTOR will not be compensated for any part performance of a specified task or service if termination is due to CONTRACTOR's breach of this agreement.

Insurance obligations; warranties; obligations to 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, CONTRACTOR 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. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.
- C. Workers' compensation: in accordance with legal requirements applicable to CONTRACTOR.

CONTRACTOR 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 with primary coverage for general liability on a noncontributory basis, along with a copy of the additional insured endorsement. 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 CONTRACTOR.

9. Compliance With Laws

CONTRACTOR will comply with the laws and requirements of all applicable 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, CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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 agrees to indemnify, defend and hold the CONTRACTOR harmless from any claim, liability or cost (including reasonable attorney's fees) to the extent caused by any reuse or modification of the materials by MCWD outside the scope of the agreement, as it may be amended. The CONTRACTOR cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). MCWD shall release, indemnify and hold the CONTRACTOR, its officers, employees, consultants and agents harmless from any claims, or damages arising from the use of Electronic Files. Electronic Files will not contain stamps or seals, remain the property of the CONTRACTOR, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without the CONTRACTOR's written consent.

MCWD may immediately inspect, copy or take possession of any materials on written request to CONTRACTOR. On termination of the agreement, CONTRACTOR 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 CONTRACTOR only pursuant to written agreement with MCWD specifying terms.

11. Data Practices; Confidentiality

If CONTRACTOR 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) CONTRACTOR 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, CONTRACTOR will not provide any information or documents, but will direct the inquiry to MCWD. If the request is addressed to CONTRACTOR, CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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.

CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR or that CONTRACTOR received on a non-confidential basis from MCWD or another party; or is disclosed pursuant to the requirements of a governmental authority or judicial order. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, CONTRACTOR retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any CONTRACTOR 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 CONTRACTOR is compensated under this agreement.

12. MCWD Property

All property furnished to or for the use of CONTRACTOR 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. CONTRACTOR may retain one complete copy of the materials and data for archival purposes. CONTRACTOR further agrees that any proprietary materials are the exclusive property of MCWD and will assert no right, title or interest in the materials. CONTRACTOR 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 CONTRACTOR by MCWD or deriving from MCWD is supplied to and accepted by CONTRACTOR as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, CONTRACTOR's warranty of professional care under paragraph 4, above, does not extend to materials provided to CONTRACTOR by MCWD or any portion of the Services that is inaccurate or incomplete as the result of CONTRACTOR'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:

Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

To CONTRACTOR:

[CONTRACTOR]
[ADDRESS]

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.

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17. Damages

Neither MCWD nor the CONTRACTOR shall be liable to the other or shall make any claim for any incidental, indirect or unforeseeable consequential damages arising out of or connected to this agreement or the performance of the Services. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

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

CONTRACTOR

By _____
Its _____

Date: _____

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its _____

Date: _____

APPROVED AS TO FORM & EXECUTION

MCWD Attorney