



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
Date: May 17, 2021
Item: Authorize Signature: Long Term Stormwater Maintenance Agreement -
Schoolhouse Square 4th Addition

Council Action Requested:

Authorize signature of the attached Long Term Stormwater BMP Maintenance Agreement for Schoolhouse Square 4th Addition. Adoption requires a simple majority of the City Council.

Background Information:

The Long Term Stormwater BMP Maintenance Agreement memorializes obligations for the private maintenance of stormwater management facilities and grants permission for City maintenance of facilities under certain conditions at the cost of the developer or future owners.

The agreement is in conjunction with land use approvals granted by the City Council in February, 2020 for construction of a 90 unit senior housing facility.

Financial Impact:

The addition of a 90 unit senior building will further enhance the tax base.

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

- Long Term Stormwater BMP Agreement

(Reserved for Recording Data)

STORMWATER MANAGEMENT FACILITIES AGREEMENT

This Stormwater Management Facilities Agreement (“Agreement”) is made, entered into and effective this ____ day of _____, 2021, by and between the City of Hastings, a Minnesota municipal corporation (“City”) and Hastings AH I, LLLP, a Minnesota limited partnership (“Developer”).

WHEREAS, Developer is the fee owner of certain real property situated in the City of Dakota, County of Dakota, State of Minnesota legally described as follows:

Lot 1, Block 1, Schoolhouse Square 4th Addition

Abstract Property

(the “Property”); and

WHEREAS, Developer has obtained the approval of the City for the development of the Property for a Stormwater Management Facilities; and

WHEREAS, as used herein, the term “Stormwater Management Facilities” may refer to water quality and/or water quantity facilities (i.e. detention basins, retention basins, swales, pipes, oil/water separators, sand filtering devices, infiltration facilities, sump structures, etc.) which are located outside the public road right-of-way; and

WHEREAS, the City has required that the Developer make provision for the construction, maintenance and repair of the Stormwater Management Facilities located within the boundaries of the Property as shown on Exhibit A attached hereto, as the same is described and depicted in those certain construction plans drawn by Loucks dated February 7, 2021 (“Plans”); and

WHEREAS, the City and Developer desire to set forth their understanding with respect to the construction, repair and maintenance of the Stormwater Management Facilities and the

responsibility relating to the costs of the repair and maintenance of the Stormwater Management Facilities.

NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Construction and Maintenance of Stormwater Management Facilities. The Developer agrees to construct the Stormwater Management Facilities according to the Plans and repair and maintain the Stormwater Management Facilities at its sole cost and expense. Maintenance of the Stormwater Management Facilities shall mean (i) monthly inspections of the infiltration basin and sump structures and, if necessary, removal of all litter, debris, sediment, and replacement of mulch, vegetation, and eroded areas to ensure establishment of healthy functioning plant life therein; and (ii) an annual inspection, and certification, by a qualified individual or company acceptable to the City that the infiltration basin and sump structures are functioning in accordance with the approved Plans and have maintained the proper operation of the stormwater treatment as an infiltration basin or sump structure according to the City Standards. If, as a result of an inspection by a qualified individual or company acceptable to the City or City staff, it is determined that the infiltration basin or sump structures (1) have not been maintained; or (2) are not functioning as originally designed and intended; or (3) are in need of repair, the Developer agrees to restore the infiltration basin or sump structure so that it functions as it was designed and intended. The Developer further agrees that they will not use the infiltration basin for snow storage and will inform its snow removal contractors of this provision of the Agreement.

Subject to Section 5 below, Developer shall be solely responsible for the repair and maintenance of the infiltration basin and sump structures and shall provide a copy of the required annual inspection report to the City. If the required annual inspection report is not submitted to the City by September 30th of each year, the Developer shall provide the City with the right to enter onto the property to conduct the annual inspection.

2. Developer's Default. In the event of default by the Developer as to any of the work to be performed by it hereunder, following at least thirty (30) days prior written notice and Developer's failure to cure such default within such time-frame, except in an emergency as determined by the City, the City may, at its option, perform the work and the Developer shall promptly, following receipt of an invoice and reasonable substantiation of such costs, reimburse the City for any reasonable out-of-pocket expense incurred by the City. This Agreement is a license for the City to act when so authorized under this Agreement, and it shall not be necessary for the City to seek a Court order for permission to enter the Property. When the City does any such work, the City may, in addition to its other remedies, assess the reasonable out-of-pocket cost in whole or in part.

3. Future City Policy. Notwithstanding anything contained in this Agreement to the contrary, in the event the City shall in the future establish a policy for repair and maintenance by the City of stormwater ponds owned by private parties located elsewhere in the City under which policy the costs of such repair and maintenance are to be paid either out of general City revenues or by collection of utility or service fees or charges, then any owner of any portion of the Property shall be entitled to petition the City for the inclusion of the infiltration basin under such repair and

maintenance program. The recording of a certified copy of the Resolution of the City Council of the City which sets forth the consent and authorization described in the foregoing sentence shall serve to terminate this Agreement, without further action on the part of any party hereto.

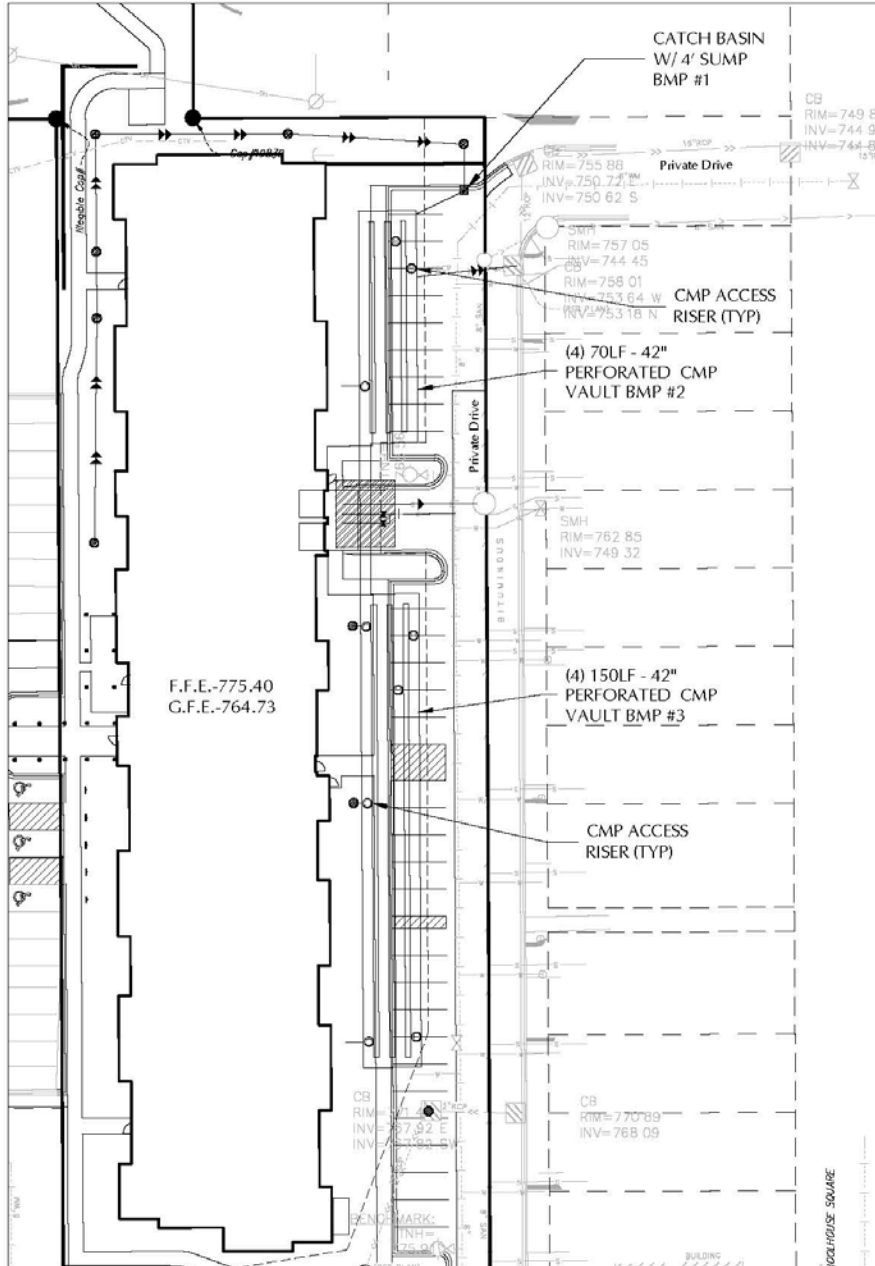
4. Changes to Site Configuration or Stormwater Management Facilities. If site configurations or Stormwater Management Facilities change, causing decreased effectiveness of stormwater management facilities, new or improved Stormwater Management Facilities must be implemented to ensure the conditions for post-construction stormwater management continue to be met.

5. Terms and Conditions. This Agreement shall run with the land and shall be binding upon Developer's successors and assigns with respect to the Property. The terms and conditions of this Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns.

6. Developer Warranty. Developer warrants and represents the following to the City and acknowledges that this Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms. The party signing on behalf of the Developer has been duly authorized by the entity to sign the Agreement and bind the entity. Developer has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto have each been duly authorized by all necessary action on the part of Developer and such execution, delivery and performance does and will not conflict with or result in a violation of Developer's organizational agreement or any judgment or order. The execution, delivery and performance by Developer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.

7. Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

**EXHIBIT A
STORMWATER MAINTENANCE FACILITIES PLANS**



HASTINGS APARTMENTS
HASTINGS, MN

REAL ESTATE EQUITIES
ST. PAUL, MN

LOUCKS
PLANNING
CIVIL ENGINEERING
LAND SURVEYING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
7200 Hemlock Lane, Suite 300
Maple Grove, MN 55369
763.424.5505
www.louckscinc.com

CADD QUALIFICATION
CADD files created by the Contractor for this project are the property of the Contractor and shall remain the property of the Contractor. The Contractor shall be responsible for the accuracy of the CADD files and shall be responsible for the accuracy of the CADD files. The Contractor shall be responsible for the accuracy of the CADD files. The Contractor shall be responsible for the accuracy of the CADD files.

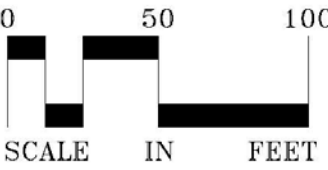
SUBMITTAL/REVISIONS

PROFESSIONAL SIGNATURE
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 Professional Engineer under the laws of the State of Minnesota.

License No. 49933
Date

QUALITY CONTROL
Loucks Project No. 19325
Project Lead PJD
Drawn By DOL
Checked By PJD
Review Date 02/07/20

SHEET INDEX



STORM O & M PLAN
EXHIBIT A

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