



Title: Authorization to Execute a Contract with Stantec, to develop a Feasibility Study of a Filtration System at Lamplighter Pond

Resolution number: 21-089

Prepared by: Name: Erin Manlick
Phone: 952.641.4586
emanlick@minnehahacreek.org

Reviewed by: Name/Title: James Wisker, District Administrator

Recommended action: Board approval of contract authorization to work with Stantec Engineering to conduct a feasibility analysis for a filtration system at Lamplighter Pond.

Schedule: January 2022: Data Collection and Review, Preliminary Design Plans
February 2022: Production of Technical Memo

Budget considerations: Amount held in escrow fund: \$490,000
Expenditures to date: \$0
Requested amount of funding from escrow: \$27,800

Past Board action: Res #18-083 Variance Approval for LifeTime, Inc., 5525 Cedar Lake Road, District Permit 18-153

Summary:

At the [August 23, 2018 meeting](#), the Board of Managers approved a variance request to the District's Stormwater Management rule for Permit #18-153, a commercial redevelopment project at the LifeTime Fitness location at 5525 Cedar Lake Road in St. Louis Park. As a condition of the variance, the District and Healthy Way of Life, LLC (the Applicant), executed a cooperative agreement (Agreement) under which the District agreed to use its capacities to identify regional stormwater management to provide an equivalent amount of stormwater treatment to that which would have been achieved on-site; and Healthy Way of Life agreed to place \$490,000 in an escrow held by the District to cover the cost of these stormwater facilities. Pursuant to the terms of the Agreement, the District must take formal action identifying one or more projects for final feasibility and advancement of design by August 23, 2023.

At the [September 9, 2021 Board of Managers meeting](#), staff briefed the Board on a potential project that could be advanced under the Agreement, an underground filtration system at Lamplighter Pond in St. Louis Park. This underground manufactured treatment device (MTD) would treat water being pumped via the lift station through a series of underground cartridges. Depending on design, this system may provide up to 60 lbs/year of Total Phosphorus reduction. The District Engineer estimates the construction cost for the filtration system to be between \$400,000 – 650,000. This estimate includes construction, permitting, legal, design, construction oversight, and a 30% contingency. Per the terms of the Agreement, the funds provided by the applicant may be applied to all of the above indicated costs, as well as up to 20 years of operations and maintenance costs incurred by the District, the City, or any other project partner.

Before the Board of Managers approves a project for final design or implementation, the Agreement commits the District to providing Healthy Way of Life a package of technical deliverables. To synthesize the work completed to date, and to provide technical detail sufficient for the Board to advance, for Healthy Way of Life's review, and to refine the potential scope of water quality treatment and cost estimates, at the September 9, 2021 Meeting, the MCWD Board of Managers directed staff to develop a scope of work for a Feasibility Study.

Since then, staff have met with Healthy Way of Life to communicate the next steps in the process and have developed a scope of work for Stantec to complete the Feasibility Study.

The scope of work (Attachment A) for the Feasibility Study will include:

1. Collecting site-specific information that will inform the design of the BMP, including topographic, boundary, and utility surveys, soil borings, and design/as-built plans of the existing lift station system
2. Coordinating with vendors to calculate filter and pump sizing and to estimate total phosphorus and total suspended solids removal
3. Preparing conceptual design plans that incorporate the site-specific conditions and design specifications of the proposed BMP
4. Producing a technical memo that will summarize the feasibility study methods, results, and recommendations

Next Steps and Timeline:

In January 2022, staff will review preliminary data and design plans, and engage the City of St. Louis Park to coordinate on operations and maintenance, project funding, and City review processes. In February, MCWD and City staff will review the final feasibility study and provide comments. In late February or early March, staff will return to the Board with the feasibility study results, and provide a recommendation on project advancement.

Supporting documents:

- Attachment A: Stantec Engineering Scope
- Attachment B: Cooperative Agreement



RESOLUTION

Resolution number: 21-089

Title: Authorization to Execute a Contract with Stantec, to develop a Feasibility Study of a Filtration System at Lamplighter Pond.

WHEREAS, In 2018, the MCWD Board of Managers approved a variance to the MCWD Stormwater Management rule for permit application #18-153, a commercial redevelopment project proposed by Healthy Way of Life I, LLC (the Applicant) located at 5525 Cedar Lake Road, St. Louis Park,

WHEREAS, Under Resolution #18-083, and as a condition of the variance, the Board of Managers directed the MCWD administrator to execute a regional stormwater treatment agreement (the Agreement) between the Applicant and the District,

WHEREAS, Under the Agreement, the Applicant placed \$490,000 in an escrow held by the District to cover the cost of the stormwater facilities, provided that the identification and analysis of potential projects was conducted by the District;

WHEREAS, The escrow funds apply to reimbursement of District project costs including feasibility assessment of a selected potential project;

WHEREAS, Staff and the District Engineer conducted preliminary assessment of potential projects, and identified a recommended project option – an underground filtration system located at an existing City-owned lift station adjacent to Lamplighter Pond, 1800 Pennsylvania Ave South, St. Louis Park,

WHEREAS, At the September 9, 2021 Board of Managers meeting, the Board directed staff to prepare a scope of services for a feasibility analysis of the proposed project,

WHEREAS, A scope of services has been developed to assess the project’s design feasibility, water quality treatment potential, cost, and operational requirements;

WHEREAS, District staff have coordinated with the Applicant in accordance with the Agreement as to the District's feasibility review and the use of escrow funds for that purpose;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator, on advice of counsel, to execute a task order with Stantec Engineering in an amount not to exceed \$27,800 to perform the feasibility study scope of services to assess the Lamplighter Pond underground filtration system.

Resolution Number 21-089 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 12/16/2021

 Secretary Date: _____



Stantec Consulting Services Inc.
2080 Wooddale Drive, Suite 100, Woodbury, MN 55125

December 13, 2021

Attention:

Ms. Erin Manlick
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345

Dear Erin,

Reference: Proposal for Lifetime Fitness / Lamplighter Pond Feasibility Study

Thank you for this opportunity to present MCWD with this proposal. Wenck, now part of Stantec (Stantec), has been working with MCWD since 2018 to study stormwater management related to the St. Louis Park Lifetime Fitness expansion. After analysing dozens of options since 2018, this proposal includes a scope and budget to evaluate the design and construction feasibility of the recommended practice: a stormwater filter system adjacent to Lamplighter Pond in St. Louis Park.

Background

The MCWD Board of Managers approved a variance in 2018 for LifeTime Fitness to contribute a fee in-lieu of constructing a stormwater control measure (SCM) at their site in St. Louis Park. Variance conditions of the "Alternative Stormwater Management Agreement" with LifeTime included a total project budget not to exceed \$490,000; TP reduction of 7.2 lb/yr; abstraction volume of 28,734 cf; and for MCWD to advance the project before the agreement's expiration on August 23, 2023.

Since approving the variance, MCWD and Stantec staff worked with City staff to evaluate dozens of potential SCMs on public and private property. Ultimately, City and MCWD staff concluded the preferred SCM is a stormwater filter system adjacent to Lamplighter Pond.

Task 101 – Data Collection & Review

Stantec will review existing plans (design and as-built) for the stormwater lift station at the southeast end of the Lamplighter Pond. We will conduct a topographic, boundary and utility survey of the area to have accurate and current information for existing conditions. We will subcontract with a drilling contractor to obtain two soil borings in the area of the proposed filtration system. If unsuitable soils are present, we will adjust the foundation support accordingly in Task 102. We will coordinate with City staff during the boring process given the existing utilities in that area. Finally, our engineers will visit the project site with City staff to identify the preferred system location and potential obstructions and obstacles.

Deliverables: Topo, boundary and utility survey; soil boring logs

Reference: Proposal for Lifetime Fitness/Lamplighter Pond Feasibility Study

Task 102 – Preliminary Design

Using the information collected in Task 101, we will prepare a set of preliminary plans. The goal of the preliminary design will be to achieve the variance conditions: at least 7.2 lb/yr TP reduction and 28,734 cf abstraction volume. Since the selected practice is filtration, the abstraction volume doubles to 57,468 cf according to MCWD rules.

The plans will include plan and profile layouts of the filter system and applicable “typical” details. To prepare the plans, we will coordinate with vendors to calculate filter and pump sizing and to estimate total phosphorus and total suspended solids removal. We will contact DNR and City staff to determine which permits, if any, may be necessary to construct the project. We will prepare a detailed cost estimate to accompany the preliminary plans. The cost estimate will include project construction cost as well as final engineering design and construction administration and oversight costs.

We will schedule one virtual meeting with MCWD during plan development to review progress and next steps. We will provide draft preliminary plans to MCWD for one round of review and comments.

Deliverable: Preliminary design plans

Task 103 – Technical Memo

Stantec will summarize the feasibility study methods, results and recommendations in a technical memorandum. We will issue a draft for MCWD and City review and then revise it once after receipt of MCWD and City comments.

We will schedule one virtual meeting with MCWD during memo development to review progress and next steps. We will provide a draft memo to MCWD for one round of review and comments.

Deliverable: Technical memo

Schedule and Budget

We propose the following schedule for this project:

- | | |
|---|-------------------|
| • MCWD approval of scope and budget by: | December 16, 2021 |
| • Contracting completed by: | December 21, 2021 |
| • Task 101 – Data Collection & Review: | January 14, 2022 |
| • Task 102 – Preliminary Design: | January 28, 2022 |
| • Task 103 – Technical Memo: | February 10, 2022 |

To complete this scope of services, we propose the following budget for tasks listed. Stantec will invoice the MCWD monthly according to our Master Services Agreement.

Reference: **Proposal for Lifetime Fitness/Lamplighter Pond Feasibility Study**

Phase	Budget
Task 101 – Data Collection & Review	\$8,600
Task 102 – Preliminary Design	\$15,300
Task 103 – Technical Memo	\$3,900
Total	\$27,800

Assumptions

Our proposed scope of work and budget include the following assumptions:

- If as-built drawings are not available, we assume the existing lift station was constructed per the design plans.
- If unsuitable soil conditions are present, we will note that in the technical memo and incorporate into the preliminary cost estimate as necessary. We will not conduct detailed design of additional foundation materials or pilings.

Project Team

Stantec's team for this project is listed below. We look forward to assisting the MCWD with this project.

- Senior Engineer: Chris Meehan
- Project Manager: Todd Shoemaker
- Project Engineers: Rena Weis, Jacob Zea, Louis Sigtermans

We look forward to assisting you with this project. If you have any questions regarding the scope of services and cost proposal enclosed, please contact us as noted below.

Regards,

Stantec Consulting Services Inc.



Todd Shoemaker, PE

Senior Associate

Phone: 651-492-4585

Fax: 651-228-1969

Sender's Email todd.shoemaker@stantec.com

AGREEMENT
Alternative Stormwater Management Agreement

Minnehaha Creek Watershed District and Life Time, Inc.

This Agreement is entered into by the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers set forth in Minnesota Statutes chapters 103B and 103D (“District”), and Healthy Way of Life I, LLC, a Delaware Limited Liability Company (“Life Time”).

RECITALS

A. Pursuant to rules duly adopted under Minnesota Statutes §103D.341, the District regulates land development to protect water resources. On August 23, 2018, the District Board of Managers (“Board”) approved Permit No. 18-153 for a building addition and related development at the Life Time property located at 5525 Cedar Lake Road, St. Louis Park, Minnesota (the “Site”).

B. In conjunction with Permit No. 18-153, the Board approved a variance requested by Life Time due to its inability, during the permit term, to meet District stormwater management rules requiring that stormwater management achieve an annual removal of 7.2 pounds of phosphorus and annual abstraction of 28,734 cubic feet. The variance is conditioned on the execution of an agreement between the District and Life Time under which the District will use its capacities to identify and implement regional stormwater management that will provide for these phosphorus removal and volume abstraction outcomes, and Life Time will bear the cost of such facilities.

C. The funds that Life Time is providing under this Agreement are solely to implement the stormwater management that the District rules require as closely as possible, from a subwatershed perspective, to what Life Time would achieve if management on the Site were feasible.

D. On the basis of the record established by the variance request, an alternative approach to substantially meet the phosphorus removal and volume abstraction outcomes required by the District rules was needed to support variance approval. This Agreement memorializes this alternative approach. The intent is that Life Time will achieve the water resource outcomes required by the District rules at its cost, and the District will facilitate this outcome without exposing its general taxpayer to substantial risk or using public funds for private compliance cost.

E. The maximum sum that Life Time will contribute under this Agreement has been determined by the parties as the estimated cost that Life Time would incur to provide for the required stormwater management on the Site. This cost does not include loss of area and other indirect costs that Life Time would incur to manage stormwater on site, all of which contribute to the infeasibility of on-site treatment and the basis for the variance approval.

F. Accordingly, the parties enter into this Agreement for mutual valuable consideration, and intend that it be legally binding.

G. Permit No. 18-153 and the associated variance are attached as Exhibit A and incorporated into this Agreement.

TERMS

Escrow

1. Before Permit No. 18-153 is issued, and as a condition of issuance, Life Time will deliver \$490,000 to the District, which the District will place into escrow for its own benefit as obligee (the "Escrow"). The parties will cooperate on the manner of funds transmittal.

2. The Escrow will be subject to the following:

a. The District will maintain a discrete escrow fund and hold or invest the funds in a manner consistent with the applicable requirements of Minnesota Statutes chapter 118A and the District's adopted investment and depository policy, as each may be amended from time to time.

b. In delivering the Escrow, Life Time unconditionally represents that all escrow funds submitted are its funds and that no third party has any right or entitlement thereto, perfected or unperfected. Life Time will remain the title owner of the Escrow, including any accrued interest. All obligations of the District under this Agreement in holding and using the Escrow are to Life Time only.

c. Life Time will not assign or purport to assign any interest in the Escrow to any third party, absent written District approval. The District will continue to recognize Life Time as the title owner of the Escrow, unless and until, in the District's judgment:

(i) Life Time has documented its assignment of escrow funds and agrees to hold the District harmless for handling the funds in accordance with the assignment terms;

(ii) the District is directed otherwise by a court with jurisdiction; or

(iii) the District is otherwise mandated by unclaimed property or other applicable law.

d. Nothing in this Agreement creates any right in any third party as against the District or in any way waives or abridges any immunity, defense or liability limit that the District enjoys under law. Life Time holds the District harmless for, and will defend and indemnify it as to any third-party claims through Life Time relating to, loss in Escrow value, loss of potential interest, early withdrawal penalty or any other economic or other claim related to the Escrow or the District's management thereof, including attorney fees and costs, absent gross negligence by the District or its manager or employee.

Identification of Alternative Stormwater Management

3. The District may use its own staff and may retain professional services to identify and evaluate the feasibility of one or more alternative stormwater management projects.

4. The District's review of potential projects initially will focus on those within the minor subwatershed as defined in the District's watershed management plan. Review, beyond preliminary consideration, outside of the minor watershed will rest on a District Board determination that there is no feasible and sound option within the minor subwatershed to achieve the required outcomes. On this determination, the District may expand its assessment to areas downgradient from the minor subwatershed outlet. "Feasible and sound" means: (a) the level of projected performance is reliable; (b) the District reasonably can expect to acquire the needed property rights, permits and approvals; (c) the estimated cost for the required removal and abstraction outcomes does not exceed the Life Time contribution; and (d) operation and maintenance for the expected project life are reasonable.

5. A decision to proceed with one or more projects utilizing the escrow funds will be made by the District Board on the basis of a finding that the project or projects will provide for some or all of the removal and abstraction outcomes that full compliance under Permit No. 18-153 would have produced.

6. The District will provide technical deliverables to Life Time before the District Board: (a) extends the District's assessment beyond the minor subwatershed boundary; or (b) approves a project for final design or implementation. The District will receive comment from Life Time and consult with it, as it may request.

Projects That May Be Funded from the Escrow

7. A project funded from the Escrow under this Agreement may: (a) be structural or nonstructural; (b) function without operation or maintenance (O&M), or require O&M; (c) consist of any one-time or ongoing action that the District engineer concludes is expected to produce annual phosphorus removal and/or volume abstraction over a 20-year period; and (d) involve one or multiple locations or discrete actions.

8. A project may be constructed or implemented by the District; by another public body or third party through agreement with the District; or through a partnership between the District and one or more other parties.

9. A project may stand alone, or it may consist of an enhancement of or addition to another project or undertaking.

10. If the District cannot identify or proceed with one or more feasible projects that meet the full annual phosphorus reduction and volume abstraction requirements, it may proceed with one or more projects that achieve a part of that result.

11. At any time, Life Time, independent of any regulatory obligation, may implement measures at the Site or another location within the minor subwatershed to meet some or all of its phosphorus removal and/or volume abstraction obligations. It will timely communicate with the District as to any such action in the mutual interest of avoiding unneeded expenditure of the Escrow. The District, through its technical advisors, will determine the measures of removal and abstraction achieved and these will be deducted from the total measures of 7.2 pounds of phosphorus, and 28,734 cubic feet of abstraction, to which the Escrow is applied.

Use of the Escrow

12. The Escrow will apply to fund and/or reimburse the District for all costs, including administrative and legal, development, design, implementation and O&M costs, related to projects under this Agreement. The Escrow will apply to costs reasonably incurred even if no project ultimately is identified or implemented.

13. Escrow funds will become the sole property of the District, and Life Time agrees to the relinquishment of all legal and equitable interest therein, when the District has provided written notice to Life Time of the intent to apply escrow funds, the purpose and the amount, and 20 days thereafter have elapsed. The District may use escrow funds to pay third parties directly, or to reimburse itself for payments made.

14. Within 60 days after the District Administrator has determined that a project has been completed or implemented, the District will perform a project accounting and provide the accounting to Life Time. Final project cost will include the District technical advisor's reasonable calculation of 20 years' O&M cost, at present value.

15. Within five years of the date of this Agreement, the District Board, on the basis of technical and regulatory feasibility, land availability, projected performance and estimated cost, will take formal action identifying one or more projects for final feasibility and advancement of design. The District will maintain the Escrow until each identified project has been completed or implemented, or the Board has formally determined that it will not proceed. When all identified projects have been completed or implemented, the District will perform an accounting of funds expended and return unused funds to Life Time, and Life Time's financial obligation under the Agreement will terminate.

Regulatory Treatment

16. By entering into and performing its obligations under this Agreement, and by otherwise conforming to Permit 18-153 and the associated variance, Life Time will be deemed to have fully complied with District rules with respect to all work performed under Permit 18-153 and all preexisting improvements on the Site.

17. Any future Site improvements will be subject to District permit requirements as may be applicable under the District Rules in effect at the time such improvements are undertaken, however, for the purpose of determining District permit requirements, the site shall be considered as though all improvements completed prior to the date of execution of this agreement, were made in accordance with District requirements in place on the date of execution of this agreement.

Notice and Miscellaneous

18. All notices required or provided for under this Agreement will be made to the following representatives of the parties, except as may be altered in a writing signed by the representative, with receipt confirmed:

c/o LTF Real Estate Company, Inc.
2902 Corporate Place
Chanhassen, MN 55317
Attn: Kari L. Broyles

With a copy to:

LTF Real Estate Company, Inc.
2902 Corporate Place
Chanhassen, MN 55317
Attn: Property Manager

Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

19. Venue for any action hereunder is in Hennepin County, Minnesota. The law of Minnesota will apply to any such action.

20. The above Recitals are incorporated into and a part of this Agreement.

Intending To Be Bound,

HEALTHY WAY OF LIFE I, LLC

By: 
Kari L. Broyles

Date: September 14, 2018

Approved for Form & Execution


MCWD Attorney

MINNEHAHA CREEK WATERSHED DISTRICT

By: 
By: James Wisker, Administrator

Date: 9-27-18

MINNEHAHA CREEK



WATERSHED DISTRICT

QUALITY OF WATER

QUALITY OF LIFE

Pursuant to Minnesota Statutes Chapter 103D, and on the basis of statements and information contained in the permit application, correspondence, plans, maps, and all other supporting data submitted by the applicant, and made a part hereof by reference, PERMISSION IS HEREBY GRANTED to the applicant named below for use and development of land in the Minnehaha Creek Watershed District.

Issued to: Life Time, Inc	Permit No: 18-153
Location: 5525 Cedar Lake Road, St. Louis Park	
Purpose: Stormwater Management-Building Addition	
Date of Issuance: 9/19/2018	Date of Expiration: 9/19/2019

By Order of the Board of Managers

Elizabeth Showalter
Permitting Technician

This permit is not transferable without District approval, and is valid to the date of expiration. No activity is authorized beyond the expiration date. If the permittee requires more time to complete the project, an application for renewal of the permit must be received by the District at least 30 days before expiration.

The applicant is responsible for compliance with all District Rules and for the action of their representatives, contractors, and employees.

- Conditions:** Project to be completed as described in plans submitted to the MCWD office on March 23rd, 2018 according to the provisions of this permit.
- Properly install and maintain all required erosion control measures until the disturbed areas are re-stabilized
 - Notify MCWD in writing upon completing installation of perimeter and sedimentation controls
 - When the site is re-stabilized and the MCWD staff has performed a final inspection, all perimeter control must be removed
 - Submission of recorded copy of maintenance declaration by October 19, 2018

(Statement concerning fees for inspections, violations, etc... on following page)

We collaborate with public and private partners to protect and improve land and water for current and future generations.





Inspection/Analysis/Monitoring Fees

A site inspection and monitoring by District staff will be performed where the activity involves:

- a commercial/industrial/multi-family residential development
- a single family residential development greater than 5 acres or of any size if within the Minnehaha Creek subwatershed
- any alteration of a floodplain or wetland
- dredging within the beds, banks or shores of any protected water or wetland
- a violation
- any project which in the judgment of the District staff should be inspected due to project location, scope, or construction techniques

In these cases, the applicant shall pay to the District a fee equal to the actual costs of field inspection of the work, including investigation of the area affected by the work, analysis of the work, and any subsequent monitoring of the work, which in the case of a violation shall be at least \$35.

Standard Fee Schedule

District professional staff	\$ 65.51*
District interns	\$ 40.35*
District clerical staff	\$ 46.69*
Consulting Senior Engineer	\$ contracted rate
Consulting Engineer/Technician	\$ contracted rate
District Counsel	\$ contracted rate
Application fee	\$ 10.00
Copy costs	\$.25 + actual staff time
Color copy costs	\$ 1.00 + actual staff time

* Hourly

We collaborate with public and private partners to protect and improve land and water for current and future generations.



RESOLUTION

RESOLUTION NUMBER: 18-083

TITLE: **Variance Approval for Life Time, Inc., 5525 Cedar Lake Road, District Permit 18-153.**

WHEREAS Life Time, Inc., ("Life Time") has applied for a permit for an addition of about 5,300 square feet of hard surface to its fitness facility at 5525 Cedar Lake Road, St. Louis Park (the "Property");

WHEREAS the Property is 10.4 acres in size, 8.5 acres of which is hard surface;

WHEREAS the District's Stormwater Management Rule, §§ 2 and 5(c), states that once site hard surface exceeds 40 percent, the property owner must provide and stormwater volume control for the aggregate site hard surface installed since the date of rule adoption in 2005;

WHEREAS in conjunction with its permit application, designated as Permit No. 18-153, Life Time has applied for a variance from the requirement to provide stormwater management for aggregate site hard surface, on the following grounds: (a) the present improvement is small in relation to the total site hard surface; (b) doing so would cause disturbance that would make its commercial operations infeasible; and (c) it could more feasibly have installed stormwater management facilities as a part of its preceding, more extensive improvements under District permit 13-041, but the District did not impose the requirement at that time;

WHEREAS the District Variance rule sets forth the following criteria for variance:

- Special conditions to which other property in the District generally is not subject mean that strict compliance with the rule will cause undue hardship;
- The hardship was not created by the property owner or its contractor;
- The hardship is not merely an inconvenience, and not solely economic;
- There is no feasible and prudent alternative by which the rule may be met; and
- The variance will not impair or be contrary to the intent of the rules.

WHEREAS Life Time proposes to construct a new infiltration basin, which District staff and the District engineer find are sufficient to meet the rule requirements for the proposed new hard surface but exhaust the ability to locate facilities on the Property without disturbing existing improvements and utilities;

WHEREAS District staff and the District engineer have thoroughly reviewed the possibilities for Life Time to secure phosphorus removal and volume control elsewhere within the subwatershed and downstream of the Property, and have concluded that at this time there are no such possibilities, and have documented the review in memoranda that are a part of the permit file;

WHEREAS District staff has determined that within the next several years there is a reasonable likelihood for regional treatment to be installed as a part of public park, road and drainage improvements or otherwise through work that the District can facilitate;

WHEREAS the Board of Managers ("Board") has reviewed the memoranda and recommendations of District staff and the District engineer, finds them reasonable and adopts them;

WHEREAS Life Time proposes as a condition of a variance to enter into an agreement with the District, under which it would pay into escrow the avoided cost of installing facilities on the Property, which the District would use to fund regional stormwater management in place of Life Time's on-site management;

WHEREAS the proposed agreement, developed between District staff and Life Time, is included with the variance application;

THEREFORE BE IT RESOLVED that the Board finds as follows:

- Special conditions causing undue hardship exist that do not apply generally to other properties within the District, namely that the proposed improvement is of limited scope in proportion to existing site improvements and there is not room to accommodate the required stormwater management facilities without substantial disturbance to existing improvements and utilities;
- The hardship was not created by Life Time or its contractor, but results in large extent from the District's inadvertent failure to impose the requirement of aggregate stormwater management when the Property was undergoing substantial disturbance and improvement under Permit 13-041;
- The hardship is not merely an inconvenience and not solely economic, in that, in addition to the heightened cost of retrofitting, the work would require a large area of site disturbance, including reconfiguration and rerouting of site drainage and existing utility lines, and would impair the present commercial use of the property for a period of time, with a substantial potential impact on existing member use and Life Time's commercial relations;
- There is no feasible and prudent means by which Life Time can meet the §5(c) requirements, as the District engineer has reviewed both on- and off-site options and concluded that Life Time has maximized the opportunity for on-site treatment without disturbing existing improvements, and that there are no off-site options that appear both to offer potentially cost-effective phosphorus removal or flow management and to be feasible for Life Time as a private entity to implement;
- A variance will not be contrary to the intent of the rules, because: (a) Life Time has maximized treatment on-site; (b) Life Time is bearing its avoided compliance cost through a legally binding agreement; (c) under the agreement, there is a strong likelihood that the District, through its relationships with its public and private partners and its capacities as a public agency, can facilitate achieving the rule's stormwater management outcomes through regional means; and (d) regional management is consistent with the Stormwater Management Rule, at §7.

BE IT FURTHER RESOLVED that the Board therefore approves a variance on the following conditions:

- Life Time will construct on-site stormwater management facilities in accordance with District-approved plans and specifications;
-

- Before a permit is issued, Life Time and the District will execute an agreement materially equivalent to the proposed agreement included in the variance request.

BE IT FINALLY RESOLVED that the District Administrator is authorized to sign the required agreement, with non-material changes and on advice of counsel, and to administer the receipt and management of the escrow for which it provides.

Resolution Number 18- was moved by Manager Miller, seconded by Manager Olson.
Motion to adopt the resolution 7 ayes, 0 nays, 0 abstentions. Date: 8-23-18.

K. Rogness
Secretary

Date: 8/23/18

