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The City of Vadnais Heights
 800 East County Road E
 Vadnais Heights, MN 55127

Memorandum:

TO: Mayor Gunderson and City Council Members

FROM: Nolan Wall, Planning/Community Development Director

DATE: September 7, 2021

SUBJECT: Request for Council Action
 Stormwater Operation and Maintenance Agreement with Zephyr Vadnais Heights, LLC
 Holiday Stationstore at 1035 East County Road E

Recommended Council Action

Staff recommends approval of the attached Operation and Maintenance Agreement. The previously approved conditions are encompassed within the document, which was prepared by the Consulting City Engineer and has been accepted by the property owner/developer.

Background

The development was approved in 2020 and the development agreement in January of 2021. The project has been delayed, but construction is anticipated to commence yet this year.

Action Requested

Staff recommends approval of the Operations and Maintenance Agreement.

This matter requires a simple majority vote.

Attachment(s): Operation and Maintenance Agreement

**OPERATION AND MAINTENANCE AGREEMENT
FOR ZEPHYR VADNAIS HEIGHTS, LLC dba HOLIDAY STATIONSTORE AT
1035 COUNTY ROAD E EAST**

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by and between the City of Vadnais Heights, a municipality under the laws of the State of Minnesota (hereinafter, "City"), and Zephyr Vadnais Heights, LLC, dba Holiday Stationstore, a Minnesota limited liability corporation, (hereinafter, "Owner").

Zephyr Vadnais Heights, LLC, dba Holiday Stationstore at 1035 County Road E East. is/are the fee Owner(s) of a certain property situated in the City of Vadnais Heights, Ramsey County, Minnesota, legally described as follows:

Commencing at the southeast corner of Lot 29 and the north line of County Road E; thence north along the east boundary line of Lot 29 a distance of 200 feet; thence 90 degrees west to the easterly right-of-way line of Trunk Highway 35E; thence south along the right-of-way line of Trunk Highway No. 35E to a point 20 feet northwesterly of the northerly line of County Road E; thence easterly in a straight line to a point of beginning.

Hereinafter referred to as "Property".

Purpose. The City has determined that it is consistent with the City's plans, regulations, purposes and goals to allow for private stormwater facilities for the Property.

It is understood that the Owner shall be responsible for installing and maintaining stormwater facilities ("Facilities") as shown on Exhibit A attached hereto. The Owner shall also be responsible for the cost associated with cleaning and maintaining the Facilities to the standards detailed in the maintenance schedule attached hereto as Exhibit B.

The City shall not be responsible for the initial cost of installing the Facilities nor for any cleaning and maintenance costs which shall be the sole responsibility of the Owner.

1. Responsibilities of the Parties.

- a) The Owner shall be responsible for all costs related to the installation of the Facilities described in Exhibit A.
- b) The Owner shall be responsible for the payment of the costs associated with the annual cleaning and maintenance, of the Facilities described in Exhibit A, and shall arrange for a qualified party to perform the tasks described in Exhibit B. If the Property is owned by a Condominium or Home Owners Association or other similar entity, the owner will cause the obligations of this Agreement to be performed in accordance with the governing documents of that organization.
- c) By September 30th of each year, the Owner shall provide the City with an annual inspection report listing the date of inspection, stormwater facility conditions at the time of inspection and maintenance actions performed in the prior year and work to be performed in the current year.

- d) The Owner agrees that the City and/or the Watershed District or Water Management Organization (hereinafter, Watershed Organization) in which the Property is located may, from time to time, inspect the facilities to determine whether or not the facilities are being maintained and are operating properly.

2. Inspection Report. By September 30th of each year, the Owner will submit to the City, the report described in 1(c) above. The inspection reports shall be submitted in accordance with the maintenance schedule outlined in Exhibit B.

3. Right of Access. The Owner hereby grants to the City and the Watershed Organization the right to enter onto the Property to inspect and monitor the Facilities. In the event the Owner is not maintaining the Facilities in accordance with this agreement, the City or Watershed Organization may issue written notice to the Owner detailing the repairs or maintenance required. The Owner shall have thirty (30) days in which to perform said repairs or maintenance. If the Owner fails to perform said repairs or maintenance thirty (30) days after receiving said notice, the City or Watershed Organization may enter onto the Property to perform said repairs or maintenance necessary to make the system work to its full capacity. The Owner shall be responsible to the City or Watershed Organization for any and all fees and costs associated with said repairs or maintenance and shall reimburse the City or Watershed Organization within thirty (30) days of receipt of invoices for costs incurred.

4. Binding Effect. The terms and provisions of this Agreement are hereby deemed to constitute covenants that run with the land and shall be binding in perpetuity on all persons owning or acquiring any right, title or interest in the Property and their heirs, successors, personal representatives and assigns. References herein to Owner, if there be more than one, shall mean all of them. This Agreement shall be filed of record so as to give notice thereof to subsequent purchasers and encumbrancers of all or any part of the Property.

The Owner hereby consents to the recording of an executed copy of this Agreement with the Ramsey County Recorder's Office; the filing cost of which shall be borne by the Owner.

If the use of the Property changes so that the Facilities are rendered as unnecessary, or are replaced by other facilities approved by the City and the Watershed Organization, a termination of this agreement must be consented to by both parties and shall be filed with the County.

5. Notices. Whenever it shall be required or permitted by this Agreement that notice or demand be given or served by either party to or on the other party, such shall be sent by certified mail, return receipt requested, or delivered personally, to the following addresses:

As to the City:
 Public Works Director/City Engineer
 Vadnais Heights City Hall
 800 East County Road E
 Vadnais Heights, MN 55127

As to the Owner:
Zephyr Vadnais Heights, LLC
dba Holiday Stationstore at 1035 County Road E East
322 19th Street SW
Forest Lake, MN 55025

Stated address may be changed by certified letter to the City referencing the approving resolution number, #21-09-_____.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be duly executed on the day and year first above written.

OWNER

Zephyr Vadnais Heights, LLC
dba Fuhr Enterprises, Inc.

By _____
Mike Fuhr, Owner's Contact

STATE OF MINNESOTA
COUNTY OF RAMSEY

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Mike Fuhr, for Zephyr Vadnais Heights, LLC, dba Holiday Stationstore., a Minnesota limited liability partnership, the Owner.

Notary Public (stamp)

CITY OF VADNAIS HEIGHTS:

Heidi Gunderson, Mayor Kevin Watson, City Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by, Heidi Gunderson, as Mayor and Kevin Watson, as City Administrator of the City of Vadnais Heights, on behalf of the City of Vadnais Heights, a Minnesota municipal corporation.

Notary Public