

ADMINISTRATIVE REPORT

DATE: September 26, 2024
TOPIC: 7.8 – Stormwater Management Facilities Agreement
with City of Cottage Grove
PRESENTER: Kris Blackburn, Director Business Services
REFERENCE TO POLICY/STATUTE: Policy 701

A. PURPOSE OF REPORT

- a. The District has an easement agreement with the City of Cottage Grove to use the stormwater pond on City property for an irrigation system at Oltman Middle School.
- b. Stormwater Management Facilities refers to an irrigation and stormwater reuse system that utilizes the stormwater pond located on City property.
- c. The City and School District 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.

B. RECOMMENDATION

- a. Administration recommends approval of the Stormwater Management Facilities Agreement between South Washington County Schools and the City of Cottage Grove.

C. CONNECTION TO STRATEGIC PRIORITY

- a. Operations, Staffing, and Finance
- b. Engagement and Partnerships



(Reserved for Recording Data)

STORMWATER MANAGEMENT FACILITIES AGREEMENT

This Stormwater Management Facilities Agreement (“Agreement”) is made, entered into and effective this ____ day of _____, 2024, by and between the City of Cottage Grove, a Minnesota municipal corporation (“City”) and Independent School District 833, a Minnesota public corporation (“School District”).

WHEREAS, the City owns real property situated within Washington County, Minnesota described as follows:

Outlot B, New Oltman Middle School

PID: 06.027.21.32.0004

(“City Property”).

WHEREAS, the School District owns real property situated within Washington County, Minnesota described as follows:

Lot 1, Block 1, New Oltman Middle School

PID: 06.027.21.31.0002

(“School District Property”).

WHEREAS, the School District has an easement to use the stormwater pond on City Property for an irrigation system that benefits School District Property, pursuant to an Easement Agreement, recorded in Washington County property records as Document Number 4269589 (“Easement Agreement”); and

WHEREAS, School District has obtained the approval from the City to use the components of its irrigation system and pumps that are on City Property pursuant to the Easement Agreement

in order to comply with the requirements for stormwater management for the benefit of School District Property; and

WHEREAS, as used herein, the term “Stormwater Management Facilities” refers to an irrigation and stormwater reuse system that utilizes the stormwater pond located on City Property, and which includes the stormwater pond, pond liners, pump, irrigation pipes, lines, filters, valves and heads, as well as the associated conduits, facilities and improvements necessary to make the system operational; and

WHEREAS, the City has required that the School District make provision for the construction, maintenance and repair of the Stormwater Management Facilities as the same is described and depicted in those certain construction plans and maintenance and operations manual which must be approved by the City Engineer and kept on file with the City (“Plans”); and

WHEREAS, the City and School District 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 School District 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 an annual inspection, and certification, by a qualified individual or company acceptable to the City that the irrigation and stormwater reuse system is functioning in accordance with the approved Plans. 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 Stormwater Management Facilities (1) has not been maintained; or (2) is not functioning as originally designed and intended; or (3) is in need of repair; or (4) that the School District is not reusing stormwater from the pond but is instead using potable water, the School District agrees to restore the Irrigation System so that it functions as it was designed and intended. Subject to Section 5 below, School District shall be solely responsible for the repair and maintenance of the Stormwater Management System 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 School District shall provide the City with the right to enter onto the property to conduct the annual inspection.

2. School District’s Default. In the event of default by the School District as to any of the work to be performed by it hereunder, following at least thirty (30) days prior written notice and School District’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 School District 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 Management Facilities 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 Stormwater Management Facilities 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. Exempt from Watering Restrictions. Because this Agreement is necessary in order for School District to comply with stormwater management requirements, School District shall not be required to comply with the City's watering restrictions in City Code Section 8-1-10.B.

6. Terms and Conditions. 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.

7. School District Warranty. School District 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 School District enforceable in accordance with its terms. The party signing on behalf of the School District has been duly authorized by the entity to sign the Agreement and bind the entity. School District 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 School District pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by School District pursuant hereto have each been duly authorized by all necessary action on the part of School District and such execution, delivery and performance does and will not conflict with or result in a violation of School District's organizational agreement or any judgment or order. The execution, delivery and performance by School District 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 School District, 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 School District is a party or by which it or any of its properties may be bound.

8. 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.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

11. Consent. School District consents to the recording of this Agreement.

12. Indemnification and Limitation of Liability.

- a. District Obligations. School District agrees to defend, indemnify and hold City, its elected and appointed officials, officers, and employees harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorney's fees, arising out of or in any way connected with the School District's performance of this Agreement.
- b. City's Obligations. City agrees to defend, indemnify and hold School District, its officer, agents, employees and volunteers harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorney's fees, arising out of or in any way connected with City's negligent performance of this Agreement.
- c. Limit of Liability. Nothing contained herein shall be deemed a waiver by the City or School District of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by a third party shall be subject to any governmental immunity defenses of the City and School District and the maximum liability limits provided by Minnesota Statute, Chapter 466.

13. Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered: (i) in person; (ii) by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges

prepaid, or (iii) by proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended addressed as follows:

If to City:	City of Cottage Grove Attention: City Administrator 12800 Ravine Parkway South Cottage Grove, MN 55016
If to School District:	Independent School District 833 Attention: Superintendent 7362 E. Point Douglas Road South Cottage Grove, MN 55016

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, on the third day after mailing if mailed by United States postal service as provided above, or within twenty-four (24) hours if sent via overnight courier service provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the day and year first above written.

CITY:
CITY OF COTTAGE GROVE

By: _____
Myron Bailey
Its Mayor

By: _____
Tamara Anderson
Its City Clerk

STATE OF MINNESOTA)
)
COUNTY OF WASHINGTON) ss.

On this _____ day of _____, 2024, before me a Notary Public within and for said County, personally appeared Myron Bailey and Tamara Anderson to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Cottage Grove, the municipality named in the foregoing instrument, and that the said instrument was signed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**SCHOOL DISTRICT:
INDEPENDENT SCHOOL DISTRICT NO. 833**

By: _____
Printed Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was executed this ____ day of _____, 2024, by
_____, the _____ of Independent School
District No. 833, a Minnesota public corporation, on behalf of the corporation.

Notary Public

**This instrument drafted by
And after recording, please return to:**
Korine Land, #262432
LeVander, Gillen, & Miller, P.A.
1305 Corporate Center Dr., Suite 300
Eagan, MN 55121
(651) 451-1831