

CAPITAL IMPROVEMENT CONSTRUCTION AGREEMENT
(Agora Development)

This Agreement is made as of this ___ day of February, 2017, by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (“Commission”), and Rock Hill Management, LLC, a Minnesota limited liability company (“Developer”). The Commission and the Developer may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Commission adopted the Bassett Creek Watershed Management Commission Watershed Management Plan on September 17, 2015 (“Plan”), a watershed management plan within the meaning of Minnesota Statutes, section 103B.231;
- B. The Plan includes a capital improvement program (“CIP”) that lists a number of water quality project capital improvements;
- C. One of the water quality projects identified in the CIP is the Four Seasons Mall Water Quality Project in the City of Plymouth (“City”) that was funded as part of the 2013 CIP levy collected by Hennepin County pursuant to Minnesota Statutes, section 103B.251;
- D. The current project involves property the Developer will acquire, on which the Agora project is to be built, that is legally described in the attached Exhibit A (“Agora Parcel”), and involves an adjacent wetland parcel owned by the City that is legally described in the attached Exhibit B (“Wetland Parcel”);
- E. The Developer is purchasing the Agora Parcel and will close on the sale in the near future;
- F. The Developer will be acquiring such temporary easement or license from the City as may be required to construct the Project on the Wetland Parcel;
- G. The original Four Seasons Mall Water Quality Project did not proceed, but the Developer has proposed four alternatives to address stormwater on the project site;
- H. Alternative 4 identified by the Developer includes a stormwater pond at the southern edge of the Agora Parcel; permeable pavers, wetland walk, two iron enhanced sand filtration basins, two filtration basins, and infiltration with peat storage on the Agora Parcel; and restoration of a wetland within the Wetland Parcel all as described in Exhibit C (collectively, the “Project”) and exceeds the Commission’s stormwater treatment requirements for the Project at a level comparable to the treatment expected to be realized by construction of the original Four Seasons Mall Water Quality Project;
- I. The City, by separate agreement with the Commission, will provide the ongoing maintenance of the wetland improvements the Developer constructs on the Wetland Parcel once the Commission determines they were constructed in accordance with the Plans;

- J. The Commission desires to provide CIP funding, on a reimbursement basis, to the Developer for the Project in accordance with the terms and conditions of this Agreement; and
- K. The Developer desires to utilize the CIP funds from the Commission to construct the Project in accordance with the terms and conditions of this Agreement.

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 Scope. The Project will consist of the construction and installation of all stormwater treatment features and improvements described in Exhibit C as “Alternative 4.” The site of the Project shall include both the Agora Parcel and the Wetland Parcel.
2. Agora Parcel. The Developer’s acquisition of fee title of the Agora Parcel is a condition precedent to the Developer being eligible for any reimbursement of Project costs from the Commission under this Agreement. The Developer shall provide the Commission proof of having acquired fee title to the Agora Parcel prior to the Developer submitting any reimbursements requests to the Commission.
3. Wetland Parcel. The Developer shall take such steps as may be required to obtain a construction easement or license from the City as may be needed to secure a right to construct the stormwater improvements on the Wetland Parcel in accordance with the Plans. The rights obtained from the City shall include a license or similar authorization for the Commission and its agents to enter the Wetland Parcel as may be needed to conduct inspections as provided in this Agreement if the Commission does not secure such authorization in its separate agreement with the City. The Developer’s acquisition of such constructions rights over the Wetland Parcel from the City shall occur before the Commission will reimburse any construction costs for the Project.
4. Design and Plans. The Developer will design the Project, prepare plans and specifications for construction of the Project, and provide supporting information including, but not limited to, final pollutant removal information and other information to confirm pollutant removal estimates (collectively, the “Plans”). The 90% Plans, and any changes to such Plans, shall be submitted to the Commission for approval. Minor change orders that do not deviate from the direction of the Commission and do not materially change either the effectiveness of the Project to meet its intended purposes or the environmental impacts of the Project may be approved by the Developer, in consultation with the Commission Administrator, without requiring approvals by the Commission. The Plans shall be completed and submitted for approval prior to the distribution of any funds under this Agreement. Approval of the Plans shall not occur unless the Plans demonstrate that the Project will remove at least 100 pounds of total phosphorus more than the amount that is required for removal for the development itself (14.88 pounds is required, so the total removal required under this Agreement is at

least 114.88 pounds of phosphorus). The Plans, once approved by the Commission, shall be incorporated in and made part of this Agreement by reference.

5. Contract Administration. The Developer shall be responsible for constructing the Project in accordance with the approved Plans. The Developer will award the contract to its selected contractor (“Contractor”) and supervise and administer the construction of the Project to ensure that it is completed in accordance with the approved Plans. The Developer will require the Contractor to name the Commission as an additional insured on all liability policies required by the Developer of the Contractor, and the Commission shall be given the same notification of cancellation or non-renewal of such liability policies as is given to the Developer. The Developer will require the Contractor to defend, indemnify, protect, and hold harmless the Commission and the Developer, their agents, officers, and employees, from all claims or actions arising from negligent acts, errors or omissions of the Contractor. The Developer will supervise the work of the Contractor, but the Commission shall perform construction inspections as provided herein.
6. Construction Inspections. The Commission’s engineer (“Commission Engineer”) shall perform periodic inspections of the Project as it is being constructed. The Developer and Commission Engineer agree to work cooperatively and in good faith with the Contractor to develop a schedule for inspections that minimizes the amount of CIP funds spent on inspections while still providing sufficient inspections to ensure the Project is constructed in accordance with the approved Plans. The Commission Engineer may not direct the work of the Contractor, but the Developer and the Contractor will give all due reasonable consideration to issuance of such change orders, work directives, or field orders as necessary and appropriate to adjust the work as requested by the Commission Engineer to help ensure the Project is constructed in accordance with the Plans.
7. Communications and Outreach. During construction of the Project, the Developer will display a sign at the construction site stating “Paid in part by the Taxpayers of the Bassett Creek Watershed.” The Developer also agrees to work cooperatively with the Commission once the Project is constructed to develop, place, and maintain educational signage on the Agora Parcel to inform the public of the stormwater improvements constructed as part of the Project.
8. Contract Payments. The Developer shall be responsible for paying the Contractor and all other expenses related to the construction of the Project, and shall keep and maintain complete records of such costs incurred. The Developer shall not be responsible for paying, or keeping records of payments, to the Commission Engineer.
9. Commission Reimbursement. The Commission agrees to reimburse the Developer for costs it incurs to construct the Project as provided in this section. The total amount of CIP funds the Commission has available for the Project is \$848,148. This amount constitutes a maximum and includes the Commission’s out-of-pocket costs related to the Project including, but not limited to, Commission Engineer’s review and inspection costs. The Commission’s out-of-pocket costs are currently estimated at between \$20,000 and \$30,000. The portion of the CIP funds in excess of such expenses are available for reimbursement to

the Developer for costs incurred by the Developer in the design and construction of the Project. The Developer may seek up to monthly reimbursements from the Commission as it incurs and pays costs to design and construct the Project. For a reimbursement request to be considered for approval at a Commission meeting, the request shall be submitted in writing, with a copy of all paid invoices (noting specifically and separately the expenses for design and construction of BMPs shown in Alternative 4) for the amounts to be reimbursed, to the Commission Administrator at least ten (10) days prior to the Commission meeting. Reimbursement requests received after that date shall be considered for payment at the following Commission meeting. The Commission may require the Developer to submit additional information as may reasonably be required for the Commission to substantiate the amounts requested for reimbursement. Requests for additional information shall be made in writing and if the Commission does not request additional information regarding a reimbursement request submitted by the Developer within thirty (30) days of the date of submission, said reimbursement request shall be deemed approved.

10. Limits on Reimbursement. Reimbursement to the Developer will not exceed the amount specified above, less any amounts retained by the Commission for Commission expenses. Reimbursement will not be increased by grants or other revenues received by the Commission for the Project without appropriate and approved sub-grant agreements between the Developer and Commission. Reimbursement will not exceed the costs and expenses incurred by the Developer for the Project, less any amounts the Developer receives for the Project as grants from other sources. All costs of the Project incurred by the Developer in excess of such reimbursement, shall be borne by the Developer or secured by the Developer from other sources.
7. Audit. As required by Minnesota Statutes, section 16C.05, subdivision 5, all Developer books, records, documents, and accounting procedures related to the Project are subject to examination by the Commission, the state auditor, and the legislative auditor for a period of six years from the completion of the Project.
8. Environmental Review and Permitting. The Developer will perform all necessary investigations of site contamination, secure all necessary local, state, or federal permits required for the construction of the Project, and will not proceed with the Project until all required environmental review and remediation of site contamination is completed or a plan for remediation is approved by appropriate regulatory agencies.
9. Ongoing Maintenance. Once the Project is constructed in accordance with the Plans, the Developer, at its own cost, shall be responsible for the ongoing maintenance of the stormwater improvements constructed on the Agora Parcel. The Developer agrees to maintain the stormwater improvement constructed on the Agora Parcel as part of the Project for a period of at least 10 years from the date of approval of the final reimbursement request for the construction of the Project. The Developer shall not be responsible for the ongoing maintenance of the stormwater improvements constructed on Wetland Parcel. The Commission intends to enter into a separate agreement with the City whereby the City agrees to provide for the ongoing maintenance of the Wetland Parcel at its own cost.

10. Indemnification. The Commission's role under this Agreement is solely to provide funds to support the Project. Review by the Commission or the Commission Engineer of any design or installation of the stormwater improvements is solely for the purpose of establishing accountability for Commission CIP funds expended. The Developer remains fully responsible for the means, method, and manner of designing, constructing, and operating the Project. Neither the Developer nor the Developer's Contractor acts as the agent or representative of the Commission in any manner. The parties are responsible for their own acts under this Agreement and none of the parties agree to accept liability on behalf of another party. The Developer hereby agrees to indemnify, defend, and hold the Commission and its officials, employees, and agents harmless for all costs, damages, or expenses which the Commission may pay or incur, including attorneys' fees, in consequence of any claims arising out of or related the acts or omissions of the Developer in performing its obligations under this Agreement or the Contractor in constructing the Project. This duty to indemnify does not extend to any claims arising from the Commission's own negligence. Nothing herein shall be construed as a waiver of, or limitation on, any immunity from or limitation on liability available to any party under law.
11. Notices. Any written communication required under this Agreement will be addressed to the other parties as follows, subject to written notice of a change of address:

To the Commission:

Laura Jester
BCWMC c/o Keystone Waters LLC
16145 Hillcrest Lane
Eden Prairie MN 55346

To the Developer:

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12. Data Practices. The Developer shall retain and make available data related to the letting of contracts and construction of the Project in accordance with, and to the extent required by, the Minnesota Government Data Practices Act.
13. Term and Termination. This Agreement shall be in effect as of the date first written above and shall terminate once the Project is completed and the Commission has completed its reimbursement payments to the Developer as provided herein. The maintenance and indemnification duties under this Agreement shall survive termination. The Commission retains the right to terminate this Agreement if the construction of the Project is not completed in accordance with the Plans, or is not completed by December 31, 2020. After the Commission notifies the Developer that it intends to terminate this Agreement because of the Developers failure to complete the Project in accordance with the Plans or by the deadline established herein, the Developer shall no longer be eligible to receive

reimbursement payments for work under this Agreement unless the Commission agrees, in writing, to a corrective-actions plan to bring the Project into compliance or to extend the construction-completion period.

14. Right of Entry. The Developer, with respect to the Agora Parcel, grants the Commission, the Commission Engineer, and the agents of the Commission a license to enter the Project site at all reasonable times to conduct such inspections as the Commission determines is needed to ensure the Project is being constructed and maintained in accordance with the terms and conditions of this Agreement.
15. Nondiscrimination. In contracting for construction of the Project, the Developer will ensure that no person is excluded from full employment rights or participation in or benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public-assistance status or national origin, and that no person protected by applicable federal or state laws, rules or regulations against discrimination is subject to discrimination.
16. Ownership. The Developer warrants and represents to the Commission that it will become the fee owner of the Agora Parcel prior to construction of the Project. The Developer understands and agrees that it becoming the fee title owner of the Agora Parcel is a condition precedent to being eligible to receive any reimbursement payments under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Commission may immediately terminate this Agreement if the Developer fails to provide the Commission proof of fee title ownership of the Agora Parcel as required herein.
17. Binding Effect. This Agreement shall be deemed to be a restrictive covenant and the terms and conditions hereof shall run with the land described herein and be binding on and inure to the benefit of the heirs, representatives and assigns of the parties hereto, and shall be binding upon all future owners of all or any part of the Agora Parcel and the Wetland Parcel, and shall be deemed covenants running with the land. The Developer agrees to notify the Commission at least 30 days before the Developer conveys any portion of the Agora Parcel on which any stormwater improvements constructed as part of the Project are located and agrees to facilitate communication between the Commission and the purchaser of the parcel to help ensure continued maintenance of the Project.
18. 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.
19. Authority to Contract. The person or persons executing this Agreement on behalf of the Developer, the Commission, and the City represent that he, she, or they are duly authorized to execute this Agreement on behalf of their respective entities and represent and warrant that this Agreement is a legal, valid, and binding obligation enforceable according to its terms.

20. 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.
21. 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.
22. 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.
23. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.

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: _____

ROCK HILL MANAGEMENT, LLC

By: _____

Its: _____

Date: _____

EXHIBIT A
Legal Description of Agora Parcel

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 1, Agora Addition, Hennepin County, Minnesota.

EXHIBIT B
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.

EXHIBIT C
Description of the Project

[attached hereto]



Solution Blue, Inc.
318 Cedar Street
Saint Paul, MN 55101

Phone: 651-294-0038
info@solutionblue.com
www.solutionblue.com

February 8, 2017

AGORA stormwater management narrative

1. Filtration basins with iron enhanced sand filtration soils – the two (2) basins north of buildings 3 and 4 are designed to be shallow filtrating basins that shall be rid of visible water within 48 hours. The basins incorporate an iron enhanced sand filter that attracts additional pollutants (phosphorus) carried within the water. The primary and overflow outlets carry to the south and east (2.) filtration basin.
2. Filtration basin – A filtration basin along the east property line receive water from surface flow. The primary and overflow outlets carry water to the (3.) Infiltration basin with amended soils.
3. Infiltration basins with amended soils – the long linear basin along the east between building 5 and Bassett Creek will have corrected soils to allow for infiltration of one-inch per hour to reach the existing peat soil body. This feature will help to saturate the peat body and reduce the rate of decay of the peat soil. The primary outlet is infiltration. Overflow outlet carries the water south to the (7.) Storm pond and forebays.
4. Wetland Walk – A highly visible center wetland feature will receive stormwater in two different ways, surface drainage during rain events and recirculation pump of stormwater that is held within the Storm pond. The wetland walk is a constructed wetland that has an open water component that is edged by wetland plant species. The outlet for this system is to the (7.) Storm pond and forebay.
5. Permeable pavers system with amended soils – Approximately 40 parking stalls that border the wetland walk will be constructed with a permeable paver with amended soils below to the Peat body or less restrictive soil layer. This feature will receive water from surface drainage, as well as, from buildings 5 and 9 roof drains. The systems primary outlet is infiltration. Overflow outlets carries water first to the (4.) wetland walk and secondarily to the (7.) Storm pond and forebay.
6. Filtration basins – Two filtration basins along Lancaster and the west property line receive water from buildings 7 and 11 roof drains as well as surface flow. The primary and overflow outlets carry water to the (7.) Storm pond.
7. Storm Pond and Forebays (with an iron enhanced bench) – The storm pond and forebays is a large excavated area for water to collect to provide settlement of stormwater particles and control the rate of release of the stormwater. The forebays will be the primary receiving areas of the stormwater and will provide the initial settlement and treatment of the stormwater. The Storm pond will provide further treatment and is critical to the rate control of the stormwater. Lastly, an iron enhanced sand bench will be installed along the south edge of a vegetated earth bench to enhance pollutant (phosphorus) removal. The primary and overflow outlets carry the water to the (8.) wetland restoration area (wetland/Bassett Creek).
8. Wetland Restoration (also contains Bassett Creek) – An approximate 2.5 acres wetland will be restored to a high level, properly functioning wetland to provide stormwater treatment, storage, and animal habitats. The wetland area contains the steam of Bassett Creek, in which, the creek will be allowed to flow within and outlet from the restored wetland. The outlet from the restored wetland is a large storm sewer pipe below HWY 169 that discharges to Northwood Lake.

Alternative 4 - On-site plus Off-site including City Wetland Restore



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AGORA

PLYMOUTH MN



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f. 6 1 2 . 3 3 9 . 5 3 8 2
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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 architect under the laws of the State of Minnesota

Gretchen M. Camp
Signature

Gretchen M. Camp
Typed or Printed Name
46433 exp. 06/30/2018
License # Date

NOT FOR CONSTRUCTION

PUD SUBMITTAL
12/9/2016

ORIGINAL ISSUE: 09/13/2016

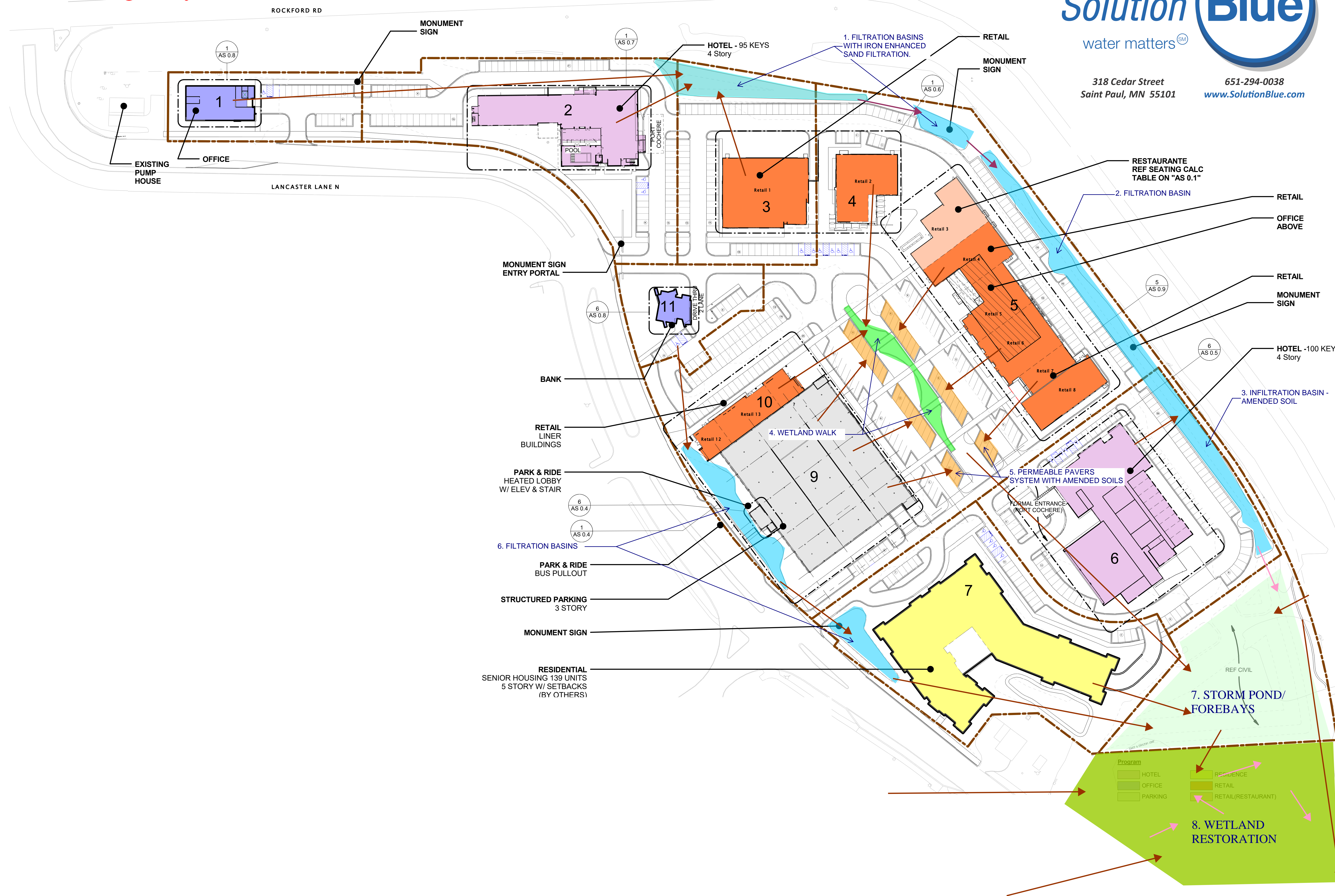
REVISIONS

No.	Description	Date
A	PUD SUBMISSION	8/15/2016
B	PUD RE-SUBMISSION	9/13/2016
C	PUD RE-SUBMISSION	10/20/2016
D	PUD RE-SUBMISSION	12/9/2016

216516
PROJECT NUMBER
ME GC / AB
DRAWN BY CHECKED BY

AGORA

SITE PLAN
AS 0.1



Program

HOTEL	RESIDENCE
OFFICE	RETAIL
PARKING	RETAIL (RESTAURANT)