

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: September 28, 2017

TITLE: Authorization to execute a second amendment to the Memorandum of Agreement (MOA) with Gateway Knollwood, LLC

RESOLUTION NUMBER: 17-060

PREPARED BY: James Wisker

E-MAIL: jwisker@minnehahacreek.org

TELEPHONE: 952-641-4509

REVIEWED BY: ☐ Administrator ☒ Counsel ☐ Program Mgr. (Name):
☐ Board Committee ☐ Engineer ☐ Other

WORKSHOP ACTION:

- | | |
|--|---|
| <input type="checkbox"/> Advance to Board mtg. Consent Agenda. | <input type="checkbox"/> Advance to Board meeting for discussion prior to action. |
| <input type="checkbox"/> Refer to a future workshop (date):_____ | <input type="checkbox"/> Refer to taskforce or committee (date):_____ |
| <input type="checkbox"/> Return to staff for additional work. | <input type="checkbox"/> No further action requested. |
| <input checked="" type="checkbox"/> Other (specify): <u>Requesting final approval on September 28, 2017</u> | |

PURPOSE or ACTION REQUESTED:

Authorization to execute a second amendment to the Memorandum of Agreement (MOA) with Gateway Knollwood, LLC extending the construction deadline for on-site stormwater facilities, and the date to execute and record a maintenance declaration for the facilities, from October 1, 2017 to November 17, 2017.

PROJECT/PROGRAM LOCATION:

Knollwood Mall, St. Louis Park

PROJECT TIMELINE:

February 2014	Execute Memorandum Of Agreement with Knollwood Mall LLC and St. Louis Park
February 2015	Execute first amendment to MOU, extending deadline to explore regional treatment
March 2016	Gateway Knollwood LLC, determined to move forward with on-site treatment
March 2017	Construction contracts awarded for onsite treatment at Knollwood
November 2017	Substantial completion of onsite treatment at Knollwood Mall

PAST BOARD ACTIONS:

April 11, 2013	Board Action	Authorization to distribute a letter of support for partnership with Rouse Properties
May 9, 2013	13-062	Authorization to execute contracts for Knollwood area feasibility planning
October 24, 2013	13-105	Authorization to execute a cooperative agreement with Rouse Properties
October 22, 2015	15-092	Authorization to amend cooperative agreement with Gateway

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

SUMMARY:

On February 24, 2014, pursuant to MCWD permit 13-278 for proposed redevelopment of Knollwood Mall at 8332 State Highway 7 in St. Louis Park, the District entered into a Memorandum of Agreement (MOA) regarding the planning and implementation of stormwater management for this area.

The MOA allowed for a delay in stormwater facility construction while the permittee explored with the District and the City of St. Louis Park the feasibility of designing facilities that would treat both on-site and regional stormwater. In the event this concept did not move forward, the MOA specified an October 1, 2017 date for the permittee to substantially complete facilities solely to treat its own, on-site runoff, and to execute and record the maintenance declaration for those facilities.

This MOA was amended for a first time in 2016 by the District and the successor to the site Gateway Knollwood LLC (Gateway). This amendment did not alter the above deadlines.

Gateway determined to not advance a regional treatment concept in 2016, and proceeded with the final design of on-site facilities. A construction contract for these facilities was awarded in March 2017, consistent with requirements outlined in the agreement.

Since then, Gateway Knollwood LLC has made significant progress towards construction completion, as outlined during a September briefing to the MCWD Planning and Policy Committee (PPC). However, Gateway is unable to meet the October 1 deadline and recently requested an extension to November 17, 2017 from MCWD and the City of St. Louis Park.

District and city staff have coordinated and are supportive of the request.

Attachments:

Attachment 1 – Draft Second Amendment to the Memorandum Of Agreement

Attachment 2 – 2014 Memorandum Of Agreement

Attachment 3 – 2016 First Amendment to the Memorandum Of Agreement

RESOLUTION NUMBER: 17-060

NOW, THEREFORE, BE IT RESOLVED that the District Administrator is authorized to execute an agreement amendment to extend the date to substantially complete the stormwater management facilities, and to execute and record a perpetual maintenance instrument for those facilities, to November 17, 2017.

Secretary _____ Date: _____

SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT

Minnehaha Creek Watershed District and Gateway Knollwood, LLC

THIS SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT (this "Amendment") is made by and between MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth in Minnesota Statutes Chapters 103B and 103D ("District") and GATEWAY KNOLLWOOD, LLC, a Delaware limited liability company ("Gateway").

RECITALS

- A. On February 24, 2014, pursuant to issuance of District Permit No. 13-278 for redevelopment activity at 8332 State Highway No. 7 in the City of St. Louis Park, Minnesota, the District and Gateway's predecessor in interest entered into a memorandum of agreement, which was amended by First Amendment to Memorandum of Agreement executed by Gateway on February 1, 2016 and by the District on February 17, 2016 (together, the "Agreement") which required in part that Gateway construct on-site stormwater management facilities (the "Facilities").
- B. The Agreement provides, *inter alia*, that by October 1, 2017, the Facilities are to be substantially completed and a maintenance agreement with respect to the Facilities is to be executed and recorded.
- C. Construction of the Facilities is underway but will not be substantially completed by October 1, 2017, nor will the maintenance instrument be completed and recorded.
- D. The District and Gateway wish to amend the Agreement to extend the date to complete the Facilities and the maintenance agreement as provided herein.

TERMS

- 1. In paragraph 4.02 of the Agreement, the date of October 1, 2017 in clauses (b) and (c) is hereby amended to November 17, 2017.
- 2. All other terms of the Agreement remain unchanged and in effect.
- 3. The above Recitals are incorporated into this Amendment.

The Remainder of this Page Left Blank Intentionally

Agreeing to be bound.

GATEWAY KNOLLWOOD, LLC

By: _____
Name: _____
Title: _____

Date: _____

MINNEHAHA CREEK WATERSHED DISTRICT

By: _____
Name: _____
Title: _____

Date: _____

Approved for form and execution:

MCWD Counsel

MEMORANDUM of AGREEMENT
Stormwater Management Facility Retrofit

Minnehaha Creek Watershed District and Knollwood Mall, LLC

This memorandum of agreement ("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 ("District"), and Knollwood Mall, LLC, a Delaware limited liability company ("Knollwood") (together, "the Parties").

Article 1 - Recitals

1.01 These Recitals are incorporated into the Agreement and a binding part thereof.

1.02 Knollwood owns property located at 8332 State Highway No. 7 in the City of St. Louis Park (the "Property"), adjacent to Minnehaha Creek. Minnehaha Creek, and Lake Hiawatha through which it flows downstream, are public waters subject to a Total Maximum Daily Load (TMDL) under state law for failure to meet state water quality standards for nutrients and bacteria.

1.03 Pursuant to Minnesota Statutes §103D.341, the District has adopted and implements rules and permitting requirements governing land development and redevelopment. Knollwood has applied to the District and been issued Permit No. 13-278 for redevelopment activity on the Property. The City of St. Louis Park (the "City") also has issued a Planned Unit Development (PUD) amendment allowing Knollwood to undertake the redevelopment activity.

1.04 Permit No. 13-278 requires that Knollwood construct stormwater management Best Management Practices (BMPs) in conjunction with its redevelopment. The PUD amendment also requires that Knollwood construct stormwater management facilities. The facilities that Knollwood is required to construct pursuant to Permit No. 13-278 and the City PUD amendment are as described in the plans attached hereto as Attachment A and incorporated herein (the "Facilities").

1.05 Knollwood has requested that it be permitted to delay construction of the Facilities while the City of St. Louis Park, the District and Knollwood mutually explore alternative stormwater management facilities that may be located on- or off-site, may accommodate presently untreated regional stormwater runoff, and may have economic and other benefit for all three parties.

1.06 Permit No. 13-278 allows Knollwood to delay construction of the Facilities on execution of this Agreement. The purpose of this Agreement is to establish Knollwood's commitment to exploring alternative facilities and to establish terms that ensure a timely construction of stormwater facilities whether or not an agreement on alternative facilities is reached.

1.07 Neither Knollwood nor the District legally commits itself under this Agreement to participating in the construction of stormwater management facilities on the Property other

than the Facilities. If Knollwood, the District and the City do not enter into an agreement for construction of alternative facilities by October 1, 2015, per paragraph 4.01, below, then Knollwood will construct the Facilities per paragraphs 4.02 and 4.03, below.

1.08 Knollwood signs this Agreement as consideration for issuance of Permit No. 13-278 and agrees that it is legally binding. Each party concurs that this Agreement involves an exchange of valuable consideration and constitutes an inducement for each party to perform the acts for which the Agreement provides.

Article 2 - On-Site Regional Facilities

2.01 Stormwater runoff from developed land adjacent to the Property on the north and east, primarily in residential use, presently is not managed for flow rate or treated for water quality before it discharges into Minnehaha Creek. The City and the District have an interest in providing flood control and water quality management for this area before it discharges into the creek.

2.02 Attached to this Agreement and incorporated herein as Attachment B are preliminary plans for a subsurface stormwater infiltration system that could be constructed on the Property to treat both on-site and regional stormwater. The Parties, through their engineering advisors, have made a preliminary determination that this design is technically feasible to manage and treat stormwater runoff from both the Property and surrounding area to standards that meet Permit No. 13-278 and otherwise to an extent that provides substantial regional stormwater management benefit. To make this determination, the parties have reviewed soil and groundwater data for infiltration characteristics as well as chemical contaminants, alignment and grade of existing and necessary additional conveyances and other infrastructure, elevations necessary to determine construction and operational needs for moving stormwater, facility footprint, maintenance access, likely permit requirements, easement needs if any, and all other factors generally relevant to assessing technical feasibility.

2.03 Pursuant to this Agreement, the Parties, in cooperation with the City, will complete the determination of technical feasibility, assess cost and risk, review potential means of funding and financing, and otherwise determine whether there is a mutual willingness to proceed with this alternative stormwater management approach or a variation thereof. Knollwood will take the lead in any further technical, risk and cost review but the Parties will work cooperatively together and with the City and the District will bring its engineering, policymaking, legal and other relevant capacity to bear in a timely way.

Article 3 - Off-Site Regional Facilities

3.01 The Parties have identified conceptually an opportunity to construct stormwater management facilities in a location not on the Property sufficient to meet Knollwood's stormwater management obligation under Permit 13-278 and to treat the stormwater from land adjacent to the Property. An off-site location may offer substantial benefit to Knollwood by increasing the area of the Property that may be used and redeveloped; to the District and City by allowing for restoration of the riparian corridor along the creek by means of a larger riparian buffer and floodplain, and allowing peak flows in the creek to be managed; and

potentially to other parties owning or occupying land within the vicinity of the Property and downstream by reducing encroachment of flood waters and providing other benefits.

3.02 The City or other road authorities may undertake potential road reconstruction work affecting public right-of-way adjacent to the Property and to Minnehaha Creek within the next several years. Constructing off-site stormwater management facilities in conjunction with such road work may offer further cost savings, limit the duration of construction-caused disruption, and allow for the public amenity from the restored natural environment to be better coordinated with public movement through and use of the surrounding lands.

3.03 The Parties recognize the potential benefits of an off-site approach and wish to work together, and with the City, in good faith to establish its feasibility and develop a further agreement establishing the roles and responsibilities of each party in implementing such an approach.

3.04 The District will take the lead to develop conceptual designs, evaluate technical feasibility, explore land availability, identify permitting needs and issues, and estimate costs for off-site regional facilities. Knollwood will cooperate in a timely way with respect to all matters within its knowledge and authority, and will bring engineering, policymaking, legal and other relevant capacity to bear in a timely way.

Article 4 - Deadlines; Financial Assurance

4.01 The Parties will work in good faith with each other and the City to evaluate regional on-site and off-site facilities. A binding project agreement among the three parties to fund, finance, construct and maintain facilities other than the Facilities must be executed by all parties by October 1, 2015. This agreement must incorporate 90 percent plans and specifications, must not contain substantial contingencies within the control of a party, and will allocate costs on the basis of benefit to participating parties. On execution of the project agreement by all parties, this Agreement will be of no further force and effect except as the project agreement otherwise may provide.

4.02 If an agreement is not reached in accordance with the terms of paragraph 4.01, Knollwood must: (a) award a contract for construction of the Facilities by March 1, 2017; (b) substantially complete the Facilities so that they are functional by October 1, 2017; and (c) execute and record an instrument for perpetual maintenance of the Facilities, in a form acceptable to the District, by October 1, 2017.

4.03 At any time before October 1, 2015, Knollwood or the District may in writing unequivocally withdraw from consideration of a regional alternative to the Facilities. In that event, the dates for Knollwood's contract award and substantial completion will be, respectively, 16 and 22 months from the date of the written withdrawal.

4.04 Within 30 days of the effective date of this Agreement, Knollwood will supply a bond or letter of credit in the amount of \$1,684,310 for construction of the Facilities. The financial assurance will be: (a) in a form acceptable to the District; (b) issued by a surety licensed to issue such a financial assurance in Minnesota; (c) in favor of the District, allowing for multiple draws and conditioned on construction of the Facilities in accordance with Permit No. 13-

278. The financial assurance will be irrevocable until October 1, 2017. At Knollwood's request, the District will coordinate with the City so that a single financial assurance in favor of both parties may be used to meet the stormwater facility requirements of each.

4.05 A project agreement under paragraph 4.01, above, may provide for cancellation of the financial assurance. Otherwise, the District will release its rights under the financial assurance on receipt of the Knollwood engineer's determination that the Facilities have been substantially completed and are functional, and the District's confirmation thereof.

Article 5 - Miscellaneous

5.01 Only contract remedies are available for a breach of this Agreement. No party will be liable for special, indirect, incidental, punitive, exemplary or unforeseeable consequential damages arising out of or in connection with its respective obligations under this Agreement. Specific performance is explicitly an available remedy for the failure of a party to perform any obligation hereunder and does not require a demonstration that other remedies are inadequate.

5.02 Each party agrees to hold harmless, defend and indemnify the other party from and against that portion of any and all liability, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that the indemnified party may incur as a result of the performance of this Agreement due to any negligent act or omission of the indemnifying party or any other act or omission that subjects it to liability in law or equity. Notwithstanding, this Agreement creates no right in and waives no immunity, defense or liability limit of the District as a public body under law, with respect to any third party or to Knollwood.

5.03 Each communication under this Agreement will be made to the following representatives:

MCWD:

Project Manager, Knollwood Project
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

Knollwood Mall, LLC
1114 Avenue of the Americas
Suite 2800
New York, New York 10036
Attn: General Counsel

Contact information will be kept current. A party may change its contact by written notice to the other party.

5.04 An amendment to this Agreement must be in writing and executed by the Parties.

5.05 If Knollwood conveys the Property to a successor in interest while this Agreement is in effect, it will require as a condition of conveyance that the successor accept an assignment of this Agreement and all rights and responsibilities hereunder.

5.06 Any legal action concerning enforcement or violation of this Agreement shall lie within the jurisdiction of Hennepin County, Minnesota, and have exclusive venue there.


5.07 This Agreement is effective on execution by the Parties and will remain in effect for five years or until superseded per paragraph 4.01, above.

Agreeing to be bound,

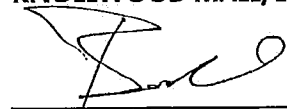
MINNEHAHA CREEK WATERSHED DISTRICT

By Sherry Davis White Date: 2-24-2019
Its President

Approved for form and execution:


MCWD Counsel

KNOLLWOOD MALL, LLC


Name: Benjamin Schall
Title: Authorized Signatory

Date:

Attachment 'A'

RELATIVE OVERALL WHOLE WALL FLOW RATES (CFS) TO CREEK **

PRIOR TO ANY WALL REDEVELOPMENT (EXISTING CONDITION)		AFTER WHOLE WALL STORMWATER SYSTEMS (FUTURE CONDITION)	
1-YR STORM	30	30	30
2-YR STORM	30	30	30
10-YR STORM	19	19	19
100-YR STORM	232	232	155

** BASED ON A 1% IMPERVIOUS SURFACE

STUDY POINT 1 FLOW RATES (CFS):

	PROPOSED	FUTURE
1-YR STORM	0	0
2-YR STORM	14	0
10-YR STORM	4.9	0
100-YR STORM	0.5	0

INFILTRATION SYSTEM ELEVATIONS:

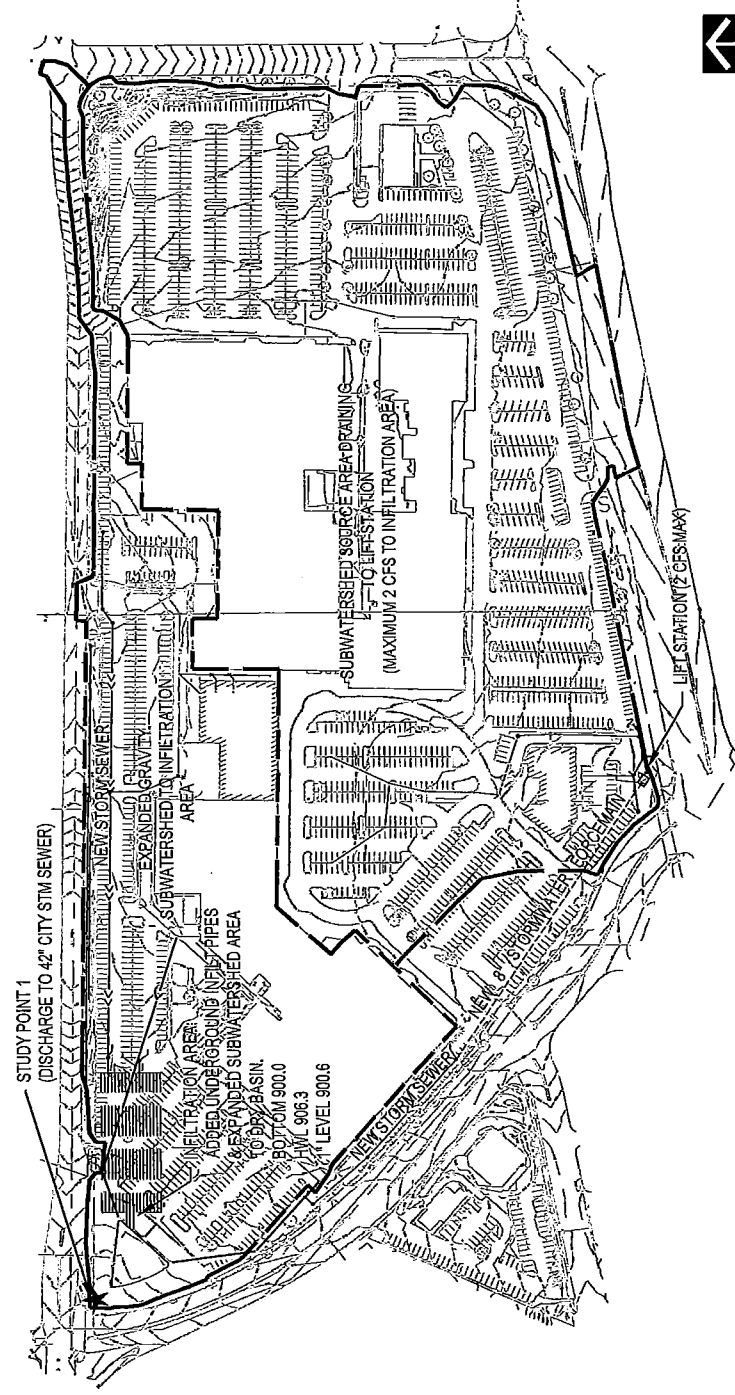
	PROPOSED	FUTURE
1-YR STORM	902.2	900.7
2-YR STORM	903.7	901.9
10-YR STORM	905.3	903.2
100-YR STORM	907.9	906.3

MODELING ASSUMPTIONS:

1. WITHIN THE WALL PROPERTY, THE IMPERVIOUS AFTER IMPLEMENTATION OF THE CENTRAL WALL REDEVELOPMENT, INCLUDING DRY BASIN, IS 34 ACRES. THEREFORE, 34 ACRES OF IMPERVIOUS IS MANAGED BY THE ABOVE INDICATED STORMWATER SYSTEMS.
2. STORMWATER CALCULATIONS ARE MODELED BY HYDROCAD V. 10.00 SOFTWARE.
3. AN INFILTRATION RATE OF 2 IN/HR FOR THE INFILTRATION IS INCLUDED IN THE HYDROCAD MODEL BASED ON THE INFILTRATION RATES FOR THE DOMINANT SOIL TYPE IN THE INFILTRATION AREA BEING CLEAN SANDS PER THE BRAUN INTEREST REPORT DATED MAY 7, 2010.
6. QUANTITY TAKE-OFFS BY AUTOCAD 2010.

LEGEND:

- - - STUDY AREA SUBWATERSHED BOUNDARY (E.G. E1)
- ★ STUDY POINT



2 FUTURE STORMWATER CONDITIONS
(34 AC IMPERVIOUS "MALL ONLY")

* EXPANDED GRAVITY SUBWATERSHED = SUBS A, B, C, E FROM "201777 WHOLE WALL LIFT STAT + INFILTRATION" HYDROCAD MODEL DATED 10-3-13.



PERFORMANCE
DRIVEN DESIGN.
LHBcorp.com

701 Washington Ave., N. Ste 200 | Minneapolis, MN 55401 | 612.336.2029

PRELIMINARY
NOT FOR CONSTRUCTION
10-10-2013

CLIENT:

ROUSE PROPERTIES

1114 AVENUE OF THE AMERICAS
SUITE 2800
NEW YORK, NY 10036
COPYRIGHT 2013 BY LHB, INC. ALL RIGHTS RESERVED.

2-21-2014 MCWD REQUEST
12-9-2013 PUD SUPPLEMENT
NO DATE REVISION

PROJECT NAME

KNOLLWOOD MALL
STORMWATER
IMPROVEMENTS

8332 HIGHWAY NO. 7, ST. LOUIS PARK, MN

DRAWING TITLE

STORMWATER
REFERENCE PLAN
POSSIBLE FUTURE
PHASE MALL ONLY

FILE: .120177600 Drawings\120177 STM 4 Stormwa

DRAWN BY: JTC

CHECKED BY: JMT

PROJ. NO: 120177

DRAWING NO:

STM4



Print Date & Time: 15 January 2014 2:24 PM

[illegible]

PROJECT TITLE	KNOLLWOOD STORM WATER MANAGEMENT

Wenck
 764-417-1220
 www.wenck.com
 © Wenck Associates, Inc.
 Consulting Engineers
 14000 N. 14th St., Suite 100
 Phoenix, AZ 85020

**MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE**

STORM WATER SITE PLAN

DTN DT	CHK'D	APP'D	DWG DATE	JAN. 2014
JWB	JT	JT	SCALE	AS SHOWN
PROJECT NO.	SHEET NO.	REV NO.		
0185-5087	C-101	1		

CONTRACT NO.

11 - 14

AGREEMENT Joint Administration of Financial Assurance Knollwood Mall LLC

CITY OF ST. LOUIS PARK

Minnehaha Creek Watershed District and the City of St. Louis Park

Background

1. This agreement ("Agreement") is made by and among the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D ("District"); the City of St. Louis Park, a charter city and political subdivision of the State of Minnesota ("City"); and Knollwood Mall, LLC ("Knollwood"), a Delaware limited liability company.
2. Knollwood owns property located at 8332 State Highway No. 7 in the City of St. Louis Park (the "Property"). The District has issued Permit No. 13-278 to Knollwood for redevelopment activity on the Property. The City Council, by Resolution 13-138, has issued a Planned Unit Development (PUD) amendment allowing Knollwood to undertake the redevelopment activity.
3. Permit 13-278 and the PUD Development Agreement December 19, 2013 between the City and Knollwood both require that Knollwood supply a financial assurance for construction of stormwater management facilities as a condition of allowing Knollwood to delay the completion of such facilities until a date as late as October 1, 2017. Knollwood proposes to supply an irrevocable standby letter of credit in the face amount of \$1,684,310, which the District and City find acceptable. The District and City also have agreed to jointly accept and administer a single letter of credit, as an element of the three parties' exploration of alternative, regional stormwater management facilities and pursuant to the cooperative agreement between the District and Knollwood.

Terms of Administration

4. The District and the City each reserves its right to approve the letter of credit form and issuer in the form attached hereto. At the least, the letter will:
 - a. Be issued by a surety licensed to issue such a financial assurance in Minnesota;
 - b. Cite District Permit No. 13-278 and the PUD Development Agreement;
 - c. Be issued jointly to the District and the City, with an original and originals of all subsequent extensions and replacement letters issued to the City with a copy to the District;
 - d. Allow for multiple draws and be conditioned on construction of the stormwater management facilities conforming to Permit No. 13-278 and Resolution 13-138;
 - e. Allow for the District and the City each unilaterally to make draws but otherwise to preserve to each all of its rights under the letter, with draws by the City subject to the

terms of the PUD Development Agreement and draws by the District and the City subject to the right of cure provided herein;

f. Be irrevocable until December 31, 2017, or provide for at least 30 days' notice to each party for a draw in advance of cancellation or non-renewal.

5. The District or City will advise the other party and Knollwood in writing at least 30 days before initiating a draw, except pursuant to a notice of cancellation or non-renewal, in which case the advice will be given as soon after receipt of the notice as possible. At the District's request, the City promptly will provide the District the original letter of credit for the purpose of a District draw. At the request of the other party, the District and City will meet and coordinate in good faith in the draw and the use of funds obtained thereby for the stormwater facility purposes specified in the PUD Development Agreement and District Permit 13-278. If the intended draw is prompted by the failure of Knollwood to fulfill an obligation under Permit No. 13-278 or the Development Agreement, the party intending the draw will afford Knollwood 30 days to cure or to reach agreement with the City and District on other terms to avert a draw.

6. The District or City will place any funds received from a draw in a separate account, not to be commingled with other funds, and held in trust for the joint interest of the two parties. All spending from the account will be documented by standard accounting practices. The City will apply the funds only for stormwater facility purposes under the PUD Development Agreement. Each party may request an interim or a final accounting.

7. Except as the District, City and Knollwood may agree in writing, funds from the letter will be used only to obtain completion of the stormwater facilities in accordance with the plans and specifications approved as a part of both Permit No. 13-278 and Resolution 13-138.

8. In a final accounting between the District, City and Knollwood of the use of any funds from the letter, funds will be applied first to any contract costs incurred by the City or the District for construction and second to documented contract administration costs (internal or professional services) of the party administering the contract. Remaining funds may be applied to other documented enforcement, administration, legal and other similar costs relating solely to the stormwater facilities, incurred by the District and the City in proportion to the documented costs incurred. Each party has the right to settlement in accordance with the final accounting.

9. Except in making a draw, in any correspondence with Knollwood or the issuer concerning the letter, the District and the City will state that it acts only on its own behalf and not that of the other party; notwithstanding this provision, the District and City will use their best efforts to minimize duplication or contradictory messages to Knollwood about any item relating to this Agreement, Permit No. 13-278 or the PUD Agreement. Any correspondence to or from Knollwood or the issuer concerning the letter will be copied to the other party.

10. The City will exercise due care in securing the letter of credit and promptly take all steps necessary to reinstate or replace the letter of credit in the event its negotiability is compromised. The District and City will cooperate in good faith in all matters relating to the administration of the letter of credit and use of funds.

General Terms

11. Each party agrees that this Agreement involves an exchange of valuable consideration and is legally binding and enforceable. Only contract remedies are available for a breach of this Agreement. Neither party will be liable for special, indirect, incidental, punitive, exemplary or unforeseeable consequential damages arising out of or in connection with its respective obligations under this Agreement.

12. The City and the District each agree to hold harmless, defend and indemnify each other from and against that portion of any and all liability, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that the indemnified party may incur as a result of the performance of this Agreement due to any negligent act or omission of the indemnifying party or any other act or omission that subjects it to liability in law or equity. Notwithstanding, this Agreement creates no right in and waives no immunity, defense or liability limit of the District or City as a public body under law, with respect to any third party or the other party to this Agreement. This Agreement is not a joint powers agreement under Minnesota Statutes §471.59 and nothing herein constitutes a party's agreement to be responsible for the acts or omissions of the other party pursuant to subdivision 1(a) of that statute.

13. Each communication under this Agreement will be made to the following:

MCWD:

James Wisker
Project Manager, Knollwood Project
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

City:

City Manager
City of St. Louis Park
5005 Minnetonka Boulevard
St. Louis Park, MN 55416

Knollwood:

Knollwood Mall, LLC
1114 Avenue of the Americas
Suite 2800
New York, New York 10036

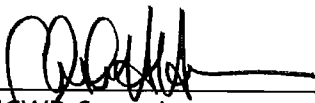
Contact information will be kept current. A party may change its contact by written notice to the other party.

14. This Agreement incorporates all terms and understandings of the parties. An amendment to this Agreement must be in writing and signed by the parties. This Agreement is effective on execution by the parties and until June 30, 2018.

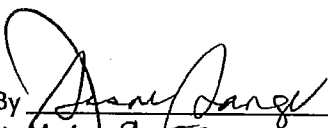
MINNEHAHA CREEK WATERSHED DISTRICT

By Sherry Davis White Date: 2-24-2014
Its President


Approved for form and execution:


MCWD Counsel

CITY OF ST. LOUIS PARK


By 
Its Mayor Pro Tem

Date: 2-25-14

By 
Its City Manager

Date: 2-25-14

KNOLLWOOD MALL, LLC.

By: 
Its COO

Date: 2-19-14

1480608.1

FIRST AMENDMENT to MEMORANDUM of AGREEMENT

Minnehaha Creek Watershed District and Gateway Knollwood, LLC

This First Amendment ("Amendment") 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 ("District"), and Gateway Knollwood, LLC, a Delaware limited liability company ("Gateway").

Recitals

1. On February 24, 2014, pursuant to issuance of District Permit No. 13-278 for redevelopment activity at 8332 State Highway No. 7 in the City of St. Louis Park (the "Property"), the District and Knollwood Mall, LLC ("Knollwood"), owner of the Property, entered into a memorandum of agreement ("Agreement") to explore the construction of stormwater management facilities that would both meet Knollwood's permit requirement to treat on-site stormwater runoff and provide regional treatment of stormwater runoff from presently untreated land adjacent to the Property.
2. The Agreement stated that if Knollwood were to convey the Property, it would require as a term of conveyance that the buyer accept an assignment of the Agreement and assume all rights and responsibilities thereunder. Knollwood thereafter conveyed the property to Gateway and, on January 13, 2015, a formal assignment of the Agreement to Gateway was executed.
4. The Agreement, as assigned, provides that Gateway, the District and the City of St. Louis Park ("City") will enter into a further agreement to fund, finance, construct and maintain regional stormwater management facilities by October 1, 2015, and if that is not achieved, then Gateway will award a contract for construction of stormwater management facilities to treat on-site stormwater runoff by March 1, 2017; complete substantial construction by October 1, 2017; and maintain a financial assurance irrevocable until October 1, 2017.
5. The October 1, 2015 date for entering into an agreement for a collaborative regional project has passed, however Gateway, the District and the City have not completed their consideration and mutually wish to extend this date.

Terms

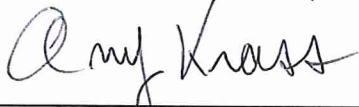
6. In paragraph 1.07 of the Agreement, the date of October 1, 2015 hereby is amended to October 1, 2016.
7. In paragraph 4.01 of the Agreement, the date of October 1, 2015 hereby is amended to October 1, 2016.
8. Paragraph 4.03 of the Agreement is deleted.
9. All other terms of the Agreement remain unchanged and in effect. This includes but is not limited to the dates stated in paragraphs 4.02 and 4.04 for award of contract for on-site stormwater management facilities, substantial completion of such facilities, execution and

recording of a perpetual maintenance instrument for the facilities and maintenance of the specified financial assurance.

10. The above Recitals are incorporated into this Amendment.

Agreeing to be bound,

GATEWAY KNOLLWOOD, LLC



Name: Amy Krass
Title: VP Asset Management

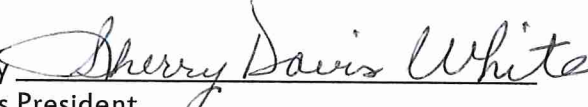
Date: 2/1/16

Approved for form and execution:



MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By 

Its President

Date: 2/17/16