



Title:	Approval of the Preliminary Development Agreement for 325 Blake Road and Approval of Alatus Development's Concept Plan for Public Realm Improvements and Connection to MCWD's Regional Stormwater Project
Resolution number:	21-074
Prepared by:	Michael Hayman, Project Planning Manager Phone: (952) 471-8226 mhayman@minnehahacreek.org
Reviewed by:	Gabriel Sherman, Planner-Project Manager; Louis Smith, MCWD general counsel
Recommended action:	The Board of Managers approves the preliminary development agreement (PDA) between MCWD, the city of Hopkins and Alatus Development, LLC, and approves Alatus Development's current concept plan for public realm improvements as part of its proposed development of the 325 Blake Road site.
Schedule:	November 2021: Approval of PDA and development public realm concepts December 2021: Purchase and sale agreement review and approval Quarter 1, 2022: Continued coordinated design effort Quarter 2, 2022: Closing on phase I sale of property
Budget considerations:	Not applicable
Past Board action:	Res # 20-066 Authorization to Execute a Cooperative Agreement with the City of Hopkins for Coordinated Planning, Improvements and Development for 325 Blake Road Res # 20-067 Authorization to Release the Request for Proposals for Design Services for 325 Blake Road Stormwater Management and Site Restoration Res # 20-091 Authorization to Contract for Design Services for the 325 Blake Road Regional Stormwater and Greenway Project Res # 20-098 Positive Determination of the Feasibility Milestone and Authorization to Solicit Interest in Potential Redevelopment of the 325 Blake Road Site Res # 20-099 Authorization to Enter into a Redevelopment Advisory Services Agreement with Shenandoah Consulting, LLC Res # 21-015 Confirmation of Select Developer List for Engagement in the 325 Blake Road Restoration and Redevelopment Project Res # 21-047 Affirming Developer Selection and Agreement Framework for 325 Blake Road

Summary:

On June 17, 2021, the Minnehaha Creek Watershed District (MCWD) and City of Hopkins (City) hosted a joint meeting of the MCWD Board of Managers and Hopkins City Council to conduct interviews of the developer finalists for the 325 Blake Road Restoration and Redevelopment project. Following interviews, the joint MCWD Board and City Council agreed to mutual considerations to facilitate the selection of Alatus Development, LLC (Alatus) as the preferred master development partner for the 325 Blake Road site (collectively, the "Partners"). The following commitments were key

considerations in the developer selection process and are essential terms included in the preliminary development agreement (PDA) and forthcoming purchase and sale agreement (PSA):

1. the purchase price in the Alatus proposal of \$11.25M over two phases (\$8M and \$3.25M) is firmly understood as the sale price of the land, and that the City Council does not support the developer using the purchase price as a subsidy to close any potential gap if financial concerns arise;
2. the City will not look to the MCWD to assume any further financial risk, and the City will accept the risk associated with any potential project financial gap using tax increment finance, grants, and other subsidy mechanisms to deliver the project vision set forth in the Alatus proposal;
3. the operation and maintenance responsibilities for the site overall will be a shared responsibility for the City, developer, and MCWD, with MCWD's responsibility focused on its remaining parcel and water management features; and
4. the Joint Liaisons Group will remain engaged in this process to assure mutually successful completion of this process and project delivery.

Using these considerations as foundational elements, and in conjunction with the previously approved cooperative agreement between MCWD and the City, the Partners worked to develop a PDA to outline the Partners' respective expectations, rights, and obligations regarding the 325 Blake Road site and to provide for further coordination as a final development plan and planned unit development (PUD) submittal are developed. In particular, the Partners desire to coordinate closely on the final development plan pertaining to the design, location, layout and maintenance of the stormwater-related improvements and amenities designed for the treatment of storm water located on the site, their connections to and integration with MCWD's regional stormwater and greenway project, and other open areas on the redevelopment site that are preserved for recreation and enjoyment by the general public (collectively, the "Public Realm").

The attached PDA has been approved by Alatus and was reviewed and approved by the Hopkins City Council on October 19, 2021. Beyond memorializing the key considerations and providing exclusive rights to Alatus for the negotiation of the PSA, the agreement acknowledges the importance of the public realm to MCWD and requires approval of the final plans for public realm improvements and connection to MCWD's regional system. Specifically, the final plans may not diminish the benefits realized in the concept plan submitted by Alatus.

Regarding the development concept, in July 2021 a design charrette was held in conjunction with the City and Alatus to sketch MCWD's stormwater and greenway project and demonstrate how Alatus' transit-oriented development (TOD) could be merged with that design. Representatives from regional agencies with an interest in the project were also invited to provide real time input on the emerging designs. The design charrette demonstrated that MCWD could achieve its stormwater and greenway goals while accommodating private development on a large portion of the 325 Blake Road site. This was documented through the two alternatives produced during the charrette: 1) a Baseline Alternative which builds out MCWD's stormwater and greenway project and reserves a portion of the site for a future TOD, and 2) an Alatus Alternative which merges MCWD's stormwater and greenway project with Alatus' proposed TOD.

Following the design charrette and separate from MCWD's continued efforts in refining its Baseline Alternative, the Partners worked to continue to advance the concept design associated with the Alatus Alternative. This effort was led by Alatus, utilizing its team of designers and engineers, with a goal of final concept submittal as part of its PUD application in late October. As such, on October 22, 2021 Alatus submitted its PUD application to the City, and provided supplemental materials, including revised concept plans and color renderings on October 29, 2021.

In accordance with the PDA, and as part of the land use application process, Alatus and the City must obtain MCWD's written approval of the final design of the Public Realm and its connection to MCWD's regional project. Further, the PDA states that MCWD will not unreasonably withhold such approval so long as the design, scope, scale, and investment for the final Public Realm (A) is not materially diminished from the design, scope, scale, and investment of the Public Realm described and/or depicted in the Concept Plan, (B) includes all necessary stormwater management improvements and

facilities within the Redevelopment Site to compensate for any impacts the Redevelopment Project has on the regional stormwater system to be located on the entire Site, such that the entire Site's regional stormwater management capacity is not reduced by the Redevelopment Project (e.g., improvements as part of the Public Realm to pump excess regional stormwater volume from the Watershed Project to the Redevelopment Site and new stormwater channels and infiltration systems on the Redevelopment Site for onsite management and treatment of such excess regional stormwater volume), and (C) includes final civil design with grading plans that demonstrate the feasibility of the Redevelopment Project, the Public Realm, and the Watershed Project to manage and treat at least the volume of regional stormwater currently planned to be managed on the entire Site.

MCWD staff and its design team (HDR) have been coordinating review of the concept design and its conformance with the PDA and regional facility. As final plans and specifications are developed, the technical veracity of the design will be confirmed, including design conformance with regulatory and regional system offset requirements. Since PDA and concept approval will occur prior to final technical design, MCWD and Alatus will memorialize the specific stormwater design, review, and approval process as part of its forthcoming PSA.

At its November 4, 2021, Board Meeting, staff will present the PDA and concept design submittal as part of the approval process. Staff recommends approval of the PDA and concept plan for public realm improvements and connection to MCWD's restoration and regional stormwater project.

Attachments:

- Preliminary Development Agreement
- Current development concept plan for 325 Blake Road



RESOLUTION

Resolution number: 21-074

Title: Approval of the Preliminary Development Agreement for 325 Blake Road and Approval of Alatus Development's Concept Plan for Public Realm Improvements and Connection to MCWD's Regional Stormwater Project

WHEREAS the Minnehaha Creek Watershed District (MCWD) acquired 325 Blake Road in 2011 as a key piece of the Minnehaha Creek Greenway, which will provide 109 acres of a connected corridor of restored creek and habitat through St. Louis Park and Hopkins; the MCWD and other public partners have made substantial investments in the preparation and planning of the site to date; the driving vision of the project is to create a uniquely water-centric redevelopment of a formerly industrialized segment of the Minnehaha Creek corridor; the project will provide layered ecological and societal benefits and will serve as a centerpiece of the larger Minnehaha Creek Greenway restoration;

WHEREAS the MCWD and the City of Hopkins (City) have entered into a cooperative agreement to guide the coordinated planning, improvements and redevelopment of the site, focusing on approximately 11-13 acres for transformation into a transit-oriented neighborhood; the MCWD will retain ownership of approximately four-six acres to treat polluted stormwater that flows into the creek from approximately 270 acres of surrounding area and to restore more than 1,000 feet of creek frontage; the MCWD is combining the planning for this later portion of the site with three accompanying parcels bordering the creek for the 325 Blake Road Regional Stormwater and Greenway and Cottageville Park Phase II Riparian Restoration Project; this project includes the construction of stormwater facilities, open space amenities, stream and riparian restoration and a trail network;

WHEREAS pursuant to the cooperative agreement, MCWD and the City requested proposals from developers for the redevelopment of the 11-13 acre site, received proposals, and selected Alatus, Wellington, and Sherman as finalists to present their proposals to a joint meeting of the Board of Managers and City Council on June 17, 2021;

WHEREAS at the June 17, 2021 joint meeting the Board of Managers and City Council discussed mutual considerations in order to facilitate the selection of Alatus as the first choice developer and Wellington as the second choice;

WHEREAS on July 8, 2021 the Board of Managers affirmed the selection of Alatus as the first choice developer and Wellington as the second choice, and memorialized the key commitments by the Hopkins City Council that were critical considerations in these selections and therefore are essential terms to be included in the preliminary development agreement and purchase agreement;

WHEREAS following the selection of Alatus Development, LLC by the joint MCWD Board and City Council (collectively, the "Partner"), the Partners developed a preliminary development agreement (PDA) to outline the Partners' respective expectations, rights, and obligations regarding the 325 Blake Road site and to provide for further coordination as a final development plan and planned unit development (PUD) submittal are developed; in particular, the Partners desire to coordinate closely on the final development plan pertaining to the design, location, layout and maintenance of the stormwater-related improvements and amenities designed for the treatment of storm water located on the site, their connections to and integration with MCWD's regional stormwater and greenway project, and other

open areas on the redevelopment site that are preserved for recreation and enjoyment by the general public (collectively, the "Public Realm");

WHEREAS the PDA has been approved by Alatus and was reviewed and approved by the Hopkins City Council on October 19, 2021, and the agreement acknowledges the importance of the public realm to MCWD and requires approval of the final plans for public realm improvements and connection to MCWD's regional system, specifically noting that the final plans may not diminish the benefits realized in the concept plan submitted by Alatus;

WHEREAS In accordance with the PDA, and as part of the land use application process, Alatus and the City must obtain MCWD's written approval of the final design of the Public Realm and its connection to MCWD's regional project; further, the PDA states that MCWD will not unreasonably withhold such approval so long as the design, scope, scale, and investment for the final Public Realm (A) is not materially diminished from the design, scope, scale, and investment of the Public Realm described and/or depicted in the Concept Plan, (B) includes all necessary stormwater management improvements and facilities within the Redevelopment Site to compensate for any impacts the Redevelopment Project has on the regional stormwater system to be located on the entire Site, such that the entire Site's regional stormwater management capacity is not reduced by the Redevelopment Project (e.g., improvements as part of the Public Realm to pump excess regional stormwater volume from the Watershed Project to the Redevelopment Site and new stormwater channels and infiltration systems on the Redevelopment Site for onsite management and treatment of such excess regional stormwater volume), and (C) includes final civil design with grading plans that demonstrate the feasibility of the Redevelopment Project, the Public Realm, and the Watershed Project to manage and treat at least the volume of regional stormwater currently planned to be managed on the entire Site;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the preliminary development agreement between MCWD, the City of Hopkins and Alatus Development, LLC, and authorizes the President to execute the agreement with any non-substantive changes in consultation with legal counsel;

BE IT FURTHER RESOLVED that the Board of Managers approves the concept design of the development Public Realm and its connection to MCWD's regional project as submitted in Alatus Development, LLC's planned unit development application to the City of Hopkins.

Resolution Number 21-074 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 11/4/2021

Date: November 4, 2021

Secretary

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of _____, 2021, by and among the **City of Hopkins, Minnesota**, a Minnesota municipal corporation (the “City”), **Minnehaha Creek Watershed District**, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (“MCWD”), and **Alatus Development LLC**, a Minnesota limited liability company (“Developer”).

RECITALS:

A. MCWD currently owns that certain 16.84-acre parcel of land located at 325 Blake Road (the “Site”). MCWD acquired the Site as a key element in the restoration of the Minnehaha Creek greenway and in a spirit of collaboration with the City in light of the Site’s potential to integrate a restored Minnehaha Creek and become a transit-oriented, mixed-use development near a future station of the Southwest Light Rail Transit line.

B. MCWD and the City are parties to that certain Cooperative Agreement for the Coordinated Planning, Improvements and Development for 325 Blake Road dated September 15, 2020 (the “Cooperative Agreement”), as set forth on **Exhibit A** attached hereto, pursuant to which MCWD and the City desire to coordinate their policies, planning, and development process for the Site in order to maximize project success in achieving the mutual goals described in the Cooperative Agreement.

C. Pursuant to the Cooperative Agreement, MCWD and the City have selected Developer as the preferred private developer for the Redevelopment Project. Attached hereto as **Exhibit B** is Developer’s concept site plan for the Redevelopment Project, which has been presented for preliminary review by the City planning commission and City Council (“Concept Plan”)

D. As more particularly described in the Cooperative Agreement, it is anticipated that MCWD will (i) retain approximately 4.0 acres of the Site to treat polluted stormwater that flows into the Minnehaha Creek from the surrounding area and otherwise provide watershed improvements (the “Watershed Project”) and (ii) sell the remainder of the Site (the “Redevelopment Site”) to Developer to be developed as a two-phase new mixed-used, transit-oriented neighborhood (the “Redevelopment Project”, and together with the Watershed Project, collectively, the “Project”).

E. MCWD and Developer are currently negotiating a definitive purchase agreement pursuant to which MCWD, as seller, and Developer, as purchaser, will sell and purchase the Redevelopment Site for Developer’s development and construction of the Redevelopment Project (the “Purchase Agreement”).

F. The City and Developer are currently parties to that certain Predevelopment Agreement, dated July 20, 2021 which outlines certain rights, responsibilities, and expectations of the City and Developer related to the Redevelopment Project (the “City Predevelopment Agreement”)

G. The parties desire to enter into this agreement to outline the parties’ respective expectations, rights, and obligations regarding the Redevelopment Site and to provide for further investigation and refinement of a final development plan (developed through the City’s land use approval process) for the Redevelopment Project (the “Final Development Plan”), and in particular refinement, mutual agreement, and final determination of that portion of the Final Development Plan pertaining to the design, location, layout and maintenance of the stormwater-related improvements and amenities designed for the treatment of storm water located on the Redevelopment Site, their connections to and integration with the Watershed Project, and other open areas on the Redevelopment Site preserved for recreation and enjoyment by the general public (collectively, the “Public Realm”).

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the parties hereinafter expressed, it is hereby agreed as follows:

1. Undertaking and Exclusive Rights. 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").

2. Cooperative Agreement; Coordination. Subject to the terms and conditions of this Agreement, the Cooperative Agreement and its terms, conditions and requirements for the processes, events, and milestones contemplated to occur after the selection of the preferred developer and the execution of this Agreement, are hereby incorporated into this Agreement. In accordance with the processes generally described in the Cooperative Agreement, each party will agree to consult with the other parties for input on all key decisions for the development parameters and Final Development Plan, as well as a coordinated community engagement, and communications strategy to supplement the City's development review process as set forth in Exhibit C. Furthermore, each party will agree to keep the other parties informed about the status of key milestones for the Project, including, without limitation, negotiation of the Purchase Agreement, the REOA, the Final Development Contracts, the status of and changes to the proposed Final Development Plan and the status of the City entitlement approval process.

3. Redevelopment Project; Public Realm.

(a) General Intent. The parties acknowledge and agree that it is the parties' collective intent that the Redevelopment Project will consist of the redevelopment of the Redevelopment Site in a manner consistent in all material respects with the Concept Plan.

(b) Public Realm. The parties acknowledge and agree that (i) the Public Realm is an essential element of the Redevelopment Project; (ii) MCWD has a unique and particular interest in the final design and plan for the Public Realm; and (iii) MCWD is entering into this Agreement and is willing to negotiate the Purchase Agreement upon the terms described herein in good faith in material reliance on the covenants and undertakings of the other parties hereto with respect to the Public Realm. Accordingly, the City and Developer shall obtain MCWD's written approval of the final design of the Public Realm and its connection to the Watershed Project, which approval shall occur as part of the land use application process and is currently anticipated to occur as part of MCWD's Board meeting on November 4, 2021. MCWD will not unreasonably withhold such approval so long as the design, scope, scale, and investment for the final Public Realm (A) is not materially diminished from the design, scope, scale, and investment of the Public Realm described and/or depicted in the Concept Plan, (B) includes all necessary stormwater management improvements and facilities within the Redevelopment Site to compensate for any impacts the Redevelopment Project has on the regional stormwater system to be located on the entire Site, such that the entire Site's regional stormwater management capacity is not reduced by the Redevelopment Project (e.g., improvements as part of the Public Realm to pump excess regional stormwater volume from the Watershed Project to the Redevelopment Site and new stormwater channels and infiltration systems on the

Redevelopment Site for onsite management and treatment of such excess regional stormwater volume), and (C) includes final civil design with grading plans that demonstrate the feasibility of the Redevelopment Project, the Public Realm, and the Watershed Project to manage and treat at least the volume of regional stormwater currently planned to be managed on the entire Site. MCWD shall have the right to review and confirm conformance with the Concept Plan as part of the City application process for land use approvals including replatting and rezoning.

4. Purchase Agreement; Acknowledgment of Purchase Price. 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 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 based 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 closing 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.

(e) The obligations of MCWD, as seller, under the Purchase Agreement shall be conditioned upon:

(i) MCWD's approval of the Final Development Plan as it relates to the Public Realm.

(ii) Execution by Developer and City of the approved Final Development Contracts.

(iii) MCWD, Developer, and, if applicable, the City shall enter into a mutually acceptable reciprocal easement and operating agreement or other easement agreements (the "REOA") to include, without limitation, the following key terms:

(A) Developer and/or City responsibility for maintenance and operation of the private commercial components of the Redevelopment Project, interior Redevelopment Project road network, and other Public Realm improvements, with such costs being allocated to and among Developer, the City and/or any other owners of the private commercial components of the Redevelopment Project;

(B) perpetual easements in favor of MCWD for access to the Watershed Project over, across and through a portion of the Redevelopment Site at no cost to MCWD;

(C) temporary construction easements in favor of MCWD over all or part of the Redevelopment Site as necessary for MCWD to complete the Watershed Project at no cost to MCWD;

(D) perpetual public access easements and perpetual stormwater management and drainage easements, in each case, over the applicable Public Realm elements and at no cost to MCWD;

(E) Developer responsibility for maintenance and operation of Public Realm water management features consistent with the Watershed Project and stormwater BMPs; and

(F) any MCWD maintenance responsibility related to Site being limited to the Watershed Project.

5. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, assigns and transferees.

6. Notices. Each notification required by this Agreement must be made to the project representative. The project representatives of the parties are:

MCWD:

Michael Hayman, Project Planning Manager
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345
Email: mhayman@minnehahacreek.org

City:

Kersten Elverum, Director of Development and Planning
City of Hopkins
1010 1st Street South
Hopkins, MN 55343
Email: kelverum@hopkinsmn.com

Developer:

Alatus Development LLC
IDS Center
80 South 8th Street, Suite 4155
Minneapolis, MN 55402

Attn: Robert Lux
Email: rlux@alatusllc.com

Contact information will be kept current. Contact information may be changed by a party by written notification to the other parties.

7. Amendments. An amendment to this Agreement must be in writing and will not be effective until it has been approved and executed by the parties. A party to this Agreement may not assign or transfer any right or obligation hereunder without an assignment agreement executed by the parties and the assignee.

8. Term, Termination. Notwithstanding any other provision 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.

9. Compliance with Laws. The parties shall exercise reasonable care to comply with applicable federal, state, and local laws, rules, ordinances, and regulations in effect as of the date of this Agreement.

10. Compliance with the Minnesota Government Data Practices Act. Data provided, produced, or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. The parties shall immediately report to the other party any requests from third parties for information relating to this Agreement. The parties agree to promptly respond to inquiries from the other party concerning data requests.

11. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the parties waive any objections to jurisdiction.

12. Non-Assignment. This Agreement may not be assigned by any party without the prior written consent of the other parties.

13. Survivability. The provisions of this Agreement concerning Indemnification, Compliance with Laws, Compliance with the Minnesota Government Data Practices Act, Audit, Choice of Law and Venue shall survive the expiration or termination of this Agreement.

14. Severability. The provisions of this Agreement shall be severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of the Agreement.

15. Waiver. Any waiver by any party of a breach of any provision of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

16. Counterparts. This Agreement may be executed in one or more counterparts or in multiple originals, either one of which is as valid as the other and when taken together shall constitute one agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MCWD:

Minnehaha Creek Watershed District,
a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D

By: _____
Name Sherry Davis White
Its: President

DEVELOPER:

Alatus Development LLC,
a Minnesota limited liability company

By: _____
Name: _____
Its: _____

CITY:

City of Hopkins, Minnesota
a Minnesota municipal corporation

By: _____
Name: Jason Gadd
Its: Mayor

By: _____
Name: Michael Mornson
Its: City Manager

Exhibit A

Cooperative Agreement

for the

Coordinated Planning, Improvements and Development for 325 Blake Road

September 15, 2020

This Agreement is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D ("MCWD"), and the City of Hopkins, a statutory city and political subdivision of the State of Minnesota ("City") (together, the "Parties").

Recitals

- A. MCWD acquired 325 Blake Road, a parcel in the City which was home to a large cold storage warehouse, in 2011 as a key element in the restoration of the Minnehaha Creek Greenway. MCWD acquired the Site in a spirit of collaboration with the City in light of its potential to integrate a restored Minnehaha Creek and become a transit-oriented, mixed-use development near a future station of the Southwest Light Rail Transitline.
- B. MCWD and the City share a vision of the Site as a catalytic opportunity for public and private investment.
- C. MCWD and the City share a commitment to guiding principles for the restoration and redevelopment of 325 Blake Road ("Site"):
 - 1. Creative design approach: Recognizing that the size and location of this property make it a unique development opportunity within a fully urbanized area, pursue a creative approach to design that is thoughtful of the environment, the social relationships between residents and the larger community, and brings something vibrant and new.
 - 2. Transit Oriented Development: Embrace elements of Transit Oriented Development (TOD) based on its proximity to the Blake Road LRT Station, the adjacent Green Line Extension, and connections to trail systems. Consider recreational and commercial amenities within the vicinity of the Site. TOD densities, parking ratios and shared parking within the Site are encouraged, as well as other transit-supportive uses such as jobs and neighborhood-serving retail.
 - 3. Water focused approach: Feature Minnehaha Creek, the Minnehaha Creek Greenway, and storm water management elements as central to the identity and orientation of the Site.
 - 4. Sustainability: Incorporate sustainable development components, such as construction materials and techniques, water and energy efficiency, renewable energy, waste management, and sustainability education elements.

5. Open design: Provide open design that establishes inviting views of Minnehaha Creek and allows for public access into the Site so that Minnehaha Creek becomes a community amenity. The design should permit easy access to and throughout the Site by pedestrians and bicyclists, while maintaining safety for all residents and users of the property.
6. Connections: Enhance physical and visual connections along and across Blake Road and to the Minnehaha Creek Greenway, Cedar Lake LRT Regional Trail, Blake Road LRT Station and Cottageville Park. Buildings should have minimal setbacks from Blake Road and an active first floor to enhance the pedestrian experience. The southwest corner of the Site is a key location due to its proximity to the Blake Road LRT Station, and development should embrace the prominence of this portion of the Site when looking at design and land use.
7. Inclusion. The site is located in a very economically and culturally diverse neighborhood with a significant number of naturally-occurring affordable housing units. It is a goal to embrace that diversity and develop the site in a way that is equitable, seeks to honor and preserve the existing community and does not aim to gentrify the neighborhood.
8. Housing mix: Consider a variety of housing types, including ownership and rental for people at a mix of income levels and household sizes. All efforts should be made to mix the affordable units with the market rate units. If financial barriers prevent that, Site design should encourage interaction between buildings via shared common areas and amenity spaces throughout the Site. Because a majority of Hopkins housing units today are rental, the City is very interested in homeownership opportunities, especially for low and moderate income households.

D. MCWD and the City wish to coordinate their policies, planning, and development process in order to maximize project success in achieving these mutual goals, and hereby enter into this Agreement to coordinate this work, and to commit their board of managers and council members to involvement in this process to completion with frequent open communication.

1. Subject Property

MCWD currently owns the 17-acre parcel at the Site and plans to retain a minimum of four acres to treat polluted stormwater that flows into the creek from approximately 270 acres of surrounding area and to restore more than 1,000 feet of creek frontage. The remaining 13 acres will be sold to transform the rest of the Site into a transit-oriented neighborhood. MCWD will be willing to explore other configurations that may result in it retaining up to six acres for its public purposes. With its ongoing ownership in a significant portion of the Site, MCWD will be actively involved in the design of the future development in order to assure that MCWD's public purposes for its portion of the Site will be served.

2. Commitments to Coordination

MCWD and the City commit their council members, managers and respective staffs to open and frequent communication in order to assure the success of this process to complete a project that serves their shared goals and the guiding principles. MCWD and the City commit to the following structure to promote sound coordination:

- a. Liaisons
 - i. The City will appoint two council members and MCWD will appoint two managers to serve as project Liaisons. The Liaisons will meet on an established schedule, approximately every six weeks.
 - ii. The Liaisons will make recommendations to the City Council and Board of Managers at key milestones for the project as established by a development decision matrix (Matrix, attached to and a part of this Agreement as Exhibit A) and schedule prepared by the Staff Coordination Team and approved by the Liaisons.

- b. City Council, Board of Managers
 - i. The City Council and Board of Managers will consider recommendations from the Liaisons and determine their concurrence at the major milestones identified in the Matrix.

- c. Staff Coordination Team
 - i. The Staff Coordination Team will be composed of MCWD's planning - project planning manager, a planner - project manager, and appropriate staff and consultants, and the City's development director, community development coordinator, and appropriate staff and consultants. Developer representatives will serve on the Staff Coordination Team once a developer team is selected.
 - ii. The Staff Coordination Team will meet weekly on an established schedule, as needed.

3. Community Engagement

The Parties agree to establish a Community Engagement Plan to provide for continued community engagement in this project. The Parties agree that implementation of this Community Engagement Plan will seek continued understanding of and engagement with the project among residents, businesses and agencies with local and regional interest in the project to provide feedback that informs the development. The Community Engagement Plan will be guided by these key principles:

- a. reflect the watershed and community wide impact of the Site;
- b. be early and meaningful;
- c. represent different stakeholder groups with an interest in the Site; and
- d. utilize remote access tools to protect health and allow broader participation during the COVID-19 pandemic.

The Staff Coordination Team will prepare a draft framework for the Community Engagement Plan to be reviewed by the Staff Coordination Team and the Liaisons and approved by the City Manager and the Board of Managers no later than the completion of the Developer Selection process described in Section

5, and a complete Community Engagement Plan for their review and approval as soon as reasonably feasible thereafter.

4. Communications

The Parties agree to establish a Communications Plan in order to assure orderly and transparent communications between the Parties, agency partners, community stakeholders, and the general public about the development process at the Site. The Staff Coordination Team will prepare a draft framework for the Communications Plan to be reviewed by the Staff Coordination Team and the Liaisons and approved by the City Manager and the Board of Managers no later than the completion of the Developer Selection process described in Section 5, and a complete Communications Plan for their review and approval as soon as reasonably feasible thereafter.

5. Developer Selection

The developer selection process will include the following elements:

- a. Attached to and a part of this Agreement as Exhibit B is the Vision Document to express the Parties' vision for a successful development at the Site and to guide developers in generating proposals.
- b. Financial Framework Dynamic Evaluation
 - i. MCWD and its consultants will prepare a dynamic evaluation of the financial framework for the project. This evaluation will be based on explicit assumptions and/or alternative assumptions so that the Parties may align their understanding of the key financial elements of the project, including such items as land sale price, tax increment financing, and other development parameters. It will also allow developers to prepare proposals in response to clear financial expectations and parameters.
 - ii. This Financial Framework Dynamic Evaluation will be reviewed by the Staff Coordination Team and presented to the Liaisons, and Board of Managers.
- c. Feasibility Milestone
 - i. The completed Financial Framework Dynamic Evaluation will serve as the basis for the Feasibility Milestone, wherein the Parties will determine to move forward with the developer selection process as described below. The Staff Coordination Team will present a recommendation to the Liaisons, who will in turn present a recommendation to the City Manager and Board of Managers concerning whether to proceed to invite developers to make proposals. Upon a favorable determination by the Board of Managers and the City Manager, the Staff Coordination Team will initiate the developer selection process as described below.
- d. Invitations to Selected Developers

- i. The Staff Coordination Team will prepare, and the MCWD will post an open invitation to developers to submit a brief letter of interest in pursuing development of the Site.
 - ii. In addition to the open invitation for letters of interest, the Staff Coordination Team will prepare a list of qualified and experienced developers with a demonstrated record of successful projects indicating an ability to meet the Parties' development objectives. The Staff Coordination Team will contact the developers on this list and invite them to submit letters of interest. The Staff Coordination Team will review the letters of interest received and prepare a list of developers to be invited to continue with the developer selection process as set forth below.
 - iii. The Liaisons will review this list for recommendation to the City Manager and Board of Managers. The list will be reviewed and confirmed with or without modifications by the City Manager and Board of Managers.
 - iv. The Staff Coordination Team will invite the developers on this approved list to meet with the Staff Coordination Team to review the Site, Vision, and development parameters.
 - v. Following these meetings, the Staff Coordination Team will issue an invitation to these developers to prepare and submit proposals.
- e. Developer Submissions
 - i. The Staff Coordination Team will review the developers' initial submissions/proposals to generate comments or requests for clarifications. These comments and/or requests will be provided to the developers to allow them to prepare refined, final proposals. These final proposals will be reviewed by the Review Committee as provided below.
- f. Review Committee
 - i. The Review Committee will have five members: the four Liaison members, plus one additional MCWD manager.
 - ii. The Review Committee will hold interviews to consider the developers' final submissions/proposals, with the assistance and participation of the Staff Coordination Team.
 - iii. Following the interviews, the Review Committee will work to build consensus on a finalist list of the best development partner to achieve the Vision, vote on a recommended finalist list of developers, and refer that recommendation to the City Council and MCWD Board of Managers.
- g. Upon the Review Committee's determination of a finalist list of developers, the Staff Coordination Team will facilitate tours for the City Council and Board of Managers of those developers' representative projects.
- h. Following the tours, the MCWD Board of Managers and the City Council will hold a joint meeting for the purpose of conducting interviews of the finalist developers and

discussing these interviews. Thereafter the Board of Managers and the City Council will vote to select a developer. If the Board of Managers and City Council do not concur in the recommendation, the matter will be referred back to the Review Committee for further consideration.

6. Development Agreement Process

- a. Preliminary Development Agreement
 - i. The City, MCWD and selected developer will negotiate a preliminary development agreement to assure the developer of the terms and conditions of exclusive rights to negotiate a final development agreement for the Site.
 - ii. This preliminary development agreement will define a process to define the partnership, roles, and process to develop and refine concepts for the Site, and to provide for further investigation and refinement of a final development plan.
 - iii. The Staff Coordination Team will prepare the preliminary development agreement for review by the Liaisons and their recommendation for approval with or without modification to the MCWD Board of Managers and the City Council.

- b. Final Development Agreement
 - i. Upon the completion of a proposed final development plan, the Staff Coordination Team will present the plan to the Liaisons for their review and recommendation for approval with or without modification to the MCWD Board of Managers and the City Council.
 - ii. Upon approval by the MCWD Board of Managers and the City Council of the final development plan, the City and developer will proceed to negotiate and execute a final development agreement.

7. Development Parameters

The Parties commit to an open and transparent decision-making process for key development parameters to be discussed and determined, and therefore agree to the following process to address the development parameters identified in this Section and described in more detail in Exhibit C to this Agreement. In cases where the City has responsibility to make decisions for a development parameter, the City agrees to consult MCWD for its input through the Staff Coordination team and Liaisons. In cases where MCWD has responsibility to make decisions for a development parameter, MCWD agrees to consult the City for its input through the Staff Coordination team and Liaisons.

- a. Access
- b. Road Infrastructure
- c. Utilities
- d. Stormwater and Open Space
- e. Land Use
- f. Density
- g. Parking
- h. Sustainability

- i. Housing Affordability
- j. Tax Increment Finance
- k. Third Party Grants

8. Land use approvals

- a. The Parties anticipate that the development of the Site will require City Site Plan Review, Zoning District Change to Mixed Use, Planned Unit Development, and Subdivision Approval. The City agrees to keep MCWD informed about these approval processes, and to consult MCWD for its input through the Staff Coordination team and Liaisons.
- b. MCWD agrees to obtain all necessary land use approvals for the stormwater facility.

9. Open Space, Park Dedication [application of Sec. 100-33 of City Code]

- a. The MCWD agrees to work with the selected developer to set aside and dedicate a minimum of 13% of the Site to the general public as park dedication, open space, trails and wetlands.
- b. The City shall apply its park dedication requirement set forth in the City of Hopkins City Code and applicable Minnesota statutes to any development proposal for the Site, including the City's discretion to waive or reduce the requirement.
- c. The City acknowledges that the Financial Framework Dynamic Evaluation described in Section 5 will include analysis of the park dedication fee and the considerations set forth in this Section in order to assist the Feasibility Milestone analysis.

10. Sale of property

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.

11. General Terms

- a. Dispute Resolution
 - i. The MCWD and the City commit through this Agreement to frequent and open communication and collaborative efforts to deliver a successful project that meets the goals of the Vision and the guiding principles set forth at the beginning of this Agreement. The Parties commit their representatives on the Staff Coordination Team, Liaisons, and City Council and Board of Managers to work to resolve any issues, concerns or disputes as soon as possible.
 - ii. In the event that the Staff Coordination Team has an issue, concern or dispute that it cannot resolve, either the City or MCWD representatives may request that the matter be addressed by the Liaisons. The Liaisons shall meet and work to resolve the matter within ten calendar days of the date of the request.
 - iii. If the Liaisons are unable to resolve the matter within ten calendar days of the date of the request, the Liaisons shall notify the City Council and MCWD Board

of Managers of the matter and efforts to resolve it. The City Council and MCWD Board of Managers shall convene a joint meeting within thirty calendar days of the notification from the Liaisons in order to resolve the matter.

- iv. If the joint meeting of the City Council and MCWD Board of Managers fails to resolve the matter, all further work on the project shall conclude, and either party may pursue any further remedies as provided in this Agreement.

b. Remedies

Notwithstanding anything to the contrary in this Agreement, each party is responsible for its own acts and omissions, and the results thereof, to the extent authorized by law and will not be responsible for the acts and omissions of the other party or the results thereof. Minnesota Statutes chapter 466 and other applicable law govern liability of the City and the District. Nothing in this Agreement constitutes a waiver or limitation of any immunity or limitation on liability to which the City or District is entitled under Minnesota Statutes Chapter 466 or otherwise. 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.

c. Indemnification

The MCWD, and any and all officers, employees, subcontractors, agents, or any other person engaged by the MCWD in the performance of work or services pursuant to this Agreement, shall indemnify, defend, and hold harmless the City and its officials, employees, contractors and agents from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by the MCWD, its officers, employees, subcontractors, agents, or any other person engaged by the MCWD in the performance of work or services pursuant to this Agreement. The City, and any and all officers, employees, subcontractors, agents, or any other person engaged by the City in the performance of work or services pursuant to this Agreement, shall indemnify, defend, and hold harmless the MCWD and its officials, employees, contractors and agents from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by the City, its officers, employees, subcontractors, agents, or any other person engaged by the City in the performance of work or services pursuant to this Agreement. In no event shall either party be liable to the other party for consequential, incidental, indirect, special, or punitive damages.

d. Force Majeure

Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform the work or services under this Agreement due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible, including acts of God or nature, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

e. Notifications and contacts

Each notification required by this Agreement must be made to the project representative. The project representatives of the parties are:

Michael Hayman, Project Planning Manager
Minnehaha Creek Watershed District 15320
Minnetonka Boulevard
Minnetonka, MNN 55345
952-471-0590
mhayman@minnehahacreek.org

Kersten Elverum, Director of Development and Planning
City of Hopkins
1010 I5¹ Street South
Hopkins, MN 55343
952-548-6340
kolverum@hopkinsmn.com

Contact information will be kept current. Either contact may be changed by a party by written notification to the other party.

f. Amendments

An amendment to this Agreement must be in writing and will not be effective until it has been approved and executed by the Parties. A party to this Agreement may not assign or transfer any right or obligation hereunder without an assignment agreement executed by the Parties and the assignee.

g. Term, Termination

Notwithstanding any other provision 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 the other party, upon providing 30 days' written notice to the party.

h. Entire Agreement and Modification

This Agreement shall constitute the entire agreement between the City and the MCWD. This Agreement supersedes any other written or oral agreements between the City and the MCWD. This Agreement can only be modified in writing signed by the City and the MCWD.

i. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

j. Third Party Rights

The City and the MCWD do not intend to confer on any third party any rights under this Agreement.

k. Compliance with Laws

The City and the MCWD shall exercise reasonable care to comply with applicable federal, state, and local laws, rules, ordinances, and regulations in effect as of the date of this Agreement.

- l. Compliance with the Minnesota Government Data Practices Act
Data provided, produced, or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. The parties shall immediately report to the other party any requests from third parties for information relating to this Agreement. The parties agree to promptly respond to inquiries from the other party concerning data requests.
- m. Audit
Each party must allow the other party, or its duly authorized agents, and the state auditor or legislative auditor reasonable access to the other party's books, records, documents, and accounting procedures and practices that are pertinent to this Agreement for a minimum of six years from the termination of this Agreement.
- n. Choice of Law and Venue
This Agreement shall be governed by and construed in accordance with the laws of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the parties waive any objections to jurisdiction.
- o. Non-Assignment
This Agreement may not be assigned by either party without the prior written consent of the other party.
- p. Non-Discrimination
The parties agree not to discriminate in executing the provisions under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion.
- q. Survivability
The provisions of this Agreement concerning Indemnification, Compliance with Laws, Compliance with the Minnesota Government Data Practices Act, Audit, Choice of Law and Venue shall survive the expiration or termination of this Agreement.
- r. Severability
The provisions of this Agreement shall be severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of the Agreement.
- s. Waiver
Any waiver by either party of a breach of any provision of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

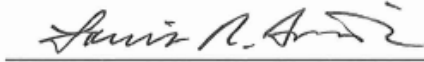
MINNEHAHA CREEK WATERSHED DISTRICT



Sherry Davis White, President

Date: *October 24, 2020*

Approved for Form and Execution:



MCWD Counsel

CITY of HOPKINS



Jason Gadd, Mayor

Date: *9/16/20*



Michael Mornson, City Manager

Date:

Exhibit B
Concept Plan



Exhibit C

Development Review Process

Item	Submittal Date	Actions/Decisions	Notes
Community engagement	Kicked off with online survey of concept plan review in July	Select consultant to lead engagement. Community engagement events in August and September.	Engagement to be led by consultant, supported by City, Alatus and MCWD
EAW	EAW initiated July 29	July 27: Notification to Planning Commission August 2: Notification to City Council September 28: Submittal to EQB October 5: EQB Monitor Publication November 4: 30 Day Comment Deadline November 23: Planning Commission December 7: City Council action December 14: EQB Submittal December 20: EQB Publication	Alatus to hire consultant to prepare EAW, with the City and MCWD to provide assistance with information. City is the RGU for submittal to EQB and consideration of the negative declaration.
Consensus around Final Development Plan		Liaison and MCWD approval	Consensus to occur prior to the October 22 submittal date for land use entitlements
Land Use: Concept Plan Review	August	August 19: Neighborhood Meeting August 24: Planning Commission September 7: City Council	Neighborhood meeting to occur as part of the community engagement. Concept plan review by the Planning Commission and City Council allows the developer to get feedback, but no formal decision is made.
Land use entitlements <ul style="list-style-type: none"> • Rezoning and PUD • Preliminary Plat • Site Plan 	October 22	November 23: Planning Commission public hearing recommendation to City Council December 7: City Council December 21: City Council second reading for rezoning and PUD	
Financial Assistance Establish TIF District		August 17: Public hearing and City Council action on establishing TIF District 1-6	

Item	Submittal Date	Actions/Decisions	Notes
Application for TIF assistance Development Agreement for financial assistance		November: City Council work session to discuss application and recommendations December 21: Public hearing on providing TIF; Development Agreement outlining the terms of financial assistance considered by the Hopkins Housing and Redevelopment Authority	

The timeline is provided to illustrate the sequence of the review and approval processes. The timeline may vary from what is shown based on discussions of items and issues that may need resolution prior to approval.

- CONCRETE PAVING
- CONCRETE PAVING - VEHICULAR
- DECORATIVE CONCRETE PAVING
- CONCRETE UNIT PAVERS
- CONCRETE UNIT PAVERS - VEHICULAR
- PERMEABLE CONCRETE UNIT PAVERS
- PERMEABLE CONCRETE UNIT PAVERS - VEHICULAR
- LIMESTONE UNIT PAVERS
- LIMESTONE FLAGGING
- CUT LIMESTONE TIERED BLOCKS
- CRUSHED AGGREGATE

- LANDSCAPE**
- LANDSCAPE PLANTING AREA
 - STORMWATER PLANTING AREA
 - TURF GRASS
 - DECIDUOUS TREE
 - ORNAMENTAL TREE
 - EVERGREEN TREE
 - DECIDUOUS SHRUB
 - EVERGREEN SHRUB
 - PERGOLA
 - WATER / WATER FEATURE

OVERALL SITE INFORMATION

SITE AREA:	543,446 sf
BUILDING FOOTPRINT:	224,881 sf (43%)
HARDSCAPE / IMPERVIOUS AREA:	185,168 sf (34%)
LANDSCAPE / PERVIOUS AREA:	123,397 sf (23%)
TREES:	316
SHRUBS:	3,066
GROUND COVER:	51,500 sf

CADD QUALIFICATION
CADD files prepared by the Consultant for this project are intended for use by the Consultant and are not to be used on other projects, for addition to this project, or for completion of this project by others without written approval from the Consultant. With the Consultant's approval, clients may be permitted to search existing CADD files for information and reference only. No transfer or reproduction of information or services to third parties shall be made at the sole risk of their party making such reference. It is the responsibility of the Consultant to identify the Consultant from any & all responsibilities, errors and omissions.

SUBMITTAL/REVISIONS

10/22/21	CITY SUBMITTAL
10/29/21	CITY RESUBMITTAL

PROFESSIONAL SIGNATURE
I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

QUALITY CONTROL

DF/ Project No.	19-199B
Project Lead	JM
Drawn By	AM/JH
Checked By	JM/TW
Review Date	

SHEET INDEX

OVERALL SITE PLAN

L1-1

Plotted: 10/29/2021 10:58:00 AM Projects\20-199B 325 Blake Road - Alatus\0_CADD\20-199B_PLD

