

AGREEMENT REGARDING THE AGORA DEVELOPMENT CAPITAL IMPROVEMENT CONSTRUCTION PROJECT

This Agreement (“Agreement”) is made and entered into this ___ day of _____, 2017, by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (“Commission”), and the City of Plymouth, a Minnesota municipal corporation (“City”). The Commission and the City may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Commission has executed, or is in the process of executing, a Capital Improvement Construction Agreement (“Project Agreement”) with Rock Hill Management, LLC (“Developer”) regarding the development of the Agora project (“Project”);
- B. The Project is to be constructed on two parcels, the first parcel is being acquired by the Developer and is identified in the Project Agreement as the “Agora Parcel,” and the second parcel is owned by the City and is identified in the Project Agreement as the “Wetland Parcel”;
- C. The Wetland Parcel is adjacent to the Agora Parcel and is legally described in the attached Exhibit A;
- D. The Project will include the construction of certain stormwater improvements as identified in the Project Agreement (“Improvements”) on the Agora Parcel and on the City’s Wetland Parcel;
- E. The Developer is responsible, under the Project Agreement, for maintaining at its own cost the Improvements constructed on the Agora Parcel and the City has agreed to maintain at its own cost the Improvements constructed on the Wetland Parcel; and
- F. The City is not a party to the Project Agreement and will instead issue the Developer a construction easement or license to enable it to construct the Improvements on the Wetland Parcel and is entering into this Agreement to ensure the Project, which is being funded in part by the Commission, can be constructed on the Wetland Parcel and to formalize the City’s agreement to maintain the Improvements on the Wetland Parcel once constructed.

AGREEMENT

In consideration of the mutual promises and agreements hereinafter set forth, and intending to be legally bound, the parties do hereby agree as follows:

1. Project Funding. The Commission agrees to provide certain funding for the Project, including for the construction of Improvements on the Wetland Parcel, in accordance with the terms and conditions of the Project Agreement.

2. Construction Authorization. The City agrees to provide the Developer a construction easement or license to enable it to construct the Improvements on the Wetland Parcel in accordance with the Project Agreement.
3. Inspection Authorization. The City hereby grants the Commission and its agents, including its administrator and engineer, a license to enter the Wetland Parcel to inspect the work to construct the Improvements and to determine its completion in accordance with the requirements of the Project Agreement. This license is in addition to any permissions that may be granted to the Commission in the construction easement or license the City issues to the Developer.
4. Maintenance of Improvements. The City hereby agrees to, at its own cost, provide for the ongoing maintenance of the Improvements constructed on the Wetland Parcel as part of the Project. Such ongoing maintenance obligation shall begin upon the Commission engineer determining the Improvements on the Wetland Parcel were constructed in accordance with the Project Agreement. The City's ongoing maintenance of the Wetland Parcel shall be performed in accordance with the standards and requirements applicable to maintaining wetlands with the same or similar Improvements.
5. Term. This Agreement shall be ongoing until such time as the Commission approves work within the Wetland Parcel that is substantially no longer consistent with the ongoing maintenance of the Improvements constructed as part of the Project.
6. Legal Compliance. Each party shall be responsible for complying with all applicable federal, state, and local laws, rules, regulations, and ordinances in carrying out their respective duties under this Agreement.
7. Entire Agreement. This Agreement sets out the entire agreement between the parties regarding this matter and no alterations or modifications to this Agreement shall be effective unless reduced to writing and signed by both parties.
8. No Waiver. The Commission's failure to insist on the performance of any obligation under this Agreement does not waive its right in the future to insist on strict performance of that or any other obligation.
9. 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.
10. No Third-Party Rights. This Agreement is solely for the benefit of the signatories hereto. This Agreement shall not create or establish any rights in, or be construed as being for the benefit of, any third party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on behalf of the parties as of the day and date first above written.

**BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION**

By: _____

Its Chair

And by: _____

Its Secretary

Date: _____

CITY OF PLYMOUTH

By: _____

Its Mayor

And by: _____

Its Manager

Date: _____

EXHIBIT A
Legal Description of the Wetland Parcel

That part of Lot 3, Block 1, PLYMOUTH PLAZA 4TH ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota described as beginning at the most southwesterly corner of said Lot 3, Block 1, PLYMOUTH PLAZA 4TH ADDITION; thence northwesterly along the right-of-way line of Lancaster Lane, according to the recorded plat thereof, to the most westerly corner of said Lot 3, Block 1; thence northeasterly along a northwesterly line of said Lot 3, Block 1 for a distance of 100.00 feet; thence easterly parallel with the south line of said Lot 3, Block 1, to the most westerly right-of-way line of Hennepin County Road #18; thence southeasterly along said most westerly right-of-way line of Hennepin County Road #18 to the south line of said Lot 3, Block 1; thence west along the south line of said Lot 3, Block 1 to the point of beginning.

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