



Nine Mile Creek Discovery Point
12800 Gerard Drive
Eden Prairie, MN 55346

(952) 835-2078

ninemilecreek.org

MEMO

TO: Nine Mile Creek Board of Managers
FROM: Randy Anhorn
DATE: June 9, 2021
RE: Wetland Protection/Restoration Plan RFP

Background/Information

At the Board's January 7, 2021, the managers directed staff to put together request for proposal (RFP) for the development of a prioritization and restoration/protection opportunity plan for identified high quality wetland. The Board further requested that following the completion of the RFP, to send the RFPs to the District's engineering pool.

The draft RFP are attached.

Request

Authorize staff to send the wetland protection/restoration plan RFP to the District's engineering pool.

Nine Mile Creek Watershed District

REQUEST FOR QUALIFICATIONS AND PROPOSALS

For

Protection of High-Quality Wetlands

Scoping and Prioritization Study

Project Overview

The Nine Mile Creek Watershed District (NMCWD) 2017 Water Management Plan identifies protecting and restoring high-quality wetlands within the watershed as one of the NMCWD's primary wetland management objectives. In 2020, the NMCWD conducted a study to identify and assess the highest quality wetlands throughout the Nine Mile Creek watershed. NMCWD identified and conducted field assessments of numerous high-quality wetlands with unique features or rare native wetland community types, and identified high-level wetland protection strategies for these wetlands. The NMCWD's long term goal is to protect these high-quality wetlands through implementation of the protection strategies. However, further refinement of these strategies is necessary before project implementation, which the NMCWD hopes to achieve in part through this Request for Proposals (RFP).

Table 1 lists four of the high-quality wetlands and summarizes potential wetland protection strategies identified in the 2020 study. The four high-quality wetlands are also shown in Figure 1. The potential wetland protection strategies identified in the study were based on a high-level review. NMCWD has not yet conducted a detailed evaluation of the scope of work that would be required to protect these wetlands or the viability of doing so. The NMCWD is seeking a qualified consultant to provide further information and recommendations on implementing the wetland protection strategies, including refinement of project definition, high-level feasibility, and planning-level costs for the four (4) high-quality wetlands identified in Table 1. The NMCWD is also seeking assistance in prioritizing the potential wetland protection activities and conducting a more detailed feasibility analysis for one wetland protection project selected by the NMCWD Board and staff.

Upon completion of the scope of services described in this request for qualifications and proposals, the NMCWD intends to use the information provided to help plan for implementation of potential wetland protection activities, including budgeting and reaching out to potential project partners.

Scope of Services

The general scope of services is outlined below.

1. Conduct scoping analysis of potential wetland protection activities identified in Table 1, including refinement of the project definition for each activity, high-level review of feasibility, and preparation of a planning-level cost.
 - For stormwater treatment retrofit or other infrastructure-related activities, the high-level review of feasibility should include review of existing grading and infrastructure, potential utility conflicts, affected landowners, and other factors to evaluate project viability.
 - For invasive species management activities, the scope of services should include definition of the extent of the potential project, review of affected landowners, consideration of how many years of management would likely be necessary, and recommendations for implementation approach (e.g., contracting, cost-share, volunteer-based, etc.). The planning-level cost should include consideration of multiple years of treatment, as appropriate.
 - For upland buffer improvements, the scope of services should include definition of the extent of the potential project, review of affected landowners, and recommendations for implementation approach (e.g., contracting, cost-share, volunteer-based, etc.).
2. Prioritize potential wetland protection activities using the following criteria, and others as appropriate:
 - Project partners
 - Public vs private (*preference for public*)
 - Number of potential project partners (*preference for lower number of participants to reduce project complexity*)
 - Permanent projects versus sustained management (*preference for permanent projects*)
 - Cost

- Cost/benefit (qualitative, versus quantitative)
 - Level of time investment by NMCWD staff
 - Achievement of co-benefits
 - Educational opportunities
 - Citizen engagement
3. Present results and recommendations from Tasks 1 and 2 to NMCWD board of managers and select one wetland protection project for more detailed analysis based on feedback from NMCWD board of managers and staff. The selected wetland protection project may include protection activities for a specific wetland or grouping of wetlands within a city.
 4. Conduct a detailed feasibility analysis of the selected project from Task 3. The feasibility analysis should include a detailed review of feasibility and preliminary project design; refinement of a planning-level cost, including consideration of long-term operation and maintenance costs; evaluation of project benefits; review of affected property owners and potential stakeholders; recommendations for implementation approach, and consideration of other project challenges. The outcome of Task 4 should provide the NMCWD board and staff with a level of information sufficient to support a go/no-go decision regarding pursuit of project implementation.
 5. Prepare report summarizing information and recommendations from Tasks 1 through 4. The report should summarize the outcomes of Tasks 1 through 3, including a refined definition and parameters for an implementation project or projects, high-level feasibility assessment, summary of project benefits, identification of affected landowners and potential project partners, planning-level costs, and project prioritization. For the wetland protection project selected in Task 3, the report should summarize results of the detailed feasibility analysis (Task 4).

A draft of the report will be provided to NMCWD staff for review in electronic format. Upon receiving comments from NMCWD staff, the draft report will be revised and re-submitted in electronic format as a review draft for distribution to the Board of Managers.

The report will be finalized based on comments received from NMCWD staff and NMCWD Board of Managers

6. Conduct presentation of results and recommendations to NMCWD Board of Managers

Responders are encouraged to propose additional or different tasks or activities if they will substantially improve the results of the project.

Key Deliverables

Key deliverables are identified below.

1. Meeting minutes for all meetings
2. Study report- preliminary draft for NMCWD staff review
3. Study report- review draft for NMCWD board of managers, in electronic PDF format
4. Presentations to NMCWD Board of Managers
5. Final study report, in electronic PDF format
6. GIS shapefiles or geodatabases

Project Schedule

Key project milestones are identified below.

- a. Project will commence upon full execution of the contract
- b. Project to be completed no later than April 30, 2022

This request for proposal does not obligate the NMCWD to award a contract or complete the project, and the NMCWD reserves the right to cancel the solicitation if it is considered to be in its best interest.

Proposal Content and Requirements

All responses to this RFP must be received via email or hard copy no later than 4:00 p.m. on Friday, July 23, 2021. If submitting in hard copy, please also provide files in electronic format. Late proposals will not be considered. All costs incurred in responding to this RFP will be borne by the responder.

Responses should be submitted to:

Randy Anhorn, Administrator
Nine Mile Creek Watershed District
ranhorn@ninemilecreek.org

The proposal submittal shall include the following content:

1. A statement of the objectives and overall project approach to show or demonstrate the responder's view and understanding of the nature of the project.
2. A detailed work plan that identifies key tasks to be completed and can be used as a scheduling and managing tool, as well as the basis for invoicing. The work plan should also include description of the deliverables to be provided.
3. Detailed cost breakdown of proposed services, including costs and number of estimated hours for key tasks.
4. A summary of key personnel who will conduct the project, detailing their training, work experience on related projects, and billing rates. The respondent must submit an organizational chart and resumes of the staff who will execute the project.
5. A summary of the responder's background and related experience, including at least three project examples of work performed by the responder in stormwater management, vegetation management and invasive species control, wetland protection and restoration, and other related work. Project examples should include identification and description of role(s) by key project team members.
6. A fee schedule.

Questions and Clarifications

A virtual pre-proposal meeting will be offered at 1:00 p.m. on Monday, July 12, 2021 at 1:00 p.m. Details to access the meeting are provided below.

Join from the meeting link

<https://barr.webex.com/barr/j.php?MTID=m894e615f67e0ac0061a328e70aa7e109>

Join by meeting number

Meeting number (access code): 177 551 5496

Meeting password: 071221

Join by phone

+18773107479 US & Canada Toll Free

+14044104502 US Toll

Prospective responders who have questions regarding this RFP should submit via email (telephone or in-person inquiries will not be accepted) to:

Randy Anhorn, Administrator
Nine Mile Creek Watershed District
ranhorn@ninemilecreek.org

All questions regarding this RFP must be received by Thursday, July 8, 2021. Responses to questions will be provided during the pre-proposal meeting at 1:00 p.m. on Monday, July 12, 2021 and will also be distributed to prospective responders via email.

Proposal Evaluation

All responses received on or before the due date specified in this solicitation will be reviewed by NMCWD. Proposals will first be reviewed for responsiveness to the proposal-content requirements. Proposals that fail to meet minimum requirements may not advance for further evaluation. Responses will be reviewed and evaluated based on qualifications, including but not limited to expressed understanding of the project objectives, demonstration of technical expertise pertinent to the project approach, work plan, qualifications/experience of specific individuals on responder's project team and cost.

NMCWD anticipates that the evaluation of proposals and selection of a consultant will be completed by August 18, 2021. The NMCWD may wish to interview respondents prior to selection.

NMCWD's consulting-services agreement template is attached below. NMCWD expects to utilize the template as the basis for the agreement entered into with the selected firm for the work described above. Respondents should carefully review the template, noting insurance, duty-of-care and indemnification terms in particular. NMCWD is disinclined to negotiate substantive terms of the agreement, but encourages respondents to call to discuss any terms prior to submission.

**Agreement between
Nine Mile Creek Watershed District and
[Consultant]**

[Project Title]

This agreement is entered into by the Nine Mile Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (NMCWD), and [Consultant], a Minnesota corporation (Consultant). In consideration of the terms and conditions set forth herein and the mutual exchange of consideration, the sufficiency of which hereby is acknowledged, NMCWD and Consultant agree as follows:

1. Scope of Work

Consultant will perform the work described in the [DATE] Scope of Services attached as Exhibit A (the Services). Exhibit A is incorporated into this agreement and its terms and schedules are binding on Consultant as a term hereof. NMCWD, at its discretion, in writing may at any time suspend work or amend the Services to delete any task or portion thereof. Authorized work by Consultant on a task deleted or modified by NMCWD will be compensated in accordance with paragraphs 5 and 6. Time is of the essence in the performance of the Services.

2. Independent Contractor

Consultant is an independent contractor under this agreement. Consultant will select the means, method and manner of performing the Services. Nothing herein contained is intended or is to be construed to constitute Consultant as the agent, representative or employee of NMCWD in any manner. Personnel performing the Services on behalf of Consultant or a subcontractor will not be considered employees of NMCWD and will not be entitled to any compensation, rights or benefits of any kind from NMCWD.

3. Subcontract and Assignment

Consultant will not assign, subcontract or transfer any obligation or interest in this agreement or any of the Services without the written consent of NMCWD and pursuant to any conditions included in that consent. NMCWD consent to any subcontracting does not relieve Consultant of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance obligations, or duty to hold harmless, defend and indemnify under this agreement.

4. Duty of Care; Indemnification

Consultant will perform the Services with due care and in accordance with national standards of professional care. Consultant will defend NMCWD, its officers, board members, employees and agents from any and all actions, costs, damages and liabilities of any nature arising from; and hold each such party harmless, and indemnify it, to the extent due to: (a) Consultant'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 Consultant to NMCWD. For any claim subject to this paragraph by an employee of Consultant 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 Consultant or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

5. Compensation

NMCWD will compensate Consultant for the Services on [an hourly OR a lump-sum] basis and reimburse for direct costs in accordance with Exhibit A. Invoices will be submitted monthly for work performed during the preceding month. Payment for undisputed work will be due within 35 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the NMCWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by Consultant, will be reimbursed by NMCWD at the rate specified in NMCWD's written approval of the subcontract.

[The total payment for each task will not exceed the amount specified for that task in Exhibit A.] The total payment for the Services will not exceed [\$_____]. Total payment in each respect 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.

Consultant 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. Consultant agrees that any authorized NMCWD 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 [DATE] unless earlier terminated as set forth herein.

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

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

7. No 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, NMCWD 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, Consultant will have and keep in force the following insurance coverages:

- A. General: \$1.5 million, each occurrence and aggregate, covering both Consultant's work and completed operations on an occurrence basis and including contractual liability.
- B. Professional liability: \$1.5 million each claim and aggregate. Any deductible will be Consultant's sole responsibility and may not exceed \$50,000. Coverage may be on a claims-made basis, in which case Consultant must maintain the policy for, or obtain extended reporting period coverage extending, at least three (3) years from completion of the Services.
- C. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.
- D. Workers' compensation: in accordance with legal requirements applicable to Consultant.

Consultant will not commence work until it has filed with NMCWD a certificate of insurance clearly evidencing the required coverages and naming NMCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing coverage for Consultant's work and completed operations as primary coverage on a noncontributory basis. The certificate will name NMCWD as a holder and will state that NMCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as Consultant.

9. Compliance With Laws

Consultant will comply with the laws and requirements of all 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, Consultant 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. Data and Information

All data and information obtained or generated by Consultant in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the data and information are contained, documented or memorialized, are the property of NMCWD. Consultant hereby assigns and transfers to NMCWD 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. Consultant agrees to execute all papers and to perform such other proper acts as NMCWD may deem necessary to secure for NMCWD or its assignee the rights herein assigned.

NMCWD may immediately inspect, copy or take possession of any materials on written request to Consultant. On termination of the agreement, Consultant may maintain a copy of some or all of the

materials except for any materials designated by NMCWD as confidential or non-public under applicable law, a copy of which may be maintained by Consultant only pursuant to written agreement with NMCWD specifying terms.

11. Data Practices; Confidentiality

If Consultant 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) Consultant possesses or has created as a result of this agreement, it will inform NMCWD immediately and transmit a copy of the request. If the request is addressed to NMCWD, Consultant will not provide any information or documents, but will direct the inquiry to NMCWD. If the request is addressed to Consultant, Consultant 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 NMCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes Consultant's obligations under this agreement with respect to protection of NMCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Consultant 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.

Consultant agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by NMCWD and so denominated by NMCWD. Consultant will not use any such materials for any purpose other than performance of the Services without NMCWD written consent. This restriction does not apply to materials already possessed by Consultant or that Consultant received on a non-confidential basis from NMCWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, Consultant retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any Consultant duty of care under this agreement does not extend to any party other than NMCWD or to any use of the materials by NMCWD other than for the purpose(s) for which Consultant is compensated under this agreement.

12. NMCWD Property

All property furnished to or for the use of Consultant or a subcontractor by NMCWD 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 NMCWD and returned to NMCWD at the conclusion of the performance of the Services, or sooner if requested by NMCWD. Consultant further agrees that any proprietary materials are the exclusive property of NMCWD and will assert no right, title or interest in the materials. Consultant will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by NMCWD.

Any property including but not limited to materials supplied to Consultant by NMCWD or deriving from NMCWD is supplied to and accepted by Consultant as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, Consultant's duty of professional care under paragraph 4, above, does not extend to materials provided to Consultant by NMCWD or any portion of the Services that is inaccurate or incomplete as the result of Consultant's reasonable 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 NMCWD:

Administrator
Nine Mile Creek Watershed District
12800 Gerard Dr.
Eden Prairie MN 55346

To Consultant:

[Authorized Representative
Organization
Address]

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

14. Choice of Law; Venue

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue for any action will lie in Hennepin County.

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. NMCWD may amend this agreement only by action of the Board of Managers acting as a body.

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

Consultant

By _____
Its _____

Date: _____

Approved as to Form and Execution

NMCWD Attorney

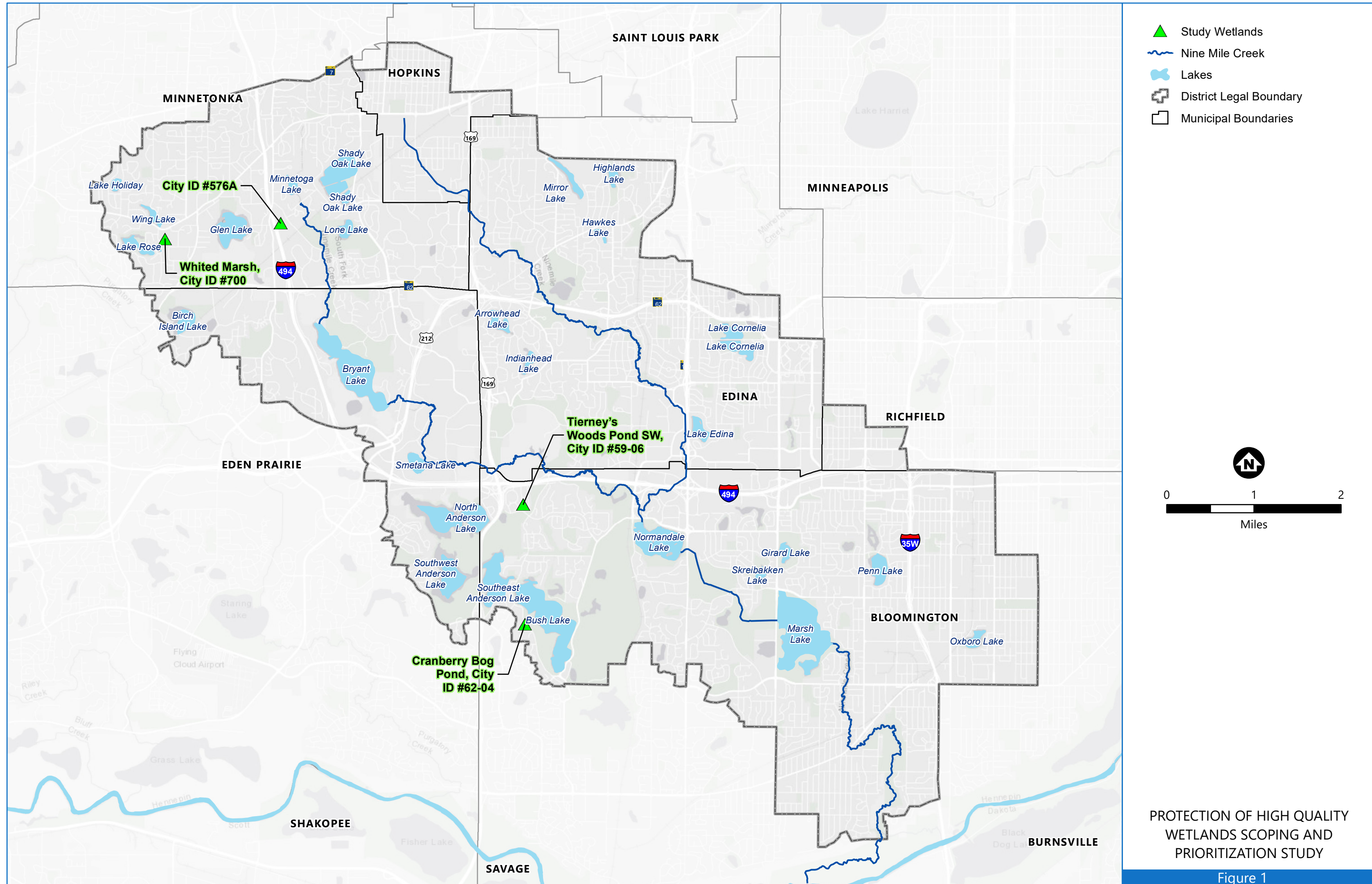
Nine Mile Creek Watershed District

By _____
Its _____

Date: _____

Table 1 Wetland protection strategies in four high quality wetlands in the Nine Mile Creek watershed.

Wetland ID	Name/Location	Wetland Description	Protection Strategies	Description of Potential Wetland Protection Activities
27-117-22-33-013	Whited Marsh, Minnetonka	Graminoid Sphagnum Rich Fen Basin	<ul style="list-style-type: none"> • Invasive species control • Stormwater management • Rain gardens • Upland buffer improvements and protections 	<p>Coordinate invasive species control including pulling, treating, and/or increasing beetles for purple loosestrife management and considering cattail management.</p> <p>Coordinate with Hennepin County to remove buckthorn in tax forfeit property and install rain garden or other suitable stormwater pre-treatment options.</p> <p>Partner with surrounding landowners to install raingardens or other suitable stormwater pre-treatment options. Incorporate native species in upland buffer establishment to provide beneficial pollinator habitat.</p>
27-117-22-34-017	City ID #576A, Minnetonka	Graminoid Sphagnum Rich Fen Basin	<ul style="list-style-type: none"> • Invasive species control • Stormwater management • Rain gardens • Upland buffer protections • Slope stabilization 	<p>Partner with surrounding landowners including MN DOT, business owner, and townhome association for invasive species control, stormwater management, rain gardens, upland buffer protections, and slope stabilization.</p>
27-116-21-19-003	Cranberry Bog Pond, Bloomington	Graminoid Sphagnum Rich Fen Basin	<ul style="list-style-type: none"> • Invasive species control • Stormwater management • Upland buffer improvements and protections • Boardwalk and educational opportunities 	<p>Partner with City of Bloomington and surrounding landowners for invasive species control, stormwater management, upland buffer improvements and protections. Consider boardwalk and educational opportunities.</p>
27-116-21-18-020	Tierney's Woods Pond SW, Bloomington	Sedge meadow/shallow marsh	<ul style="list-style-type: none"> • Invasive species control • Stormwater pre-treatment • Institutional wetland protections 	<p>Implement stormwater pre-treatment measures to prevent further degradation of this high quality native wetland community.</p>



PROTECTION OF HIGH QUALITY WETLANDS SCOPING AND PRIORITIZATION STUDY

Figure 1