

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: September 13, 2018

TITLE: Authorization to Accept Funding and Execute an Agreement with the MN DNR for Improved Flood Risk Mapping

RESOLUTION NUMBER: 18-091

PREPARED BY: Tiffany Schaufler

E-MAIL: tschaufler@minnehahacreek.org

TELEPHONE: 952-641-4513

REVIEWED BY: Administrator Counsel Program Mgr. (Name):
 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): Requesting approval at the September 13, 2018 Board Meeting.	

PURPOSE or ACTION REQUESTED:

Authorization to accept \$8,065 in funding from the MN DNR and execute an agreement with the MN DNR for improved flood risk mapping along Minnehaha Creek.

PROJECT/PROGRAM LOCATION:

Minnehaha Creek subwatershed

PROJECT TIMELINE:

October – December 2018

PROJECT/PROGRAM COST: N/A

PAST BOARD ACTIONS: N/A

SUMMARY:

The Minnesota DNR has received a grant from the Federal Emergency Management Agency (FEMA) to update the hydrologic and hydraulic modeling of FEMA reaches in the Twin Cities HUC8 watershed. DNR staff reached out to District staff to see if the District was interested receiving a pass-through grant to do the modeling work by the District's engineer.

District staff are interested in using the DNR funds to evaluate the current FEMA approved hydraulic model for Minnehaha Creek to identify how the current model responds in comparison with Atlas-14 precipitation data.

**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.**

District staff are also interested in using the DNR funds to compare the results of the XP-SWMM model outputs for the June 20-24, 2014 high water event to actual monitoring data collected by the District to confirm model accuracy.

The anticipated deliverables from the DNR grant are:

1. Recommendation of critical precipitation depths that should change from current TP-40 durations to Atlas-14
2. Calibration of the current XP-SWMM model based on data collected by District staff during the June 20-24, 2014 high water event
3. Meeting with DNR staff to summarize results and identify key next steps

The District's engineer, Wenck, has provided a proposal for \$8,065 (Attachment A) to perform the work noted above, through use of the DNR grant funding. DNR staff have reviewed Wenck's proposal and have drafted a grant agreement (Attachment B) between the DNR and MCWD, in which the DNR would reimburse MCWD the \$8,065 to perform the work.

ATTACHMENTS:

- Attachment A: Wenck Scope
- Attachment B: DNR Grant agreement

RESOLUTION

RESOLUTION NUMBER: 18-091

TITLE: Authorization to Accept Funding and Execute an Agreement with the MN DNR for Improved Flood Risk Mapping

BE IT RESOLVED that the Minnehaha Creek Watershed District, hereinafter referred to as the "Applicant," acts as legal sponsor for entering in to an agreement with the Minnesota Department of Natural Resources for a collaborative effort to improve flood risk identification and mapping within its jurisdiction and that the District Administrator is hereby authorized to collaborate with the Minnesota Department of Natural Resources for securing funding of a project on behalf of the Applicant.

BE IT FURTHER RESOLVED that the Applicant has the legal authority to request financial assistance, and the institutional, administrative, technical and managerial capability to ensure satisfactory completion of the project described in the State of Minnesota grant contract with the Minnehaha Creek Watershed District for Improved Floodplain Modeling and Mapping attached herein.

BE IT FURTHER RESOLVED Applicant understands that funding provided through the Minnesota Department of Natural Resources requires no monetary match.

BE IT FURTHER RESOLVED that the Applicant hereby pledges to complete the project per the approved scope and budget if it exceeds the total funding provided by the Department of Natural Resources grant.

BE IT FURTHER RESOLVED that the Applicant has not incurred any reimbursable project expenses prior to the full execution of a grant agreement.

BE IT FURTHER RESOLVED that the Applicant has not violated any Federal, State, or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED that the Applicant and the State of Minnesota have prepared a grant agreement, and that the Applicant certifies that it will comply with all applicable laws and regulations as stated in the grant agreement.

NOW, THEREFORE BE IT RESOLVED that the District Administrator is hereby authorized to execute the agreement, with any final changes on advice of counsel, as necessary to implement the project on behalf of the applicant.

NOW, THEREFORE BE IT FINALLY RESOLVED that the District Administrator is authorized to execute a contract with Wenck to evaluate current FEMA modeling for Minnehaha Creek for an amount not to exceed \$8,065.

Resolution Number 18-091 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary

ATTACHMENT A
MINNEHAHA CREEK WATERSHED DISTRICT
FEMA MODELING UPDATE AGREEMENT



Responsive partner.
Exceptional outcomes.

To: Tiffany Schaufler, Project and Land Management Manager, Minnehaha Creek Watershed District

From: Chris Meehan, P.E., CFM, Wenck Associates, Inc.

Date: April 25, 2018

Subject: Minnehaha Creek 100-year water surface elevation evaluation

This proposal is to evaluate the current FEMA approved hydraulic model for Minnehaha Creek (Creek) with the incorporation of Atlas-14 precipitation depths along with comparing the 2014 rainfall flooding event to collected monitoring data.

SCOPE OF SERVICES

1. UPDATE PRECIPITATION – Atlas-14

Wenck will take the current XP-SWMM Hydraulic Model for Minnehaha Creek and run the Atlas 14 24-hr, 7-Day, and 10-Day precipitation depths. Upon review of these model outputs we will look to recommend if the critical event with Atlas-14 precipitation depths should change from current TP-40 durations.

As part of the modeling we will use the most current version of XP-SWMM to complete the modeling and debug any continuity or flow issues that may come up with the revised precipitation depths.

2. COMPARE MODEL RESULTS TO MONITORING DATA

Wenck will run the approved model in the most recent version of XP-SWMM for the highwater event in 2014 (June 20-24, 2014) and compare model output to monitoring data collected by the District. The objective is to compare results to confirm model accuracy throughout the system.

The output of this task will be a graphical comparison of the model results and monitoring data for 3-4 points along the creek.

It is assumed this will not be a full calibration of the model but a review to determine how well the model predicts flows and water surface elevations along the creek.

3. PARTNER MEETING

The results of the precipitation and monitoring models runs will be summarized and presented in a meeting with District and Minnesota DNR staff to identify what next steps need should be taken to ensure the model provides necessary data for planning and regulatory purposes of the District.

Ms. Tiffany Schaufler,
Project and Land Manager
Minnehaha Creek Watershed District
April 25, 2018



A summary of work requested and associated fee for services is provided below.

Table 1. Minnehaha Creek 100-year water surface elevation evaluation

Scope of Work	Fee estimate
1. Update Precipitation Depths	\$5,130
2. Compare Model Results to Monitoring Data	\$2,330
3. Partner Meeting	\$605
TOTAL =	\$8,065

Each task includes the expected minimum level of effort using the most efficient discounted hourly rates that are currently used by MCWD along with direct expenses covering mileage, survey equipment, etc. It is anticipated the scope of work will be finalized within two weeks of MCWD authorization.

This scope of work is contingent on the MCWD Board of Managers authorization for the District Administrator to execute a grant agreement with the Minnesota DNR which would reimburse the District for the costs incurred by Wenck under this scope of work.

Wenck appreciates the opportunity to provide you with our proposal. If you have any questions or comments regarding this proposal, please call me at (763) 252-6844.

If this proposal is acceptable, please sign and return.

Sincerely,

WENCK ASSOCIATES, INC.

Chris Meehan, P.E.
Project Manager

ACCEPTED BY:

Minnehaha Creek Watershed District

James Wisker, Administrator
Minnehaha Creek Watershed District

8-29-18

(Date)

**STATE OF MINNESOTA GRANT CONTRACT
WITH THE MINNEHAHA CREEK WATERSHED DISTRICT FOR IMPROVED
FLOODPLAIN MODELING AND MAPPING**

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources, ("State") and the Minnehaha Creek Watershed District (DUNS# 150731255), 15320 Minnetonka Blvd. Minnetonka, Minnesota 55345 ("Grantee").

Recitals

1. Under Minn. Stat. Section 84.026, Subdivision 2, the State is empowered to enter into this grant agreement.
2. Under the Federal Emergency Management Agency (FEMA) Cooperating Technical Partners (CTP) Program, CFDA 97.045 and under 2 CFR 200, the State received a federal award for pass through grants to local government units to improve floodplain mapping.
3. The State agrees that updating and improving floodplain data is in the interest of the State.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant contract.

Grant Contract

1 Term of Grant Contract

- 1.1 **Effective date:** September 12, 2018, or the date the State obtains all required signatures under Minnesota Statutes §16B.98, Subd. 5, whichever is later. Per [Minn.Stat. §16B.98](#) Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed. **The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2 **Expiration date:** April 30, 2020, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16. Data Disclosure.

2 Grantee's Duties

The Grantee, who is not a state employee, will be responsible for tasks generalized below, consistent with the details included in Attachment A – *Minnehaha Creek 100-year water surface elevation evaluation* dated April 25, 2018, attached and incorporated hereto:

- Submittal of updated XP-SWMM hydraulic model for Minnehaha Creek
- Report comparing modeled results to monitoring data
- Coordination and participation in a partnermeeting with DNR staff presenting a summary of modeled results.

All work shall comply with required grants management policies and procedures set forth in [Minn.Stat. §16B.97](#), Subd. 4 (a)(1).

3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4 Consideration and Payment

4.1 **Consideration.** The State will reimburse Grantee for all eligible products received and services performed by the Grantee under this grant contract as follows:

(a) **Compensation.** The Grantee will be reimbursed 100% for eligible project expenses, not to exceed \$8,065.00. This grant does not require a local match.

(b) **Travel Expenses.** Grantee shall not be reimbursed for travel and subsistence expenses incurred as a result of this grant contract.

(c) **Total Obligation**

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$8,065.00.

4.2. Payment

(a) **Invoices/Deliverables**

Grantee will submit invoices for work completed no more frequently than monthly. Each invoice will state billing period of work performed, be itemized and include a report of work performed and progress as to each of the following project deliverables:

- Updated XP-SWMM hydraulic model for Minnehaha Creek incorporating Atlas 14 precipitation data
- Comparison of model results to monitoring data
- Partner meeting invoice for time and meeting summary

The State's Authorized Representative will review all invoices and the State will promptly disburse payment for accepted work. Disbursement does not limit any State remedies relating to the acceptability of the completed work pursuant to section 5 of this grant contract.

Requested reimbursement amounts for each work task shall not exceed 120% of the amount identified for each of the three work tasks in Table 1 contained in Attachment A of this agreement. Upon project completion, prior to termination of this agreement, financial reconciliation will be performed to ensure Grantee is reimbursed for all actual incurred costs of services and deliverables, not to exceed \$8,065.00.

(b) **Federal funds**

Payments under this grant contract will be made from federal funds obtained by the State through FEMA Cooperating Technical Partners Program, CFDA number 97.045 and under 2 CFR 200, federal award number EMC-2017-CA-00005-SO1. The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee's failure to comply with federal requirements.

4.3 Contracting and Bidding Requirements

Grantees that are municipalities as defined in state statute must comply with the contracting provisions of [Minn. Stat. §471.345](#).

5 Conditions of Payment

All services provided by the Grantee under this grant contract must be performed in accordance with a professional standard of care and as described in Attachment A to the State's satisfaction, as determined by the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the

State to be unsatisfactory or performed in violation of federal, state, or local law. Beyond the obligation to the State for the services and deliverables as described in the preceding sentences of this Section 5, nothing herein constitutes an additional express or implied warranty, by Grantee or its contractor, of the accuracy of the deliverables or their fitness for a particular purpose. Nothing herein constitutes an express or implied warranty, by Grantee or its contractor, of the accuracy of the deliverables or their fitness for a particular purpose, to any third party.

6 **Authorized Representative**

The State's Authorized Representative is Patrick Lynch, Floodplain Hydrologist, Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota, 55155, 651-259-5691, pat.lynch@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept or reject the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is James Wisker, Administrator, Minnehaha Creek Watershed District, 15320 Minnetonka Blvd., Minnetonka, Minnesota 55345 (952) 641-4509, jwisker@minnehahacreek.org. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant Contract Complete**

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments.** Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 **Liability**

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, to the extent due to the failure of the Grantee or the Grantee's agents or employees to perform the services in accordance with this grant agreement. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 **State Audits**

Under Minn. Stat. §16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10 **Government Data Practices and Intellectual Property**

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (MCGDPA), as it applies to all data provided by the State under this grant contract, and as it applies

to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

The Grantee will use existing models and data sets in performing the work, which are and will remain the Grantee's intellectual property. The State owns any intellectual property developed with these funds ("Works and Documents"). The federal awarding agency may receive royalty-free, non-exclusive and an irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so as noted in [2 CFR 200.315](#). The Grantee also holds a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use the work for the Grantee's non-commercial purposes.

Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this contract, the Grantee will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. The Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Prevailing Wages

Grantee agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project.

13 Publicity and Endorsement**12.1 Publicity**

Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. All projects primarily funded by state grant appropriation must publicly credit the State of Minnesota, including on the grantee's website when practicable.

12.2 Endorsement

The Grantee must not claim that the State endorses its products or services.

14 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15 Termination

The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

16 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§16A.15 and 16C.05.

Signed: Felicia Barnes
(with delegated authority)

Date: 9/5/2018

SWIFT Contract/PO No(s). 147305/3000140574

3. STATE AGENCY

Individual certifies the applicable provisions of Minn. Stat. §16C.08, subdivisions 2 and 3 are reaffirmed.

By: _____

Title: Director, Ecological & Water Resources

Date: _____

2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Distribution:
Agency
Grantee
State's Authorized Representative - Photo Copy