

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. I.

From: Ross Bintner PE, - Environmental Engineer

Action

Discussion

Date: December 3, 2013

Information

Subject: Authorize Nine Mile Creek Cooperative Agreement - Promenade Phase 4.

Action Requested:

Authorize Cooperative Agreement with Nine Mile Creek Watershed District for Promenade Phase 4

Information / Background:

At the November 20 meeting of the Nine Mile Creek Watershed District, the district board considered the request for participation to integrate stormwater management features into the Edina Promenade Phase 4 project, approved the request and ordered the design of the project. This action includes the commitment to pay one-half of the estimated \$667,350 design and construction costs for the integrated stormwater feature. The attached agreement memorializes obligations of the City and Watershed District to coordinate the development of this project.

Attachments:

Nine Mile Creek Watershed District Cooperative Agreement – Promenade Phase 4 Project.

**COOPERATIVE AGREEMENT
BETWEEN THE CITY OF EDINA AND
NINE MILE CREEK WATERSHED DISTRICT**

Promenade Phase 4 - Stormwater Management Project, Edina

This cooperative agreement is made by and between the City of Edina (Edina), a Minnesota municipal corporation, and the Nine Mile Creek Watershed District (NMCWD), a watershed district created pursuant to Minnesota Statutes chapters 103B and 103D, to achieve mutual stormwater-management goals through design, construction and operation of underground irrigation and infiltration capacity, along with shallow gardens and rock channels, all integrated into Edina's Centennial Lakes Promenade recreational area.

Recitals and Statement of Purpose

WHEREAS Edina has constructed, owns and operates the Centennial Lakes Promenade, a greenway with bike and walking paths that connects Centennial Lakes Park to nearby retail and residential areas and that lies within the Nine Mile Creek watershed. On November 19, 2013, the Edina City Council ordered the completion of a design for the addition of water amenities (a pond and brook), using water pumped from Centennial Lakes, to the Promenade (Promenade Phase 4), and the Promenade Phase 4 is to be implemented on land owned by Edina in conjunction with the redevelopment of adjacent retail areas.

WHEREAS NMCWD has an approved water resources management plan pursuant to Minnesota Statutes section 103B.231, that has as a primary goal the improvement of water quality in the Nine Mile Creek watershed.

WHEREAS Edina and NMCWD have together identified a need to improve stormwater runoff management in the Promenade Phase 4 area to achieve shared goals and contribute to Edina's compliance with Clean Water Act requirements included in its National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit. Edina and NMCWD have jointly supported the development of the Edina Centennial Lakes Runoff Volume Reduction Plan (October 2013), which outlines options for integrating improved stormwater runoff management systems into the Promenade Phase 4.

WHEREAS Edina and NMCWD have examined the options analyzed in the Edina Centennial Lakes Runoff Volume Reduction Plan and have determined that the design, construction and operation of underground irrigation and infiltration systems, along with shallow gardens and rock channels (the Project), will provide cost-effective and productive runoff-volume management in the Promenade area.

WHEREAS On November 19, the Edina City Council by resolution requested that NMCWD participate in the development and construction of the Project, including but not limited to the contribution by NMCWD of 50 percent of the cost of the design, construction and major maintenance of the Project.

WHEREAS NMCWD, by November 20, 2013, action of its Board of Managers, received the request for participation in the Project from Edina, recognized Edina's substantial contribution of the land-use rights necessary for the Project, and directed the NMCWD administrator to develop a cooperative agreement with Edina for the Project.

WHEREAS NMCWD is amending its watershed management plan to include the Project as a capital improvement of the NMCWD.

WHEREAS Edina and NMCWD are authorized by Minnesota Statutes section 471.59 to enter into the cooperative agreement.

Now, therefore, IT IS AGREED by and between Edina and NMCWD that they enter into this agreement to document their understanding as to the scope of the Project, reaffirm their commitments as to the general responsibilities of and tasks to be undertaken by the parties, establish procedures for performing these tasks and carrying out these responsibilities, and facilitate communication and cooperation to successfully complete the Project.

1 Organization and Relationship of the Parties

1.1 The Nine Mile Creek Watershed District administrator, the Nine Mile Creek Watershed District's professional consulting engineer (the NMCWD Engineer), a representative of Edina Public Works Department and a representative of the professional consulting engineer hired by Edina to design the Promenade Phase 4 (the Centennial Engineer) will constitute the Design Team for the Project, charged to conduct the day-to-day activities necessary to complete the Project and to serve as their respective parties' principal contacts for the Project.

1.2 Each party will use best efforts to coordinate and communicate informally, primarily through the Design Team, so that any issues may be timely addressed. Members of the Design Team will meet frequently to ensure the successful completion of the Project.

1.3 Within 90 days after this agreement takes effect, the Design Team will prepare a plan for public participation, communication and education. Activities under the plan will be carried out individually or together as the plan may specify. Design Team members may not commit to expenditures for public education plan implementation that otherwise require approval of their respective governing bodies unless and until such approval has been obtained.

2 **Project.** The Project is further defined and specified for purposes of this cooperative agreement and the parties' implementation thereof as consisting of the following:

2.1 Design and preparation of all necessary construction documents (drawings, technical specifications) for the Project, in accordance with the NMCWD Engineer's November 12, 2013, professional services proposal and the conceptual drawing of the Project (both attached to and incorporated into this agreement as Exhibit A). The design will also include services provided by the NMCWD Engineer to coordinate integration of the Project into the package of bid and contract documents prepared by the Centennial Engineer for Promenade Phase 4.

2.2 Construction of the Project by a contractor selected by Edina in accordance with Minnesota procurement law, under contract with Edina and in conjunction with the construction of Promenade Phase 4.

2.3 Development by the NMCWD Engineer and implementation by Edina of a plan for the post-construction maintenance and operation of the Project (the Maintenance Plan). The Maintenance Plan also will identify specific performance-monitoring protocols and reporting to be completed, and delineate major and routine maintenance and repair of the Project.

3 Cost- and Credit-Sharing

3.1 NMCWD and Edina each will contribute 50 percent of the costs of the Project and of major repair and maintenance of the Project, as described in the Maintenance Plan. The Design Team will develop the protocols and procedures necessary to facilitate reimbursement for Project costs as provided by this agreement.

Each party will pay the internal and incidental costs of its participation in the Project not otherwise specified as subject to cost-sharing as specified in herein.

3.2 NMCWD and Edina will share credit for stormwater-management capacity of the Project in proportion with the party's contribution toward the costs of the Project. Available credit will be determined on completion of the Project and annually in accordance with the monitoring results produced through implementation of the Maintenance Plan.

Edina must first dedicate stormwater-management capacity credit from its allocation determined in accordance with this agreement to compliance with any requirements applicable under the NMCWD rules to the Promenade Phase 4.

4 Specific duties – NMCWD

4.1 NMCWD timely will amend the capital improvements program in its water resources management plan to include the Project in accordance with Minnesota Statutes section 103B.231, and order the Project in accordance with Minnesota Statutes section 103B.251.

4.2 NMCWD will contract the NMCWD Engineer for the development of a design for the Project and the plans and specifications necessary to integrate the Project into the bidding/contract documents prepared by the Centennial Engineer for Promenade Phase 4. The contract for the design, plans and specifications will require the NMCWD Engineer to sign the Project plans and specifications, and require that the NMCWD Engineer's warranty of due professional care extend to both the NMCWD and Edina. The contract will require the NMCWD Engineer to provide 90 percent plans and specifications for the Project for approval by Edina and NMCWD on or before March 28, 2014. Notwithstanding the foregoing, NMCWD will make no warranty to Edina regarding the NMCWD Engineer's or another third party's performance in design, construction or construction management for the Project. NMCWD is responsible to make payments to the NMCWD Engineer in accordance with the terms of contract for the design, plans and specifications for the Project.

4.3 NMCWD will approve or reject the plans and specifications for the Project and for incorporation into the Promenade Phase 4 bidding/contract documents within 15 business days of receipt from the NMCWD Engineer. Failure to timely act will constitute approval.

4.4 NMCWD will cooperate with and assist Edina in obtaining permits for Promenade Phase 4, including but not limited to ensuring that the plans and specifications for the Project comport with NMCWD regulatory requirements.

4.5 NMCWD will approve or disapprove issuance of a notice of contract award by Edina for Promenade Phase 4 including the Project within 15 days of bid opening, unless the parties agree otherwise. Failure to timely act will constitute approval. If NMCWD disapproves of issuance of a notice of award by Edina for Promenade Phase 4 with the Project included, this agreement will terminate immediately and the parties will have no further obligations hereunder. In particular, Edina will be released from its obligation to contribute to the costs of development of the design, plans and specifications for the Project, as described in paragraphs 2.1 and 4.2 of this agreement and NMCWD will reimburse Edina for any reimbursement already received at the time of termination.

4.6 NMCWD timely will approve or disapprove any change orders for construction of the Project, within 30 days of notification of the need for the change order by the Centennial Engineer. Failure to timely act will constitute approval.

4.7 NMCWD will reimburse Edina in accordance with sections 2 and 3 of this agreement for expenditures made for the construction of the Project in accordance with paragraphs 5.3, 5.4, 5.6 and 5.7 and for major maintenance and repair of the Project as defined in and in accordance with the Maintenance Plan.

4.8 NMCWD will contract with the NMCWD Engineer for the development of the Maintenance Plan. The contract for the Maintenance Plan will require the NMCWD Engineer to provide the Maintenance Plan for approval by Edina and NMCWD within 1 year of certification by a qualified engineer of the as-built construction drawings of the Project; such approval not to be unreasonably withheld. NMCWD is responsible to make payments to the NMCWD Engineer in accordance with the terms of contract for the Maintenance Plan for the Project.

5 Specific duties – Edina

5.1 Edina owns or will timely acquire all land-use rights necessary for the Project, and will own all Project elements at completion of construction.

5.2 Edina will approve or reject the plans and specifications for the Project for incorporation into the Promenade Phase 4 bidding/contract documents within 15 business days of receipt from the NMCWD Engineer. Failure to timely act will constitute approval. Approval will not be unreasonably withheld.

5.3 Edina will direct the Centennial Engineer to integrate the design, plans and specifications for the Project into the bidding/contract documents for Promenade Phase 4 in a manner that

delineates costs of the Project separate from other costs of construction of Promenade Phase 4 for purposes of cost accounting.

5.4 Edina will obtain all permits and approvals necessary for the Project, except that NMCWD will ensure that the Project comports with NMCWD regulatory requirements.

5.5 Edina will solicit sealed bids for Promenade Phase 4, including the Project, in accordance with Minnesota municipal procurement law.

5.6 If the bids are acceptable to Edina and the NMCWD, Edina will contract for the construction of Promenade Phase 4 with the lowest qualified responsible and responsive bidder, as determined by Edina in consultation with NMCWD. Edina will award and enter a contract for the construction of Promenade Phase 4, and such contract will:

a. Require the selected contractor to indemnify, defend and hold harmless NMCWD, its officers, board members, employees and agents from any and all actions, costs, damages and liabilities of any nature arising from the contractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty, or a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by the contractor to Edina. The contract will require that any claim subject to indemnification by an employee of selected 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 the contractor or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

b. Require that the contractor name NMCWD an additional insured with primary coverage for general liability on a noncontributory basis for both ongoing work and completed operations to the extent of NMCWD's statutory liability limit.

c. Require that within 60 days of certified completion of construction of Promenade Phase 4, the selected contractor provide certified as-built construction documents to NMCWD.

5.7 Edina is responsible to make payments to the contractor in accordance with the terms of contract for construction of Promenade Phase 4.

5.8 Edina will reimburse NMCWD in accordance with sections 2 and 3 of this agreement for expenditures made in accordance with paragraphs 4.2 and 4.8.

5.9 Edina will approve or reject the Maintenance Plan within 45 days of receipt from the NMCWD Engineer, such approval not to be unreasonably withheld. Failure by Edina to timely act on its rights and obligations under this paragraph will constitute approval of the Maintenance Plan. If Edina disapproves the Maintenance Plan, this agreement is terminated and all maintenance requirements for the Project to assure that it will continue to effectively function as designed will become the sole responsibility of Edina. On approval of the Maintenance Plan, Edina will perform all routine maintenance and monitoring of the Project, along with reporting as required by the Maintenance Plan.

6 General Terms

6.1 **INDEPENDENT RELATIONSHIP; LIABILITY.** This agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59, and neither party agrees to be responsible for the acts or omissions of the other pursuant to subdivision 1(a) of the statute. Only contractual remedies are available for the failure of a party to fulfill the terms of this agreement. Edina and NMCWD enter this agreement solely for the purposes of enhancing stormwater management capacity in the Centennial Lakes subwatershed of the Nine Mile Creek watershed in Edina. Accordingly, with respect to any and all activity undertaken pursuant to this agreement, Edina and NMCWD will each hold harmless, defend and indemnify the other, its officers, employees and agents for all claims, damages, liabilities, losses and expenses asserted against the other party at any time by any third party, including any governmental body. Notwithstanding the foregoing or any other provision of this agreement, Edina's and NMCWD's obligations under this paragraph will survive the termination of the agreement. This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party. As between the Parties, only contract remedies are available for a breach of this agreement. Notwithstanding the foregoing, NMCWD will not be deemed to have acquired by entry into or performance under this agreement, any form of interest or ownership in or to any portion of the land that is the site of the construction of the Project or adjacent property. NMCWD will not by entry into or performance under this agreement be deemed to have exercised any form of control over the use, operation or management of any portion of the property that is the site of the Project or adjacent property so as to render NMCWD a potentially responsible party for any contamination under state and/or federal law.

6.2 **PUBLICITY AND ENDORSEMENT.** Any publicity regarding the Project must identify Edina and NMCWD as the sponsoring entities. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Edina or NMCWD individually or jointly with others, or any subcontractors, with respect to the Project. NMCWD and Edina will collaborate on the development of educational and informational signage pertinent to the Project, and each party, at its cost, may develop, produce and, after approval of the other party, distribute educational, outreach and publicity materials related to the Project.

6.3 **DATA MANAGEMENT.** All designs, written materials, technical data, research or any other work-in-progress will be shared between the parties to this agreement on request, except as prohibited by law. As soon as is practicable, the party preparing plans, specifications, contractual documents, materials for public communication or education will provide them to the other party for recordkeeping and other necessary purposes.

6.4 **Data Practices.** All data created, collected, received, maintained or disseminated for any purpose in the course of this agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy

6.5 ENTIRE AGREEMENT. This agreement contains the complete and entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters. The recitals stated at the outset are incorporated into and a part of the agreement.

6.6 COMPLETE AGREEMENT. This agreement, as it may be amended in writing, constitutes the entire agreement between the Parties. Any amendment to this agreement 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 agreement or their successors in office.

6.7 WAIVERS. The waiver by Edina or NMCWD of any breach or failure to comply with any provision of this agreement by the other party will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.

6.8 NOTICES. Any notice, demand or communication under this agreement by either party to the other will be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

Edina
Ross Bintner
7450 Metro Blvd
Edina, MN 55379
952-903-5713

NMCWD
Kevin Bigalke, Administrator
7710 Computer Blvd.
Edina, MN 55435
952-835-2078

6.9 TERM; TERMINATION. This agreement is effective on execution by both parties and will terminate three years from the date of execution of the latest amendment hereto or on the written agreement of both parties.

IN WITNESS WHEREOF, the parties have caused the agreement to be duly executed intending to be bounded thereby.

(Signature page follows.)

CITY OF EDINA

MAYOR

By: _____

Title: _____

Date: _____

CITY MANAGER

By: _____

Title: _____

Date: _____

Approved as to form & execution:

City attorney

NINE MILE CREEK WATERSHED
DISTRICT

By: _____

Title: _____

Date: _____

Approved as to form & execution:

District counsel

EXHIBIT A

resourceful. naturally.
engineering and environmental consultants



November 12, 2013

Mr. Kevin Bigalke
Nine Mile Creek Watershed District
Edina Business Center
7710 Computer Ave, Suite 135
Edina, MN 55435

**Re: Centennial Lakes Runoff Volume Reduction
Professional Services Proposal for Preparation of Construction Documents**

Dear Mr. Bigalke:

We are providing the following proposal for the Nine Mile Creek Watershed District's consideration related to the preparation of Final Construction documents and bidding services related to the construction of the Centennial Lakes Runoff Volume Reduction Improvements project. Barr Engineering will be responsible for providing final design, construction documents and bidding services related to the Centennial Lakes Runoff Volume Reduction improvements. The construction documents prepared by Barr Engineering will be incorporated into the City of Edina Promenade Phase 4 construction document package, which will be coordinated by URS on behalf of the City of Edina.

Proposed Scope of Work

The final design will be based upon the D/B Conceptual Design Option (shallow underground infiltration system in combination with shallow surface gardens and rock channel) as outlined in the October 18, 2013 *Edina Centennial Lakes Runoff Volume Reduction Plan* report prepared by Barr Engineering Company. Barr's proposed work tasks, estimated hours, and costs associated with the Volume Reduction Improvements are summarized in Table 1.

Although not included in this proposed scope of work (Table 1), the following potential tasks have been identified during discussions with NMCWD and/or City of Edina staff that might be considered for addition to the project scope at a later time.

- Educational signage
- Design of solar pumping system
- Design of forecast-based automatic pumping controls

Deliverables

Construction documents will be prepared to bid both the Centennial Lakes Runoff Volume Reduction Improvements (by Barr) and the Promenade Phase 4 (by URS) as one construction contract package. Barr will coordinate bidding documents with URS to clearly indicate quantities for each scope for cost-sharing purposes between the NMCWD and City of Edina. The following deliverables will be prepared and provided to the NMCWD and City of Edina:

Construction documents will be prepared to bid both the Centennial Lakes Runoff Volume Reduction Improvements (by Barr) and the Promenade Phase 4 (by URS) as one construction contract package. Barr

will coordinate bidding documents with URS to clearly indicate quantities for each scope for cost-sharing purposes between the NMCWD and City of Edina. The following deliverables will be prepared and provided to the NMCWD and City of Edina:

- 30% construction plans submittal
- 60% construction plans submittal
- 90% construction plans submittal
- Specifications and special provisions
- Applicable permitting submittals
- Bidding forms and quantities
- Engineer's construction cost estimate
- Preparation of addenda, as necessary

Table 1 Summary of Proposed Work Tasks

Task	Task Description	Estimated Hours	Estimated Cost
1.	Preparation of Construction Documents		
A.	Assisting URS with developing erosion control plan, Stormwater Pollution Prevention Plan (SWPPP), removals plan and site restoration plan	45	\$4,000
B.	Hydraulic design for intake, pump, and distribution line	50	\$6,000
C.	Layout and design of shallow underground infiltration system	120	\$12,000
D.	Layout and design of shallow gardens and rock channel	120	\$12,000
E.	Design for slip lining of the existing sanitary sewer under infiltration areas	30	\$3,500
F.	Planting plans for the shallow garden areas	50	\$5,500
2.	Preparation of Technical Specifications	60	\$7,000
3.	Assisting URS with preparation of permitting submittals	20	\$1,500
4.	Assisting URS with preparation of bid package and bid administration, including preparing engineers opinion of probable cost, quantities, and bid form, attendance at pre-bid meeting and response to bid questions	75	\$7,000
5.	Coordination with URS regarding Promenade Phase 4 design	20	\$2,500
6.	Review feasibility of incorporating the use of solar pumps	20	\$2,000
7.	Review feasibility of incorporating automated pumping controls based on weather forecasting technology	20	\$2,000
8.	Meetings (3) and communication with NMCWD and City staff	30	\$4,000
	Subtotal		\$69,000
	Contingency (10%)		\$7,000
	Total		\$76,000

Proposed Fees

Our proposed not-to-exceed budget of \$76,600 is based upon the scope of services outlined above, and includes a 10% contingency for unforeseen project tasks. We anticipate a separate proposal for professional services related to construction inspection and administration to be based upon the final construction documents. Actual fees will be billed on a time and expense basis. For your reference, Barr Engineering Co. does have a Master Agreement for Professional Services with the City of Edina.

Schedule

The following is our proposed project schedule:

Notice to Proceed	December 2, 2013
30% Plan submittal to City	January 10, 2014
60% Plan submittal to City	February 12, 2014
90% Plan and spec submittal to City	March 28, 2014
Bidding Period	April 19 – May 9, 2014
Contract Award	May 20, 2014
Begin Construction	June, 2014

We anticipate the scope of services to be complete by June 30, 2014.

We are pleased to continue our involvement with the Centennial Lakes Runoff Volume Reduction Improvements project and look forward to continuing our working relationship with the Nine Mile Creek Watershed District and City of Edina. If you should have any questions or require additional information, please contact me at 953-832-2859 or by e-mail at kleuthold@barr.com.

Sincerely,


for Kurt A. Leuthold P.E.
Vice President

c. Chad Millner, City of Edina
Ross Bintner, City of Edina

FIGURE 6:

UNDERGROUND IRRIGATION AND INFILTRATION + SHALLOW GARDENS WITH ROCK CHANNEL

Design Option D/B combines the shallow underground irrigation and infiltration system concept, below the proposed water feature and a series of visible surface gardens with a rock channel throughout the lower portion of the Promenade.

Some water pumped up from the lake travels through a mainline beneath the proposed pathway. It flows from the main distribution into smaller drip-line pipes that distribute the water throughout a shallow rock trench so that it can be wicked up through roots and used to irrigate lawns and plantings. Water not taken up by the plants infiltrates into the ground.

Other water pumped up from the lake flows into a series of shallow gardens via a rock channel that resembles a stone creekbed. Water is taken up by the plants and infiltrates into the ground.

bioinfiltration gardens

Babbling brook feature continues through shallow

OPTION D/B:



