STATE OF MINNESOTA **COUNTY OF HENNEPIN**	**DISTRICT COURT** **FOURTH JUDICIAL DISTRICT** Court File Number: 27-CV-25-8066 Case Type: Civil Other/Misc.

Alatus Development LLC,

Plaintiff,

vs

Minnehaha Creek Watershed District and
City of Hopkins,

Defendants.

Judge Colette Routel

ORDER

This matter came before the Honorable Colette Routel, Hennepin County District Court, on June 3, 2026, on Defendant Minnehaha Creek Watershed District's Motion for Summary Judgment. Mark Becker, Esq., and Christian Poppe, Esq., appeared on behalf of Plaintiff Alatus Development LLC. Justin Templin, Esq., appeared on behalf of Defendant Minnehaha Creek Watershed District. At the hearing, the Court heard oral argument and ordered additional briefing on an issue. After receiving and reviewing that additional briefing, the Court took the matter under advisement.

BACKGROUND

I. FACTUAL BACKGROUND

A. The Minnehaha Creek Watershed District, the Property and the Cooperative Agreement

Defendant Minnehaha Creek Watershed District ("MCWD") is a local government unit established in 1967 under the Minnesota Watershed District Act of 1955. (Index No. 12, Affidavit of J. Wisker, ¶ 1.) Its purposes and powers are set forth in Chapters 103B and 103D of the Minnesota Statutes, but broadly, its mission "is to collaborate with public and private partners to protect and improve land and water for current and future generations." (*Id.*; Index No. 1, Complaint, Exhibit 8 at Exhibit A (Cooperative Agreement) at A-1.) MCWD encompasses 178 square miles within Hennepin and Carver Counties. (Index No. 12, Affidavit of J. Wisker, ¶ 1).

In 2011, MCWD acquired approximately 17 acres of land along Minnehaha Creek at 325 Blake Road in the City of Hopkins (the "Property"). (Index No. 1, Complaint, Exhibit 8 at Exhibit A at A-1, A-2.) This land was previously used for a large cold storage warehouse. (*Id.* at 1.) MCWD purchased the Property to restore more than 1,000 feet of Minnehaha Creek frontage and to build a stormwater treatment facility to treat polluted stormwater that flows into Minnehaha Creek from the surrounding area. (*Id.* at 1, 2.) MCWD planned to sell the land not needed for stormwater treatment to a private developer so it could transform the area into a "transit-oriented, mixed-use development near a future station of the Southwest Light Rail Transit line." (*Id.*)

Initially, the MCWD attempted to create a partnership with Kraus-Anderson to develop the portion of the Property not needed for stormwater treatment. (Index No. 12, Affidavit of J. Wisker, ¶ 13.) But when Kraus-Anderson was unable to reach an agreement with the City of Hopkins ("City") regarding their respective roles for infrastructure elements, it abandoned the project. (*Id.*) MCWD "reflected on this experience" and decided "it would be important to have a more explicit collaboration with the City of Hopkins, which clarified roles for the MCWD as land seller and water resource agency and the City as municipal authority for land use approvals and infrastructure finance." (*Id.* at ¶ 14.)

In October 2020, MCWD and the City entered into a Cooperative Agreement relating to the development of the Property.[1] The agreement was designed to coordinate the "policies, planning, and development process" for the Property and to ensure "frequent open communication" between the MCWD and the City. (Index No. 1, Complaint, Exhibit 8 at A-2.) Under the Cooperative Agreement, MCWD and the City committed to a "structure to promote sound coordination," which included the appointment of two liaisons from the MCWD and two liaisons from the City. Those liaisons would meet regularly and make recommendations to the City Council and the MCWD Board of Managers. (*Id.* at A-3.) Under the agreement, MCWD and the City also agreed to jointly select a developer for the project and to negotiate a preliminary development agreement with the chosen developer. (*Id*. at A-4 to A-6.)

Importantly, however, the Cooperative Agreement gave MCWD the sole authority to negotiate a Purchase Agreement with the selected developer, requiring only that it "consult" with the City. (*Id*. at A-7.) The Cooperative Agreement states:

> MCWD will negotiate a purchase agreement with the selected developer on terms compatible with the final development plan. MCWD agrees to keep the City informed about this negotiation and to consult the City for its input through the Staff Coordination Team and Liaisons.

Id. The agreement also included a provision entitled "Remedies," that states:

> This Agreement creates no right in any third party; waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement; and creates no relationship of third-party beneficiary, principal and agent, partnership, or joint venture as between the City and District. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.

(*Id.* at A-8.)

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[1] Both parties refer to the Cooperative Agreement included as Exhibit 5 to the Plaintiff's Complaint. (Index No. 1, Complaint, Exhibit 5.) This document, however, is labelled "DRAFT August 18, 2020," and is unsigned. (*Id.*) A signed version of the Cooperative Agreement is included as an attachment to the Preliminary Development Agreement, which is labeled as Exhibit 8 to the Complaint. Throughout this order, the Court refers to the final version, which was signed by the City on September 16, 2020, and by the MCWD on October 24, 2020. (Index No. 1, Complaint, Exhibit 8 at Exhibit A.)

B. Developer Selection and the Preliminary Development Agreement

On June 17, 2021, in accordance with the Cooperative Agreement, the MCWD's Board of Managers and the Hopkins City Council held a joint meeting to select a developer for the site. (Index No. 12, Affidavit of J. Wisker, ¶ 17.) Plaintiff Alatus Development, LLC ("Alatus"), was one of three developers that submitted proposals for the Board/City Council's consideration. (*Id.*) "Of the three proposals considered, Alatus had the largest total development costs, largest public subsidy in tax increment financing, and largest amount of grants needed." (*Id.*) MCWD made it known that Alatus' proposed phasing and purchase price would need to remain "firm" for it to be selected as the project's developer. (*Id.*) With this caveat, Alatus was selected as the developer for the site, and Wellington Management was selected as an alternate developer if Alatus was unsuccessful.[2] (*Id.*)

On November 4, 2021, MCWD, the City, and Alatus entered into a Preliminary Development Agreement ("PDA"). (Index No. 1, Complaint, Exhibit 8.) The PDA gave Alatus, "for a reasonable period of time," the exclusive right to negotiate an agreement with the MCWD to purchase 13 acres of the Property for redevelopment. (*Id.* at 2.) While the purchase agreement was being negotiated, and for 12 months after its execution, the PDA also gave Alatus the exclusive right to "negotiate the terms of land use entitlements," "site plan approval," and "financial assistance" for the project with the City. (*Id.*) With respect to the purchase agreement to be negotiated between MCWD and Alatus, the PDA created a two-phase approach:

> 4. <u>Purchase Agreement; Acknowledgment of Purchase Price</u>. Within a reasonable period of time, MCWD and Developer shall negotiate in good faith to reach agreement on a definitive Purchase Agreement. The City hereby acknowledges that MCWD relied on Developer's pledge to pay the Purchase Price (set forth below) as a

[2] In his Declaration, Robert C. Lux, the Chief Executive Officer for Alatus claims that Wisker's Affidavit "insinuates that the District reluctantly approved Alatus only to appease the City." (Index No. 40, Declaration of R. Lux, ¶ 38.) Lux also indicates that Wellington Management was not listed as an alternate developer in the PDA. (*Id.* at ¶ 39.) These disputes, however, are not over material facts.

condition to MCWD's consent to selection of Developer. The City agrees to include the Purchase Price within its financial analysis of Developer's proposal. The parties agree that the Purchase Agreement shall include, without limitation, the following key terms and conditions:

> (a) The Redevelopment Site may be acquired by Developer in up to two phases (each a "Phase" and, collectively, the "Phases"). The first Phase to be acquired by Developer shall include approximately 70% of the Redevelopment Site (the "Phase I Land") and the second Phase shall include the remaining balance of the Redevelopment Site (the "Phase II Land").
>
> (b) Purchase price of $11,250,000 ("Purchase Price") for the entire Redevelopment Site, which may be allocated in reasonably proportional manner cased on acreage of the two (2) Phases, provided the purchase price for the Phase I Land must be $8,000,000 and $3,250,000 for the Phase II Land (unless such amounts are adjusted in the Purchase Agreement by mutual agreement of Developer and MCWD)[.] The parties will acknowledge and agree that the foregoing purchase prices are reasonable market values for the Redevelopment Site.
>
> (c) Closing on the Phase I Land must occur by June 30, 2023[.] [C]losing on the Phase II Land must occur by December 31, 2024.
>
> (d) Developer, as buyer, will have at least a twelve (12) month due diligence and contingency period for obtaining land use entitlements and financing for the Phase I Land closing.

(*Id.* at 3) (emphasis omitted).

Regarding termination, the PDA states:

> Notwithstanding any other provisions in this Agreement to the contrary, this Agreement may be terminated as follows: (1) the parties, by mutual written agreement, may terminate this Agreement at any time; (2) the parties may terminate this Agreement in the event of a breach of the Agreement by another party, upon providing 30 days' written notice to the party, unless such breach is cured before the expiration of said 30-day period.

(*Id.* at 5.) The Preliminary Development Agreement incorporated the Cooperative Agreement between MCWD and the City by reference. (*Id.* at 2.)

C. Real Estate Purchase Agreement

On May 9, 2022, MCWD and Alatus entered into a Real Estate Purchase Agreement (hereinafter "Purchase Agreement"). (Index No. 1, Complaint, Exhibit 10.) The Purchase Agreement retained the two-phase purchase structure contemplated by the Preliminary Development Agreement, along with the total purchase price of $11,250,000. (*Id.* at 2.) It created a 12-month "Feasibility Period," however, during which Alatus would gather the information it needed to proceed with closing and determine, to its satisfaction, whether the project was sufficiently financed. (*Id*. at 3-4, 9.) The Phase I Closing Date was to occur 90 days after the end of the Feasibility Period or 90 days after the waiver of the Feasibility Period, whichever occurred first. (*Id.* at 11.) The Feasibility Period could be extended by Alatus for up to two separate 90-days periods, so long as Alatus paid $25,000 to MCWD for each period. (*Id.* at 4.) Consequently, if the Feasibility Period was not waived, the Purchase Agreement contemplated an extension of the Preliminary Development Agreement's June 30, 2023 closing date for Phase I. The Phase II closing date, on the other hand, remained December 31, 2024, as it had been in the PDA. (*Id*.)

The Purchase Agreement noted that Alatus had received approval from the City in December 2021 to have the portion of the Property it was purchasing rezoned. (*Id.* at 1.) That rezoning would enable the construction of 800 multi-family units (with 688 of those units as apartments, 112 as senior cooperative units, 33 as townhomes), along with retail and restaurant space on the Property. (*Id*.) A portion of the housing units would be financed as an affordable housing project through an award of tax-exempt bonds from Minnesota Management and Budget. (*Id.* at 2.) The agreement required MCWD to "consider any reasonable requests by the Buyer" necessary to accommodate Alatus's efforts to satisfy the conditions required for the issuance of those housing bonds, but it explicitly stated that any accommodations would be at the MCWD's "sole and absolute discretion." (*Id.*) Finally, because the development footprint would encroach slightly on the area contemplated for MCDW's stormwater treatment facility, the project now contemplated certain "Stormwater Offset Improvements." (*Id.*)

The Purchase Agreement required Alatus to deposit $100,000 earnest money with the Title Company. (*Id.* at 3.) If Alatus complied with the terms of the agreement, this earnest money would be applied against the Phase II purchase price. (*Id.*) If Alatus failed to complete the Phase I or Phase II Closing, however, MCDW could "exercise[] its right to terminate this Agreement in accordance with Section 15," and the agreement provided that "the Earnest Money shall be paid to [MCDW] upon such termination." (*Id.*) More specifically, Section 15(a) of the Purchase Agreement included the following provision if Alatus defaulted on its terms:

> If Buyer defaults in performance of its obligations under this Agreement, Seller shall have the right to terminate this Agreement by written notice to Buyer in the manner required by Minnesota Statutes Section 559.21 and to obtain the Earnest Money as liquidated damages. Such termination of this Agreement and receipt of the Earnest Money will be the only remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance.

(*Id*. at 19.)

The Purchase Agreement noted that "[t]ime is of the essence" in its performance. (*Id.* at 21.) It also contained a merger clause stating:

> This Agreement and the exhibits attached hereto sets forth fully and completely the agreement between the parties in connection with this transaction, there are no written or oral agreements between the parties relating to this transaction that are not expressly set forth herein and this Agreement supersedes all prior oral or written agreements relating to this transaction; provided, however, the parties acknowledge and agree that the parties, together with the City, are parties to a certain Preliminary Development Agreement related to the Project (the "PDA"). In the event of any conflict between the terms and conditions of this Agreement and the PDA, the terms and conditions of this Agreement shall prevail.

(*Id*. at 21.)

D. First Amendment to the Purchase Agreement

Just ten days after the execution of the Purchase Agreement, Alatus requested a modification to change the two-phased development plan. Alatus asked to proceed out of order by constructing the Chorus Apartments – the affordable housing development – first. (Index No. 12, Affidavit of J. Wisker, ¶ 19.) Thus, the two-phased development plan would now become a three-phased plan. (*Id.*) MCWD was concerned, however, that this change could leave the

Chorus Apartments "as an island of affordable housing" with no parking, and that there were various other implications if the rest of the Property was not developed as planned. (*Id*.) To make this amendment more palatable to MCWD, on June 9, 2022, Alatus offered to increase its earnest money from $100,000 to $1,000,000. (*Id*.)

On June 23, 2022, the parties entered into the First Amendment to the Real Estate Purchase Agreement ("First Amendment"), which divided the Phase I Project into the Phase IA and Phase IB, so that Alatus could proceed with construction on the Chorus Apartments first. (Index No. 1, Complaint, Exhibit 11.) The First Amendment acknowledged that it was being entered into because Alatus had received a commitment for "Low Income Tax Credit" financing for construction of the Chorus Apartments, but to use this financing, it was required to close on the portion of the Property to be used for this development or before July 8, 2022. (*Id.* at 1.) The First Amendment divided the $8,000,000 purchase price for the Phase I project land into two separate purchase prices for the Phase IA ($1,000,000) and Phase IB ($7,000,000) project properties. (*Id.* at 1.)

The First Amendment contained the provision for "Additional Earnest Money" that had been offered by Alatus to secure MCDW's support. It stated:

> As a condition to, and no later than simultaneously with, the Phase IA Closing, Buyer shall deposit the sum of $1,000,000.00 (the "Additional Earnest Money") with the Title Company pursuant to an escrow agreement in a form mutually agreed to by the parties thereto in their reasonable discretion.
>
> For avoidance of doubt, the Additional Earnest money is separate and distinct from the $100,000 "Earnest Money" set for in Section 2(b) of the Original [Purchase] Agreement, and the parties' respective rights and obligations with respect to said Earnest Money are not modified by this Amendment.

(Index No. 1, Complaint, Exhibit 11 at 2.) If Alatus successfully performed its obligations under the Purchase Agreement by, among other things, completing all phases of the project, the Additional Earnest Money would be applied to the Phase IB purchase price at closing. But if

Alatus defaulted under the Purchase Agreement, the Additional Earnest Money was to be forfeited to MCWD. (*Id.*) The First Amendment also included additional assurances by Alatus that it had approved the construction drawings for the watershed project – the portion of the Property development most important to the MCWD – and it "has, or is able to readily obtain, all financing necessary to construct" it. (*Id.*)

E. Extensions to the Feasibility Period and the Second Amendment to the Purchase Agreement.

As noted above, the Purchase Agreement authorized Alatus to extend the one-year Feasibility Period by up to two separate 90-day periods, so long as Alatus paid $25,000 to MCWD for each period. (Index No. 1, Complaint, Exhibit 10 at 4.) Alatus exercised these rights. On May 8, 2023, Alatus extended the Feasibility Period from May 9, 2023, to August 7, 2023. (Index No. 1, Complaint, Exhibit 12; Index No. 12, Affidavit of J. Wisker, ¶ 20.) And on August 4, 2023, Alatus extended the Feasibility Period for the second time, from August 7, 2023, to November 6, 2023. (Index No. 1, Complaint, Exhibit 13; Index No. 12, Affidavit of J. Wisker, ¶ 20.) Alatus provided the $25,000 payment for each of these extensions, as required. (*Id.*)

On November 3, 2024, before the second extension period ended, the parties entered into a Second Amendment to the Real Estate Purchase Agreement ("Second Amendment"). (Index No. 1, Complaint, Exhibit 14.) The Second Amendment noted that Alatus was seeking approval for $15,850,000 in municipal bonds for parking and infrastructure costs associated with the project, and that it had begun negotiations with two developers who were interested in constructing the townhomes and senior housing on the Property. (*Id.* at 1.) Because these negotiations were still in progress, the Second Amendment extended the feasibility period to March 31, 2024, and the closing date on Phase IB to no later than July 1, 2024. (*Id.*) The closing date for Phase II project remained December 31, 2024.

The Second Amendment also provided that $100,000 of the $1,000,000 in Earnest Money provided under the First Amendment would be immediately released to MCDW and considered an "Additional Extension Payment," rather than earnest money. (*Id.* at 1-2.) Alatus also committed to pay $11,339.50 in transaction costs and expenses. (*Id.* at 4.)

After execution of the Second Amendment by Alatus and MCWD, Bob Lux, Alatus' principal, repeatedly offered MCWD assurances that financing for the project was coming "any day" from Kanye Anderson Capital Advisors (hereinafter "Kanye Anderson"). (Index No. 12, Affidavit of J. Wisker, ¶ 22.) In March 2024, Alatus described Kanye Anderson as nearly a "definitive yes" with only two more weeks needed to finish underwriting. Alatus was so confident that it organized a meeting with its partners and their associated engineers, architects, and construction managers to prepare for initiation of site construction. (*Id.*) When six weeks passed without a commitment from Kanye Anderson, however, Alatus organized a site meeting with Kanye Anderson, Hopkins Mayor Patrick Hanlon, and MCWD's Board Manager Eugene Maxwell. (*Id*. at ¶ 23.) After this meeting, on May 13, 2024, Mr. Lux sent an email to MCWD indicating that Kanye Anderson was "all in" and just needed final committee approval. (*Id*.) But approval never came. (*Id*.) On June 13, 2024, Mr. Lux sent another email to MCWD, the City, and other its other development partners stating that Kayne Anderson's underwriting team had declined to move forward with the project. According to Mr. Lux, Alatus was now pivoting to try to find a new capital source, even though less than 20 days were left before the Phase IB closing date. (*Id.* at ¶ 24.)

For its part, Alatus claims that it pursued financing through multiple sources, including Kanye Anderson, but financing for real estate projects was not available through normal banks or private equity sources due to high interest rates and historically high inflation. (Index No. 40, Declaration of R. Lux, ¶ 42.) It also asserts that it incurred more than $2,000,000 in third-party development costs, including costs related to infrastructure and the "cascade" water feature design. (*Id*. at ¶ 15.)

F. Third Amendment to Purchase Agreement

MCWD asserts that after the June 13 email, and as the July 1, 2024 deadline to close approached, it did not receive any additional communication from Alatus. (Index No. 12, Affidavit of J. Wisker, ¶ 26.) Alatus disagrees with this assertion and claims that it "communicated with MCWD regularly and responded to all important District communications in a reasonable period of time." (Index No. 40, Declaration of R. Lux, ¶ 45.) This factual difference is not material to resolving the parties' dispute.

On July 1, 2024, MCWD and Alatus entered into a Third Amendment to the Purchase Agreement ("Third Amendment"). (Index No. 1, Complaint, Exhibit 15.) The Third Amendment provided Alatus a 120-day extension, giving it until November 1, 2024, to close on the Phase IB project property, and May 1, 2025 to close on the Phase II project property. (*Id.* at 1.) The Third Amendment also stated that MCWD would now be authorized to pursue discussions with other developers, thereby altering the exclusivity provisions in the Purchase Agreement. (*Id.*) MCWD could not enter into agreements for other persons to develop the Property, however, so long as the Third Amendment remained in effect. (*Id.*)

MCWD told Alatus that there would be no more extensions "without meaningful commitments to advance key infrastructure for development, including MCWD's water resource project at the site," and it "outlined key milestones that would need to be achieved." (Index No. 12, Affidavit of J. Wisker, ¶ 26.) According to MCWD, on September 18, 2024, representatives for the parties met to discuss the status of the project and the essential elements needed to proceed. Alatus shared that it was negotiating with a new potential financing partner, NHP Foundation. (*Id*. at ¶ 27.) MCWD claims that it outlined its needs in detail and reiterated that there would not be any more extensions without a commitment by Alatus to advance key infrastructure and performance milestones, which required Alatus to design the infrastructure within 60 days. (*Id.*) Alatus, on the other hand, asserts that the parties understood that interest rates were high and that extensions were warranted. It also claims that MCWD did not express that it would not support additional time extensions. (Index No. 40, Declaration of R. Lux, ¶ 48.)

On October 24, 2024, Alatus emailed MCWD to request a one-year extension. (Index No. 12, Affidavit of J. Wisker, ¶ 29.) That request did not contain any proposed terms for the extension. without proposed terms for the extension. (*Id.*) The MCWD Board of Managers declined to grant another extension, noting that the November 1, 2024 deadline was close and that none of the milestones outlined in September had been achieved. Instead, the Board directed staff and counsel to issue a notice of default to Alatus. (*Id.*)

G. Notice of Default and Termination

On November 5, 2024, MCWD notified Alatus that it was in default on the Purchase Agreement for "failing to pay the Phase 1B Purchase Price and to close on the Phase 1B Property on November 1, 2024 and to otherwise satisfy the conditions and requirements of the Phase 1 Closing" as required. (Index No. 1, Complaint, Exhibit 18.) The Notice of Default also states that MCWD "reserves all of its rights and remedies under the Purchase Agreement for such defaults, including the right to cancel the Purchase Agreement and retain the Earnest Money and the Additional Earnest Money." (*Id.*) The Notice of Default outlined the minimum steps that Alatus needed to accomplish no later than December 31, 2024 for MCWD to rescind the notice and consider another amendment to the Purchase Agreement. (*Id.*)

Between November 2024 and April 2025, MCWD, the City, and Alatus attempted to negotiate a way forward to closing under the Purchase Agreement. (Index No. 12, Affidavit of J. Wisker, ¶ 30-32; Index No. 1, Complaint, Exhibits 19, 20, 22, 23.) MCWD asserts that the milestones agreed upon were not met by Alatus and NHP financing never materialized. (Index No. 12, Affidavit of J. Wisker, ¶¶ 32, 33.) On April 1, 2025, five months after the Phase 1 closing date had passed, MCWD issued a Notice of Termination to Alatus. (Index No. 1, Complaint, Exhibit 24; Index No. 12, Affidavit of J. Wisker, ¶¶ 34-36.) The notice gave Alatus 30 days to cure the defaults highlighted in the November 5, 2024 Notice of Default. (Index No. 1, Complaint, Exhibit 24.) This lawsuit followed.

II. PROCEDURAL HISTORY

On April 29, 2025, Alatus filed a Summons and Complaint naming MCWD and the City as Defendants and pleading the following counts: (1) Declaratory and Injunctive Relief (Temporary Restraining Order/Permanent Injunction); (2) Breach of Contract; and (3) Unjust Enrichment/Quantum Meruit. (Index No. 1, Complaint.) On the same day that it filed its Complaint, Alatus sought a temporary restraining order against MCWD asking for the following relief:

a. declaring that pursuant to the PDA and Joint Development Agreement, MCWD cannot unilaterally cancel the Purchase Agreement without the consent or approval of the City;

b. declaring that pursuant to the PDA, Alatus has not been afforded a "reasonable period of time" to negotiate a "definitive" Purchase Agreement, and that accordingly MCWD has no right to cancel the Purchase Agreement;

c. declaring pursuant to the PDA, MCWD must continue to "negotiate in good faith" with Alatus towards a "definitive" Purchase Agreement;

d. declaring that the Purchase Agreement in its current state is not "definitive" because the City and Alatus have not executed Final Development Contracts, and the reciprocal easements have not been agreed upon yet, as required by Paragraph 4(e)(ii) and 4(e)(iii) of the PDA;

e. enjoining MCWD from canceling the Purchase Agreement and to require MCWD to continue to afford Alatus a "reasonable period of time" to negotiate a "definitive" Purchase Agreement.

(Index Nos. 2., 3) No affidavits of service appear in the file demonstrating service on Defendants MCWD and the City. Defendant MCWD filed a Notice of Motion and Motion to Dismiss pursuant to Rule 12.02 of the Minnesota Rules of Civil Procedure on May 19, 2025. (Index No. 15.) No answer or motion to dismiss was filed by the City.[3]

On May 28, 2025, Judge Burke held a hearing on Alatus' Motion for a Temporary Restraining Order ("TRO"). Approximately one week later, on June 6, 2025, Judge Burke issued an Order denying Alatus' Motion. (Index No. 20.) In that 25-page opinion, Judge Burke concluded, among other things, that Alatus had not established a likelihood of success on the merits in its case, and therefore, a TRO was inappropriate. (*Id.* at 9-18) (analyzing the merits).

Following denial of the Plaintiff's Motion for a TRO, Judge Burke issued a Scheduling Order. (Index No. 21.) The Scheduling Order included (1) a mediation deadline of February 6, 2026, (2) a discovery deadline of March 8, 2026, and (3) a motion deadline April 7, 2026. (*Id.* at ¶¶ 2, 6(b), 8(a).) The Scheduling Order also included a provision that was standard in Judge Burke's orders, but unique in the Civil Division. Judge Burke indicated that she would not schedule a hearing on any dispositive motion – including motions to dismiss – until mediation had taken place. (*Id.* at ¶ 8(b).)

The parties engaged in mediation in August and October 2025. (Index No. 22; Index No.

[3] During oral argument on June 3, 2026, Alatus indicated that it had given the City an "indefinite" extension to file its answer. From that hearing and from other filings with this Court, is apparent that the City is not a true defendant in this litigation despite being named as such by Alatus.

26 at 2.) In October 2025, however, Judge Burke received notice that she would be transferring out of the Civil Division. As a result, she did not set any additional dispositive motion hearings after that date, because any such decision would be due after she was set to rotate out of the Civil Division. For this reason, MCWD's Motion to Dismiss was not scheduled.

This matter was officially reassigned to the undersigned on December 18, 2025, and the undersigned transferred into the Civil Division in January 2026. On January 26, 2026, the MCWD emailed the Court to request a hearing on its Motion to Dismiss. The Court responded on February 6, 2026, setting the hearing for April 17, 2026 at 11:00 a.m. (Index No. 28 at Exhibit 2.) This date did not work for Counsel for Alatus, however, and on February 11, 2026, the parties requested that the Court reschedule the hearing date for "June or July 2026, to accommodate Plaintiff's counsel's scheduling conflict and the parties' ongoing settlement negotiations." (Index No. 25; Index No. 30 at 3 n.2.) The Court initially rescheduled the hearing for May 21, 2026, noting that the case, which had already been pending for a significant time, needed to move along.

On Wednesday, March 4, 2026, with only two business days left before the Scheduling Order's discovery deadline of March 8, 2026, Alatus filed a motion seeking to extend the discovery until May 31, 2026. (Index No. 26.) Alatus indicated that it had been engaged in settlement negotiations, and as a result, had not participated in any discovery to date. The MCWD filed an opposition to Alatus's motion to extend the deadlines, noting that it had not been served with any written discovery or notices of depositions. (Index No. 30.) Email correspondence provided to the Court by Alatus establishes that it did not ask to schedule depositions until three weeks before the discovery deadline, and then, Counsel for MCWD invited Alatus to serve whatever deposition notices were needed. Despite this invitation, no deposition notices were served. (Index No. 28, Exhibit 2; Index No. 30 at 4; Index No. 31 at

Exhibit A.)

The Court, which at that point was already fully booked with hearings through the end of June 2026, did not set a separate motion hearing on Alatus's motion. The hearing on MCWD's dispositive motion and Alatus's motion to extend the discovery deadline was ultimately pushed out until June 3, 2026, however, when a trial scheduled for that date settled. In the meantime, now that the discovery deadline had passed, MCWD filed a new Notice of Motion and Motion for Summary Judgment, along with a supporting Memorandum. (Index Nos. 34, 35.) On May 7, 2026, Alatus filed its Memorandum of Law in Opposition to the MCWD's Motion for Summary Judgment. (Index No. 37.) MCWD filed its reply on May 13, 2026. (Index No. 41.)

At the June 3, 2026 hearing, the Court heard oral argument from the parties and issued an order for submissions requesting that the parties submit letter briefs on Alatus' argument that MCWD defaulted by not filing an answer. Alatus submitted a letter brief on this issue on June 12, 2026. (Index No. 45.) On June 26, 2026, MCWD submitted its letter brief in response to Alatus. (Index No. 47.) The Court then took the matter under advisement.

ANALYSIS

I. MCWD DID NOT DEFAULT BY NOT FILING AN ANSWER.

Alatus argues that MCWD is in default and that all allegations in the Complaint are deemed admitted because it has not filed an answer. In its Response Memorandum, Alatus did not even reference the Motion to Dismiss filed by MCWD. (Index No. 37, at 13-14.) In its supplemental letter brief to the Court, however, Alatus focuses on the fact that while MCWD filed its Motion to Dismiss in a timely manner and paid the required filing fee, it did not obtain a hearing date from Judge Burke's Chambers. While Alatus acknowledges that Judge Burke's Scheduling Order required the parties to mediate before any such hearing could be scheduled, it claims that mediation occurred on August 22, 2025, and MCWD should have requested a motion hearing date at that time. Finally, Alatus argues that when MCWD filed a Motion for Summary Judgment on April 23, 2026, paid a separate filing fee for that motion, and briefed that motion, it "abandoned" its Motion to Dismiss. (Index No. 45.)

The Court disagrees. MCWD filed a timely Motion to Dismiss pursuant to Rule 12.02(e) of the Minnesota Rules of Civil Procedure, which alleviated its need to file an Answer. Minn. R. Civ. P. 12.02. (noting that "[a] motion making any of these defenses shall be made before pleading if a further pleading is permitted"). The parties then engaged in mediation from August through October 2025.[4] When that mediation was unsuccessful, Counsel for MCWD diligently informed the Court and requested a motion hearing date, both through correspondence filed into this case, *see* Index No. 22, as well as via email/telephone. Judge Burke declined to set a motion hearing at that time, because she knew she would be transitioning out of the Civil Division. (Index No. 47) (noting that "counsel for the District contacted the Court to obtain a motion hearing date. By that time, Judge Burke was beginning the process of transitioning her caseload and did not intend to take new matters under advisement. No hearing dates would be available until after the transition was complete").[5] In January 2026, when the undersigned transitioned

[4] While Plaintiff now seeks to confine its mediation to August 22, 2025, this is inconsistent with its prior representations to this Court. In its Motion to Extend Time, filed on March 4, 2026, Counsel for Alatus stated that "the parties engaged in mediation with a [sic] Mark Heley serving as mediator. The mediation took place between August, 2025 and October, 2025." (Index No. 27 at 2.)

[5] While this statement is made by Counsel for MCWD in letter format, the undersigned can confirm that it is accurate. One of Judge Burke's law clerks during this time transferred to work with the undersigned, and therefore, there is continuity in the Chamber's knowledge of events from August 2025 – January 2026, when the transition occurred. Additionally, this same pattern (i.e., refusing to set hearings on motions to dismiss until mediation had occurred, and not setting any new dispositive motions between October – December 2025) was replicated in dozens of other cases and accounts for the limited docket space the undersigned had to schedule new hearings following the transition.

into the Civil Division and was assigned Judge Burke's caseload, Counsel for MCWD immediately reached out to schedule a hearing on its Motion to Dismiss. As noted in the Procedural History section above, that hearing date, which was originally set for April 2026, was then moved, first due to a personal conflict noted by Counsel for Alatus, *see* Index No. 25, and then, briefly, due to a Court emergency. Thus, it was ultimately rescheduled for June 3, 2026.

It is true that MCWD ultimately briefed an argued a Motion for Summary Judgment rather than its originally contemplated Motion to Dismiss. The Rules of Civil Procedure, however, explicitly contemplate conversion of a motion to dismiss for failure to state a claim into one for summary judgment. Minnesota Rule of Civil Procedure 12 provides:

> If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.02. The only material outside the pleading that MWCD introduced through its summary judgment motion was the Affidavit of James Wisker, the MWCD's Administrator. (Index No. 12.) This Affidavit was filed with the Court in *May 2025*, as part of MCWD's response to Alatus's Motion for a TRO. As a result, Alatus cannot claim prejudice. Additionally, the material in this Affidavit provides mostly background or color; none of the statements contained therein are essential to the Court's determination here. Indeed, the Court would rule the same way if this motion were briefed as a Motion to Dismiss rather than a Motion for Summary Judgment.

While the Court provided Counsel additional time to find caselaw supporting its argument, the cases relied on by Alatus in its letter brief are not analogous to the present matter. Two of the cases involve a motion to challenge an arbitration award, where the party bringing the motion failed to promptly secure a hearing date within the 90-day deadline mandated by law. *Haekenkamp v. Allstate Ins. Co.*, 265 N.W.2d 821, 824 (Minn. 1978); *LAN Const., Inc. v. Robert Williams*, 2004 WL 780161, at *2 (Minn. Ct. App. Apr. 13, 2004). Even under those circumstances, the Court did not find the motion barred in most cases unless prejudice was shown. *Haekenkamp*, 265 N.W.2d at 824; *Khawaja v. State Farm Ins. Co.*, 631 N.W.2d 106, 112-13 (Minn. Ct. App. 2001) (noting that appellant "has failed to demonstrate that any technical noncompliance with Minn. R. Gen. Pract. 115.02 was prejudicial"). Moreover, in *In re Est. of Norman*, also relied on by Alatus, the court found that the district court did not err by not considering motions submitted by an incarcerated man without notice of a hearing date. 2015 WL 1013996 (Minn. Ct. App. Mar. 9, 2015). In that case, the Court of Appeals stated, "If a party brings a motion but does not comply with the notice requirement, a district court need not consider the motion." *Id*. at *3. These cases are significantly different than the present situation where MCWD could not obtain a hearing date from the previous judicial officer because of her personal Chambers's policy. For these reasons, MCWD did not default, and the Court will consider its present Motion for Summary Judgment.

II. MINNEHAHA CREEK WATERSHED DISTRICT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

A. Legal Standard

A moving party is entitled to summary judgment if there is no genuine issue of material fact and they are entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01; *see also Gaspord v. Wash. Cty. Planning Comm'n*, 252 N.W.2d 590, 590 (Minn. 1977) (holding that "[s]ummary judgment is properly rendered only where there is no genuine issue of material fact in dispute and where a determination of the applicable law will resolve the controversy"). If the moving party puts forth a prima facie case, the burden of producing facts that raise a genuine issue shifts to the opposing party. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). To satisfy this burden, the non-moving party must do more than create "a metaphysical doubt as to a factual issue" and must present evidence that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ,* 566 N.W.2d 60, 71 (Minn. 1997). Still, Courts "resolve all doubts and factual inferences against the moving part[y]." *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).

As an initial matter, the Court agrees with Alatus that Judge Burke's denial of its Motion for a TRO does not in any way constitute the law of the case. (Index No. 37 at 13-14.) But the undersigned does find Judge Burke's analysis and reasoning with respect to the merits of this lawsuit to be persuasive, and it adopts that reasoning – contained in pages 9 through 18 of the Order – herein. (Index No. 20.)

B. MCWD Properly Terminated the Purchase Agreement.

In its Complaint, Alatus alleges the MCWD breached the parties' agreement because the MCWD needed the City's consent to cancel the Purchase Agreement. (Index No. 1, Complaint, ¶ 165(a).) Alatus also argues that MCWD improperly terminated the Purchase Agreement, because MCWD waived the time is of the essence provision of the Purchase Agreement, and therefore, Alatus was not in default. (*Id.* at ¶ 165(b).) Conversely, the MCWD argues in its motion that Alatus' claims are unsupported by the plain language of the contract and by MCWD's conduct. The Court agrees with the MCWD.

1. The Plain Language Allows MCWD to Unilaterally Terminate the Purchase Agreement

The goal of contract interpretation is to ascertain and enforce the intent of the parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). A court determines the parties' intent from the plain and unambiguous language of the relevant documents, if possible. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2003); *Current Technology Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). "[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect." *Travertine Corp.*, 683 N.W.2d at 271. If the language of a contract is reasonably susceptible to more than one meaning, however, it is ambiguous. *Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990). If contractual language is ambiguous, extrinsic evidence may be consulted to determine its meaning. *Empire State Bank v. Devereaux*, 402 N.W.2d 584, 587 (Minn. Ct. App. 1973). But unless that extrinsic evidence is conclusive as to the parties' intent, the court may not grant summary judgment because contract interpretation then becomes an issue of fact to be reserved for the jury. *Id.*

Section 15(a) of the Purchase Agreement contains the following provision regarding default:

> If Buyer defaults in performance of its obligations under this Agreement, Seller shall have the right to terminate this Agreement by written notice to Buyer in the manner required by Minnesota Statutes Section 559.21 and to obtain the Earnest Money as liquidated damages.

Index No. 1, Complaint, Exhibit 10 at 19.) MCWD invoked this section when it sent Alatus a Notice of Termination on April 1, 2025, stating that Alatus failed "to pay the Phase 1B Purchase Price and to close on the purchase of the Phase 1B property on November 1, 2024." (*Id.* at Exhibit 24.) As a result, MCWD terminated the Purchase Agreement.

The language of the Purchase Agreement is unambiguous. MCWD, as the seller, had the unilateral right under the Purchase Agreement to terminate it in the event of default. The Purchase Agreement does not contain a provision requiring MCWD to obtain the consent of the City to terminate the agreement. Alatus was required to deliver the Phase 1B Purchase Price at the Phase 1 Closing, and the Third Amended Purchase Agreement set November 1, 2024, as the Phase 1 closing date. (*Id.* at Exhibit 15.) Alatus defaulted on the Purchase Agreement by failing to pay the Purchase Price by the closing date, and it did not cure its default.

2. The Cooperative Agreement is Not a Joint Powers Agreement Requiring the City's Consent to Terminate the Purchase Agreement.

Alatus argues that the Cooperative Agreement was a Joint Powers Agreement under Minnesota Statutes § 471.59. According to Alatus, because the Cooperative Agreement required the developer to be selected by a mutual vote of the City Council and MCWD's Board of Directors, the Purchase Agreement between Alatus and MCWD can only be terminated by a mutual vote of the City Council and MCWD's Board of Directors. MCWD argues the parties' relationship is not a Joint Powers Agreement because the agreements do not cite the statute authorizing joint powers agreements, do not reference the concept of a joint powers agreement, do not create a joint powers organization, and do not agree to share powers common to the contracting parties. The Court agrees with MCWD.

Minnesota law authorizes governmental units to enter into a Joint Powers Agreement as follows:

> Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised. The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units.

Minn. Stat. § 471.59 subd. 1(a). The statute "allows governmental entities to join together as a single entity in order to accomplish a common goal. The consolidated group . . . can *exercise any power common* to the contracting parties." *Joint Indep. Sch. Dist. No. 287 (Suburban Hennepin Cnty. Area Vocational-Tech. Sch.) v. City of Brooklyn Park*, 256 N.W.2d 512, 515 (Minn. 1977) (emphasis added). The powers held by a joint powers organization "are determined with reference to the powers possessed by the individual participants." *Id.* A joint powers organization must have the approval of its Board of Directors to enter into a contract, unless the organization's bylaws or joint powers agreement provide otherwise. *City of Geneseo. v. Utilities Plus*, 533 F.3d 608, 613 (8th Cir. 2008).

Here, Alatus' argument finds no textual support in the parties' agreements. The Cooperative Agreement does not cite Minnesota Statutes § 471.59 or state that it creates a joint powers organization. Under the Cooperative Agreement, MCWD agreed to exercise its powers to sell the land to a developer, and the City agreed to exercise its powers related to land use entitlements. There is no language in the agreement that indicates MCWD or the City intended to jointly exercise a power common to them or provide one another with the ability to exercise any such power on behalf of the other. Additionally, while the City had the joint power to select the developer under the Cooperative Agreement, there is no provision in the Cooperative Agreement regarding termination of the developer or requiring joint consent to terminate the developer. Therefore, MCWD was permitted to terminate the Purchase Agreement unilaterally and did not breach its contractual obligations under it.

3. MCWD Did Not Waive the Timelines in the Purchase Agreement.

Alternatively, Alatus argues that time was not of the essence under the Purchase Agreement. It argues that, based on the parties' conduct and course of dealing, a reasonable factfinder could determine the time is of the essence provision was waived and was no longer enforceable by MCWD because it allowed amendments to the Purchase Agreement that moved the closing date. MCWD argues that a reasonable factfinder could not find waiver because each of the new amendments to the Purchase Agreement retained the term that the time was of the essence. It also argues that Alatus now seeks to have the Court punish the MCWD for not terminating the Purchase Agreement immediately upon having the legal right to do so and instead working with Alatus to complete the project.

Under Minnesota law, waiver is the intentional relinquishment of a known right. *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 367 (Minn. 2009). There are two elements to waiver: (1) knowledge of the right, and (2) an intent to waive the right. *Stephenson v. Martin*, 259 N.W.2d 467, 470 (Minn.1977). The party asserting waiver bears the burden of showing that the waiving party knew of the right and intended to waive it. *Frandsen v. Ford Motor Co.,* 801 N.W.2d 177, 182 (Minn. 2011). Waiver is often a question for the factfinder because "intent is an operation of the mind, and should be proved and found as a fact. It is rarely to be inferred as a matter of law." *Farnum v. Peterson-Biddick Co.*, 234 N.W. 646, 648 (Minn. 1931). Here, however, Alatus has not created a genuine issue of material fact with respect to waiver.

It is true that MCWD entered into amendments to the Purchase Agreement that extended the closing deadlines for the project. In each case, however, those amendments were negotiated, memorialized in writing, and executed *before* the deadline expired. *See* Factual Background I(E) & I(F). The deadline in the Third Amendment to the Purchase Agreement expired on November 1, 2024, and no extension was obtained by Alatus. It is hard to imagine how negotiated amendments to a contractual deadline can be deemed a "waiver" of future deadlines.

Additionally, Alatus has introduced no facts that indicate in the lead up to the November 1, 2024 deadline, MCWD – through its actions or words – expressed an intention to waive that deadline. The Declaration of Mr. Lux focuses primarily on negotiations that occurred after that deadline had already passed, and mostly while this lawsuit was pending.[6] These settlement

[6] Mr. Lux makes a broad statement in his Declaration that "[t]he District and Alatus repeatedly negotiated extensions, continued negotiations after deadlines passed, and excused delays when factors outside of the parties' control manifested, such as skyrocketing construction costs during COVID-19, and dramatic increases in interest rates imposed by the Federal Reserve." (Index No. 40 at ¶ 26.) This broad, conclusory statement, with no temporal guideposts, is insufficient to create a genuine issue of material fact with respect to waiver of explicit contractual deadlines.

negotiations do not create a factual dispute over whether MCWD "waived" a contractual deadline that has long passed.

C. MCWD Did Not Breach Any Contractual Obligation to Alatus Under the Preliminary Development Agreement.

Alatus also argues that MCWD attempts to conflate the Purchase Agreement with the Preliminary Development Agreement. Alatus argues that Count II of the Complaint alleges that the MCWD breached the Preliminary Development Agreement, not the Purchase Agreement, in at least three ways: (a) improperly removing Alatus without a joint vote of the City; (b) failing and refusing to provide Alatus a reasonable period of time to negotiate a "definitive" Purchase Agreement; (c) using Alatus' cascade water feature design in the MWCD's grant application without compensating Alatus for that design; and (d) holding the $1,000,000 paid by Alatus in the Purchase Agreement when the MCWD has suffered no damages. MCWD argues that the Purchase Agreement governs the parties' rights with regard to the sale of the property and that it expressly allows MCWD to terminate the agreement. Again, the Court agrees with the MCWD.

1. The Purchase Agreement Governs the Parties' Rights With Regard to the Sale of the Property.

Alatus relies on the following provision of the Preliminary Development Agreement to support its argument:

> Notwithstanding any other provisions in this Agreement to the contrary, this Agreement may be terminated as follows: (1) the parties, by mutual written agreement, may terminate this Agreement at any time; (2) the parties may terminate this Agreement in the event of a breach of the Agreement by another party, upon providing 30 days' written notice to the party, unless such breach is cured before the expiration of said 30-day period.

(Index No. 1, Complaint, Exhibit 8 at § 8.) Alatus argues that because part (2) of this termination clause uses "parties", plural, the plain language of the agreement indicates that the two parties not in breach must provide written notice of termination to the remaining party. This interpretation is correct as it relates to the Preliminary Development Agreement alone, but the Purchase Agreement states:

> Entire Agreement. This Agreement and the exhibits attached hereto sets forth fully and completely the agreement between the parties in connection with this transaction, there are no written or oral agreements between the parties relating to this transaction that are not expressly set forth herein and this Agreement supersedes all prior oral or written agreements relating to this transaction; provided, however, the parties acknowledge and agree that the parties, together with the City, are parties to a certain Preliminary Development Agreement related to the Project (the "PDA"). **In the event of any conflict between the terms and conditions of this Agreement and the PDA, the terms and conditions of this Agreement shall prevail**.

(Index No. 1, Complaint, Exhibit 10 at § 18(e)) (emphasis added.)

As the Court has already outlined above, the Purchase Agreement gives MCWD the power to unilaterally terminate the agreement regarding the sale of the property. This makes logical sense, since the MCWD owns the Property; the City does not hold an ownership interest in the Property. The Notice of Termination indicated that the MCWD was terminating the Purchase Agreement for the sale of the property. The Preliminary Development Agreement, in contrast, established terms for exclusivity in negotiations and memorialized the roles of the parties in negotiating a Purchase Agreement and Predevelopment Agreement. Alatus is now attempting to conflate the purpose of the different agreements and wrongly apply the Preliminary Development Agreement to the sale of the property by MCWD.

2. MCWD Did Not Breach the Preliminary Development Agreement for Failure to Afford Alatus a "Reasonable Period of Time" to Negotiate.

Paragraph 1 of the Preliminary Development Agreement states:

> In consideration of the time, effort and expenses to be incurred by Developer in pursuing the Redevelopment Project, (a) MCWD hereby agrees that for a reasonable period of time after mutual execution of this Agreement, Developer will have the exclusive right to negotiate the terms of the Purchase Agreement, containing the key terms described in Section 4 below and (b) notwithstanding anything to the contrary in the City Predevelopment Agreement, the City hereby agrees that during the negotiation of the Purchase Agreement and for a period of at least twelve (12) months after any mutual execution of the Purchase Agreement,

> Developer will have the exclusive right to make specific proposals and negotiate the terms of land use entitlements and site plan approvals for the Final Development Plan, and definitive development contracts with the City for the development of Redevelopment Site and financial assistance for such Redevelopment Project (the "Final Development Contracts".)

(Index No. 1, Complaint, Exhibit 8 at § 1.) Paragraph 4 of the Preliminary Development Agreement states:

> Within a reasonable period of time, MCWD and Developer shall negotiate in good faith to reach agreement on a definitive Agreement. The City hereby acknowledges that MCWD relied on Developer's pledge to pay the Purchase Price (set forth below) as a condition to MCWD's consent to selection of Developer.

(*Id.*, at § 4.)

The plain language of the Preliminary Development Agreement prohibits MCWD and the City from entertaining other developers for a reasonable period of time after execution of the agreement, and requires MCWD and Alatus to negotiate a Purchase Agreement within a reasonable period of time. MCWD and Alatus did negotiate and sign a Purchase Agreement, along with three amendments to the Purchase Agreement. While Alatus claims this is not a "definitive" purchase agreement, it would have been "definitive" had Alatus performed under it terms. Alatus' argument that it has not been afforded a reasonable period of time to negotiate a definitive Purchase Agreement is therefore without any support.

3. MCWD Does Not Owe Alatus for Design Work Under a Breach of Contract Theory.

Alatus argues that MCWD breached the Preliminary Development Agreement by using its design for the cascade feature for a grant application without compensation. The parties dispute the degree to which the design was a collaborative effort versus an independent venture by Alatus. This factual dispute, however, is immaterial given the lack of contractual support for Alatus' argument. Alatus argues that the Preliminary Development Agreement contemplates that Alatus would incur effort and expenses in pursuit of the deal, and that the MCWD would transfer the land in consideration for that effort. The Preliminary Development Agreement, however, does not state that Alatus would be paid for its design work, and Alatus has not identified any specific contractual language to the contrary.

4. The Liquidated Damages Do Not Constitute an Unenforceable Penalty.

Under Minnesota law, a liquidated-damages clause in a contract is prima facie valid on the assumption that the parties intended it to be a fair compensation for an injury caused by breach of contract. *Gorco Constr. Co. v. Stein*, 99 N.W.2d. 69, 74-75 (Minn. 1959). Despite the presumption of validity, however, the court must scrutinize the provision to ensure that it is not a penalty. *Id.*; *Meuwissen v. H. E. Westerman Lumber Co.*, 16 N.W.2d 546, 549 (Minn. 1944). To do so, the court will determine whether the damages caused by a breach are difficult to estimate, and whether there is a reasonable basis in fact for such damages. *Meuwissen*, 16 N.W.2d at 549; *see also Lagoon Partners, LLC v. Silver Cinemas Acquisition Co.*, 999 N.W.2d 113, 119–20 (Minn. Ct. App. 2023) (noting that the court will consider "whether the amount agreed upon is reasonable or unreasonable in the light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances").

Alatus argues that the liquidated damages clause, negotiated by the parties' sophisticated counsel, is an invalid penalty. Alatus claims that generally in contracts for the sale of land, the measure of damages used is "the difference between the contract price and the actual or market value of the property at the time of breach, including any expenses necessarily incurred by the vendor in his effort to carry out the contract." *Wilson v. Hoy*, 139 N.W. 817, 819 (Minn. 1913). This, however, is not a typical agreement regarding the sale of land. That is evident by the fact that the MCWD did not "list" the land for sale and enter into a purchase agreement with Alatus for its market value. The MCWD is heavily invested in how the project is developed.

Additionally, Alatus' breach of the Purchase Agreement has resulted in damages attributable to delayed stormwater management progress and water quality improvements to Lake Hiawatha. The value attributable to improvements in water quality would obviously be hard to determine. Thus, given the presumption of validity given to liquidated damages clauses, the arms-length transaction and the sophistication of the parties and their counsel, the liquidated damages clause is enforceable.

The duty to mitigate damages must also be considered. Alatus argues that MCWD did not mitigate its damages because it did not accept a substitute transaction tendered by Alatus. Indeed, "a nonbreaching party is duty-bound to use reasonable diligence to mitigate damages." *Deutz-Allis Credit Corp. v. Jensen*, 458 N.W.2d 163, 166 (Minn. Ct. App. 1990). Liquidated damages that fail to account for this duty are an unenforceable penalty, as they are not considered to be a reasonable forecast of just compensation resulting from the breach. *Lagoon Partners*, 999 N.W.2d at 123. Notably, however, "when one party to the contract defectively performs and subsequently offers to correct the breach through a new contract, the nonbreaching party may generally decline the offer and still recover its full damages." *DeRosier v. Utility Systems of America, Inc.*, 780 N.W.2d 1, 7 (Minn. Ct. App. 2010).

D. Alatus' Unjust Enrichment Claim Fails Because There is an Enforceable Contract.

Finally, MCWD argues that summary judgment on Alatus' claim for unjust enrichment is appropriate because the parties have an express, fully integrated contract that sets forth its contractual rights. Alatus argues that it is entitled to recover under an unjust enrichment claim because it conferred a benefit on MCWD through designing the cascade feature that MCWD then used in its application for public funding. The Court agrees with MCWD that unjust enrichment is foreclosed by the existence of a contract.

"To establish a claim for unjust enrichment, the claimant must show that another party knowingly received something of value to which he was not entitled, and that the circumstances are such that it would be unjust for that person to retain the benefit." *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001). "Unjust" can mean "illegally or unlawfully." *First Nat'l Bank of St. Paul v. Ramier*, 311 N.W2d 502, 504 (Minn. 1981). Additionally, unjust enrichment can occur where a defendant's retention of a benefit is "morally wrong." *Schumacher*, 627 N.W.2d at 729.

As an equitable remedy, "[r]elief under the theory of unjust enrichment is not available where there is an adequate legal remedy." *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. Ct. App. 1992); Unjust enrichment is also known as quasi contract. *See Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 268 (Minn. Ct. App. 1996). Where there is "an express contract, there can be no contract implied in fact or quasi contractual liability with respect to the same subject matter. The express contract excludes both." *Schimmelpfennig v. Gaedke*, 27 N.W.2d 416, 420 (Minn. 1947).

Here, there is an express contract with respect to the subject matter of Alatus' unjust enrichment claim. Alatus is seeking, under Count III, to collect for costs it incurred for its development services relating to the project. Alatus specifically alleges that MCWD received the benefit of Alatus' development services, including obtaining an additional $2,000,000 from a PFA grant based upon Alatus' services. (Index No. 1, Complaint, ¶ 172.) As the Court already noted above, the Purchase Agreement states that costs associated with project planning and securing project financing are assigned to Alatus. The issue was contemplated by the parties and explicitly governed by the contract. Therefore, Alatus' unjust enrichment claim cannot survive summary judgment.

ORDER

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendant Minnehaha Creek Watershed District's Motion for Summary Judgment is **GRANTED**.
2. Plaintiff Alatus Development LLC's Motion to Extend Time is **DENIED** as moot.

BY THE COURT:

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Dated: September 24, 2026

COLETTE ROUTEL
District Court Judge