SOUTH WASHINGTON COUNTY SCHOOLS
SCHOOL BOARD
7362 East Point Douglas Rd S.
Cottage Grove, MN 55016

ADMINISTRATIVE REPORT

DATE:	November 21, 2024
TOPIC:	5.15 – Driveway Encroachment Agreement with City of Cottage Grove
PRESENTER:	Kris Blackburn, Director Business Services
REFERENCE TO POLICY/STATUTE:	Policy 701

A. **PURPOSE OF REPORT**

a. The Park High School construction project includes driveway and other private roadway improvements which shall be used by District employees, guests, visitors and members of the public.
b. These improvements are located on property that lies within existing City of Cottage Grove utility easements recorded as Document Nos. 3721571 and 3725666.
c. Accordingly, the District needs an encroachment on the utility easements for the driveway and other private roadway improvements.
d. The City is willing to allow these improvements to be placed within the encroachment area, on the condition the district maintains the improvements.

B. **RECOMMENDATION**

a. Administration recommends approval of the Agreement relating to Landowner Improvements for Driveway/Private Drive for Park High School (the Driveway Encroachment 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

AGREEMENT RELATING TO LANDOWNER IMPROVEMENTS FOR DRIVEWAY/PRIVATE DRIVE FOR PARK HIGH SCHOOL IN THE CITY OF COTTAGE GROVE, WASHINGTON COUNTY, MINNESOTA

THIS 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, ("Landowner"). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1. Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2. City. "City" means the City of Cottage Grove, a Minnesota municipal corporation.

1.3. City Easements. "City Easements" means the Utility Easements recorded in the Washington County Recorder's Office as Document Nos. 3721571 and 3725666.

1.4. Encroachment Area. "Encroachment Area" means that portion of real property that lies within the City Easements that contains Landowner Improvements. The Encroachment Area is depicted on Exhibit A, attached hereto and incorporated herein.

1.5. Landowner. "Landowner" means Independent School District 833, a Minnesota public corporation and their successors and assigns in interest.

1.6. Landowner Improvements. "Landowner Improvements" means Landowner's private driveway and other private roadway improvements that are located within the Encroachment Area on City Easements. It is understood that Landowner Improvements shall be used by Landowner's employees, guests, visitors and members of the public.

1.7. **Landowner Property.** "Landowner Property" means the real property located in the City of Cottage Grove, Washington County, Minnesota legally described on Exhibit B, attached hereto and incorporated herein.

1.8. **Maintain.** As used in this Agreement with respect to the Landowner Improvements, "maintain" and derivations thereof means to upkeep and repair in accordance with relevant City ordinances and regulations applicable to such improvements.

ARTICLE 2
RECITALS

2.1. Landowner owns Landowner Property.

2.2. Landowner Property requires an encroachment on City Easements for Landowner Improvements so that the Landowner Property can have reasonable access and circulation within Landowner Property.

2.3. Subject to the terms of this Agreement, the City is willing to allow the Landowner Improvements to be placed within the Encroachment Area, on the condition the Landowner maintains Landowner Improvements and subject to other terms and conditions herein.

ARTICLE 3
AGREEMENTS

3.1. **Construction and Maintenance of Landowner Improvements.** Under the terms and conditions stated herein, Landowner, at its own cost, is hereby authorized by the City to construct and maintain the Landowner Improvements in the Encroachment Area. The Landowner Improvements shall only be placed in the Encroachment Area. Landowner shall not place any other structures, retaining walls, irrigation systems, buildings, fences, landscaping, trees or shrubs in the Encroachment Area, except for the Landowner Improvements, without the City's written consent. Landowner, at its own expense, shall maintain and repair the Landowner Improvements. Landowner shall obtain proper permits from the City prior to making any modifications to Landowner Improvements.

3.2. **City Not Responsible for Landowner Improvements.** Nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Landowner Improvements.

3.3. **Continuing Right to Encroachment Area.** Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the Encroachment Area. Landowner understands that City may be improving, maintaining, replacing or repairing the portion of City Easements upon which Encroachment Area is located.

3.4. **Subordinate Position of Landowner Improvements.** The Landowner Improvements are subordinate to the rights of the City in the Encroachment Area. Landowner

understands that utilities are located in the Encroachment Area and Landowner will not disturb, alter, damage or otherwise interfere with the utilities. The City's rights supersede and are superior to Landowner Improvements.

3.5. Risk of Loss. Landowner understands and agrees that the Landowner Improvements within the Encroachment Area may be adversely affected by damage caused to Landowner Improvements arising out of the City's use or the use of utilities in the Encroachment Area. The parties agree that the City is not responsible for such events; the City shall have no liability to Landowner for such events. Landowner assumes the risk of using the Landowner Improvements in the Encroachment Area.

3.6. Emergency. The City shall not be required to give such notice if the City's engineer determines that an emergency exists in the Encroachment Area. In such instance, the City, without giving notice to Landowner, may perform the work. If such work is related to Landowner's use of Landowner Improvements, the Landowner shall reimburse the City for the costs and expenses relating to the work. Once the City's costs and expenses have been determined by the City, the City shall send an invoice for such costs and expenses to the Landowner. The Landowner must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged to the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility bills within the City.

3.7. Remedies. If the Landowner fails to perform its obligations under this Agreement, then the City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

(a) The City may specifically enforce this Agreement.

(b) If Landowner fails to make payments under Section 3.6, then the City may certify to Washington County the amounts due as payable with the real estate taxes for Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The Landowner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property. Further, as an alternate means of collection, if the written billing is not paid by the Landowner, the City, without notice and without hearing, may specially assess the Landowner Property for the costs and expenses incurred by the City. The Landowner hereby waives any and all procedural and substantive objections to special assessments for the costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Landowner waives any appeal rights otherwise available pursuant to Minnesota Statute §429.081. The Landowner acknowledges that the benefit from the performance of tasks by the City equals or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Landowner Property.

No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

3.8. Indemnification. The Landowner shall indemnify, defend and hold the City, its council, agents, consultants, attorneys, employees and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies including interest, penalties and attorneys' fees, that the City incurs or suffers, or that the private utilities incur or suffer, which arise out of, result from or relate to any of the following:

(a) The Landowner Improvements;

(b) Maintenance of the Landowner Improvements;

(c) Failure by the Landowner to observe or perform any covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement; and

(d) Use of the Encroachment Area for Landowner Improvements by Landowner, its agents, consultants, employees, representatives, guests, invitees or members of the public.

3.9. City Duties. Nothing contained in this Agreement shall be considered an affirmative duty upon the City to perform the Landowner's obligations contained in Article 3 if the Landowner does not perform such obligations.

3.10. No Third Party Recourse. Third parties shall have no recourse against the City under this Agreement. Landowner shall defend and indemnify City for any actions brought by third parties arising out of any of the terms, conditions or obligations, of Landowner related to Landowner Improvements.

3.11. Recording. This Agreement shall be recorded with the Washington County Recorder against the Landowner Property.

3.12. Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Landowner Property and shall be binding upon the heirs, successors, administrators and assigns of the parties, for so long as the Landowner Improvements remain on the City Easements.

3.13. 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 and 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.

3.14. Governing Law. This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota, and any action venued in Washington County District Court.

3.15. 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.

3.16. Headings. The subject headings of the sections this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

3.17 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 Landowner:	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.

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

CITY:
CITY OF COTTAGE GROVE

_____
Myron Bailey
Its Mayor

_____
Tamara Anderson
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

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 Clerk of the City of Cottage Grove, the municipality named in the foregoing instrument, and that said instrument was signed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____
Notary Public

LANDOWNER:
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 L. Land (#262432)
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
651-451-1831

EXHIBIT A
DEPICTION OF ENCROACHMENT AREA

EXHIBIT B
LEGAL DESCRIPTION OF LANDOWNER PROPERTY

PARCEL 1:
That tract or parcel of land lying and being in the County of Washington, State of Minnesota, described as follows, to-wit:

Southwest Quarter of Southwest Quarter of Section 9, Township 27, Range 21 except south 60 feet thereof subject to utility easement.

Abstract Property
PID: 09.027.21.33.0003

PARCEL 2:
That tract or parcel of land lying and being in the County of Washington, State of Minnesota, described as follows, to-wit:

Southeast Quarter of Southeast Quarter of Section 8, Township 27, Section 21, Washington County, Minnesota, except therefrom that part lying west of line drawn 40 feet East of and parallel with following described line: Beginning at the southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 8; thence Northerly 2641.75 feet to a point on the north line of said Northeast Quarter of Southeast Quarter, distant 10.45 feet east from the northwest corner of said Northeast Quarter of Southeast Quarter and there terminating; also except that part of the West 60 feet of the North 20 feet of the South 318 feet of said Southeast Quarter of Southeast Quarter; also except South 60 feet of said Southeast Quarter of Southeast Quarter lying east of line parallel with and 40 feet East from following described line: Beginning at southwest corner of said Southeast Quarter of Southeast Quarter thence northerly distant 2641.75 feet to point on north line of said Northeast Quarter of Southeast Quarter said section distant 10.45 feet East from northwest corner of said Northeast Quarter of Southeast Quarter and said line there terminating. Subject to easements.

Abstract Property
PID: 08.027.21.44.0004