

**AGREEMENT BETWEEN THE VILLAGE OF COTTAGE GROVE AND THE
MONONA GROVE SCHOOL DISTRICT FOR THE CONSTRUCTION OF AN
ELEMENTARY SCHOOL FACILITY IN THE VILLAGE OF COTTAGE GROVE,
WISCONSIN**

THIS AGREEMENT regarding the CONSTRUCTION OF A NEW ELEMENTARY SCHOOL FACILITY IN THE VILLAGE OF COTTAGE GROVE, WISCONSIN (AGREEMENT) is made and entered into with an effective date of _____, _____, 2020, by and between the MONONA GROVE SCHOOL DISTRICT, a duly organized school district under the laws of the State of Wisconsin with its principal offices at 5301 Monona Drive, Monona, Wisconsin 53716 (DISTRICT) and the VILLAGE OF COTTAGE GROVE a duly organized Wisconsin municipal corporation, with its principal office located at 221 E. Cottage Grove Road, Cottage Grove, Wisconsin 53527 (VILLAGE).

RECITALS

WHEREAS, the DISTRICT is the equitable and fee simple owner of the following real estate located within the VILLAGE (PROPERTY).

See attached EXHIBIT A

WHEREAS, the DISTRICT desires to construct and develop a new ELEMENTARY SCHOOL FACILITY (FACILITY or PROJECT);

WHEREAS, the VILLAGE seeks to protect the health, safety and welfare of the community by taking various actions including but not limited to requiring that various projects are completed in conjunction with the development in a manner that is consistent with Village Ordinances which require provisions be made for the installation of public sanitary sewer facilities, water main and water service laterals, streets and related infrastructure (hereafter IMPROVEMENTS) required on or to serve the PROPERTY;

WHEREAS, the purpose of this AGREEMENT includes, but is not limited to, avoiding the harmful consequences of undertaking land development without satisfactory completion of IMPROVEMENTS or the payment of IMPROVEMENT costs, which can lead to underdeveloped and/or unproductive land;

WHEREAS, this AGREEMENT is intended to protect the VILLAGE from the cost of completing required IMPROVEMENTS within and serving the PROJECT; and,

WHEREAS, the VILLAGE will be injured in the event of DISTRICT'S failure to fully and completely perform the requirements of this AGREEMENT even if construction has not yet been commenced.

ACCORDINGLY, the parties agree that the terms and provisions of the AGREEMENT will become enforceable upon the approval and recording of the Final Plat or CSM, if any, or the

execution of this Agreement, whichever occurs later and may be enforced by the VILLAGE even if construction has not begun.

This AGREEMENT contains the following EXHIBITS (and any subsequent exhibits provided for herein) all of which are incorporated by reference as if fully set forth:

- EXHIBIT A Legal Description of PROPERTY to be developed
- EXHIBIT B Village ENGINEER'S Estimate of Costs for IMPROVEMENTS to be completed by VILLAGE
- EXHIBIT C Preliminary IMPROVEMENT Plans & Specifications submitted by the DISTRICT (Final plans to be submitted for review by the VILLAGE)
- EXHIBIT D Land Disturbance Permit
- EXHIBIT E Table of Reimbursements for Oversizing Pipes
- EXHIBIT F Village Action Report - July 16, 2019
- EXHIBIT G DNR NOI, Water and Sewer Permits
- EXHIBIT H Madison Metropolitan Sewerage District Annexation
- EXHIBIT I Traffic Impact Analysis
- EXHIBIT J Buss Rd. Temporary Improvements

DISTRICT agrees to develop the PROPERTY in accordance with:

1. This AGREEMENT and incorporated EXHIBITS.
2. Any applicable regulations of any governmental entity with jurisdiction over the PROPERTY, PROJECT, and IMPROVEMENTS.
3. The VILLAGE ORDINANCES, and the VILLAGE COMPREHENSIVE PLAN.
4. The following approvals and conditions are incorporated as if fully set forth herein. See the VILLAGE ACTION REPORT dated July 16, (attached as EXHIBIT F)
 - (i) JULY 10, 2019 VILLAGE PLAN COMMISSION MEETING
REZONING FROM RH, RURAL HOLDING TO SR-4, SINGLE
FAMMILY RESIDENTIAL-APPROVED
CONDITIONAL USE PERMIT FOR AN "INDOOR INSTITUTIONAL"
LAND USE-APROVED WITH CONDITIONS
SITE PLAN-APPROVED WITH CONDITIONS
CERTIFIED SURVEY MAP- APPROVED WITH CONDITIONS
 - (ii) JULY 15, 2019 VILLAGE BOARD MEETING

REZONING FROM RH, RURAL HOLDING TO SR-4, SINGLE
FAMMILY RESIDENTIAL-APPROVED

CONDITIONAL USE PERMIT FOR AN “INDOOR INSTITUTIONAL”
LAND USE-APROVED WITH CONDITIONS

SITE PLAN-APPROVED WITH CONDITIONS

CERTIFIED SURVEY MAP- APPROVED WITH CONDITIONS

ARTICLE I - GENERAL CONDITIONS

A. IMPROVEMENTS

The DISTRICT shall construct and install, at their own expense, those on-site and off-site IMPROVEMENTS not located in a public right-of-way and the VILLAGE shall construct and install, at the DISTRICT’s expense, those on-site and off-site IMPROVEMENTS located in a public right-of-way. The IMPROVEMENTS are generally outlined in this AGREEMENT and more particularly described in EXHIBITS C and J, attached hereto and incorporated herein by reference.

B. CONTRACTORS ENGAGED BY THE DISTRICT

The DISTRICT may engage contractors/subcontractors for construction of IMPROVEMENTS outlined in this AGREEMENT. If so, every contractor/subcontractor shall be submitted for approval to the VILLAGE at least 7 days prior to commencement of work by the contractor/subcontractor and must be approved by the VILLAGE’s engineer or other person designated by the VILLAGE and, if approved, shall comply with every requirement of the VILLAGE'S ORDINANCES and standards in performing such work.

The VILLAGE will construct specified IMPROVEMENTS in the public right-of-way for which the DISTRICT shall reimburse the VILLAGE in full within 30 days of delivery by the VILLAGE of each request for such reimbursement to the DISTRICT. Requests for reimbursement may be delivered periodically at the discretion of the VILLAGE prior to completion of IMPROVEMENTS, but no less frequently than annually. The DISTRICT is responsible for all costs associated with VILLAGE-constructed IMPROVEMENTS including repairs and maintenance of IMPROVEMENTS prior to acceptance of dedication of the IMPROVEMENTS by the VILLAGE.

C. VILLAGE APPROVAL OF STARTING DATES

For IMPROVEMENTS not constructed by the VILLAGE, no work shall be commenced without the VILLAGE’s approval.

No building permits shall be issued for the PROPERTY until all necessary approvals have been issued by the VILLAGE.

D. CHANGE ORDER TO WORK

The VILLAGE shall not be responsible for any costs or changes related to the FACILITY, the IMPROVEMENTS, or the PROPERTY except those specifically enumerated as being the responsibility of the VILLAGE in this AGREEMENT or other written agreement executed by the VILLAGE and the DISTRICT.

E. ACCEPTANCE OF WORK NOT CONSTRUCTED BY THE VILLAGE

For IMPROVEMENTS not constructed by the VILLAGE, the VILLAGE shall designate representatives to inspect the IMPROVEMENTS and review reports as the work progresses. Within fourteen (14) days of a written notice by the DISTRICT requesting inspection of an IMPROVEMENT, the VILLAGE shall inspect the IMPROVEMENT and, if the IMPROVEMENT is deemed satisfactory, shall issue a letter acknowledging that the IMPROVEMENT has been completed according to the terms and conditions of this AGREEMENT.

Prior to dedication, all IMPROVEMENTS to be dedicated to the VILLAGE must be inspected and approved by the VILLAGE, any REIMBURSEMENT COSTS associated with such IMPROVEMENTS shall be paid to the VILLAGE by the DISTRICT (See ARTICLE I Paragraph (K),) the VILLAGE shall receive from the DISTRICT valid lien waivers from all persons providing materials or performing work on any such IMPROVEMENT, and the DISTRICT shall provide to the VILLAGE ‘Record Drawings’ for each IMPROVEMENT comprised of two sets of plans, and digital files with record AutoCAD drawings, including Bench Mark elevations on the tops of all fire hydrants (subject to VILLAGE approval). A breakdown of all quantities, construction, engineering and administrative costs incurred by the DISTRICT shall be submitted, reviewed and approved by the VILLAGE ENGINEER, VILLAGE TREASURER or DESIGNEE respectively. This is necessary to comply with GASB 34 for each year's work and submitted by the DISTRICT, prior to year-end.

Any water supply system installation will not be accepted until a bacteriologically-safe sample is obtained by a certified testing agency. The DISTRICT shall be responsible to flush the main, obtain the samples, and have all tests completed as may be reasonably required by the VILLAGE.

The DISTRICT shall maintain and repair all IMPROVEMENTS until dedication of such IMPROVEMENTS is accepted by the VILLAGE by resolution.

The VILLAGE will notify the DISTRICT if inspection reveals that an IMPROVEMENT does not conform to the standards, details, and specifications listed in Article I.A. and shown in EXHIBIT C or is otherwise defective.

F. TIME OF COMPLETION

All work and IMPROVEMENTS specified within this AGREEMENT shall be completed by or billed to the DISTRICT as follows:

1. To be completed by the DISTRICT within one year of final plat approval for property immediately adjacent to the Northern Boundary of the PROPERTY but no sooner than the end of 2025, or as otherwise agreed upon by the DISTRICT, the VILLAGE and owner of the platted property:
 - a. Completion of street and utility improvements to Red Hawk Trail, Mourning Dove Drive and Pheasant Run including extensions of the sanitary sewer line from Red Hawk Trail and the watermain from Mourning Dove Drive to the Northern boundary of the PROPERTY within the street right-of-way.
2. To be completed by the VILLAGE at a time determined by the VILLAGE (unless specifically provided below). The costs of these IMPROVMENTS may not be billed to the District sooner than 2025:
 - a. Full street IMPROVEMENTS as described in Section J Paragraph 3 Subsection a, of the AGREEMENT to Buss Road adjacent to the PROPERTY from the Southern Boundary to the Lane Street intersection.
 - b. Full street IMPROVEMENTS as described in Section J Paragraph 3 Subsection a of the AGREEMENT to Buss Road adjacent to the PROPERTY north of the Lane Street intersection (such IMPROVEMENTS to be completed concurrent with improvements to Buss Rd. north of the PROPERTY).
3. To be completed by the DISTRICT on or before occupancy of the school:
 - a. Extension of the water main line from Pheasant Run to the Southern Boundary line of the PROPERTY.
 - b. Completion of a drivable roadway access directly connecting DISTRICT's middle school and elementary school sites.
 - c. Completion of a sidewalk/path from the elementary school site to Pheasant Run.
 - d. All other IMPROVEMENTS and work required by the AGREEMENT and not otherwise specified in this section.
4. To be completed by the VILLAGE at the time specified below (to be billed to the DISTRICT):
 - a. Prior to occupancy of the school, temporary street improvements to Buss Rd. and other improvements in the Buss Rd. Right-of-way, adjacent to the PROPERTY from the Southern Boundary through the intersection with Lane Street as depicted in EXHIBIT J.

- b. In 2021, a Buss Road/Cottage Grove Road intersection traffic signal/urbanization. The DISTRICT will be responsible for 29% of these costs.

G. INDEMNIFICATION AND INSURANCE REQUIRED OF PRIVATE CONTRACTORS

The DISTRICT hereby expressly agrees to indemnify and hold the VILLAGE and its agents harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work related to the PROJECT that is the subject of this AGREEMENT. The DISTRICT further agrees to aid and defend the VILLAGE or its agents (at no cost to the VILLAGE or its agents) in the event the VILLAGE or its agents are named as a defendant in an action concerning the performance of work pursuant to this AGREEMENT except where such suit is brought by the DISTRICT.

The DISTRICT shall inform and require all Contractors engaged by the DISTRICT in the construction of this PROJECT to comply with the requirements of this AGREEMENT pertaining to damage claims, indemnification, and providing insurance coverage at amounts determined by the VILLAGE. The DISTRICT shall also require the DISTRICT's contractors to maintain a current Certificate of Insurance on file with the VILLAGE CLERK. Said Certificate shall indicate that the VILLAGE and its service providers are named as insured or additional insured, to the extent that the addition of this designation is reasonably available in the commercial insurance market.

H. GUARANTEE OF THE WORK

For IMPROVEMENTS not constructed by the VILLAGE, the DISTRICT guarantees and warrants all IMPROVEMENTS constructed under this AGREEMENT for a period of one year from the date of final acceptance by the VILLAGE BOARD of the last IMPROVEMENT completed by the DISTRICT, against defects in workmanship or materials. If any such defect should appear during this period, the DISTRICT agrees to cure such defect at the DISTRICT's expense, including restoration of any areas or IMPROVEMENTS affected during curative actions.

All guarantees or warranties for materials or workmanship which extend beyond the above one year guarantee period shall be assigned by the DISTRICT to the VILLAGE (as beneficiary) at the end of this guarantee period.

I. COMPLIANCE WITH LAW

The DISTRICT shall comply with all applicable laws, ordinances, and regulations during the PROJECT.

J. ENTRY; SPECIFICATIONS FOR IMPROVEMENTS

1. The DISTRICT grants to the VILLAGE the right to enter the PROPERTY to inspect and monitor compliance with the requirements of VILLAGE ordinances and this AGREEMENT, at reasonable times and with reasonable notice to the DISTRICT.
2. The following IMPROVEMENTS and other work shall be completed by the DISTRICT:

a. GRADING, EROSION CONTROL, BARRICADES AND ACCESS:

- i. Furnish, install, and maintain during construction and until the IMPROVEMENTS constructed by the DISTRICT are accepted by the VILLAGE, all barricades and signs as specified by the VILLAGE at all points where new rights-of-way extend or intersect existing streets and all street ends. Signs and barricades shall be required, furnished, and installed so as to conform with the Manual of Uniform Traffic Control Devices.
- ii. Provide for effective erosion and runoff control measures as required by the VILLAGE. The DISTRICT shall provide and maintain erosion control at curb inlets and sweep all public streets used for access to the site and the public streets constructed as part of the PROJECT at least bi-monthly (or more often if so directed by the VILLAGE) until dedication of the street is formally accepted by the VILLAGE. Erosion Control measures shall comply with the “Wisconsin Construction Site Best Management Practice Handbook” and Chapter 163, Erosion, Sediment and Water Runoff Control, of the Village ordinances.
- iii. Clean all silt and debris from any detention basin (sides and bottoms) at times ordered by the VILLAGE and prior to acceptance. All damaged grading and seeding or other public works facilities shall also be restored after each cleaning, to the satisfaction of the VILLAGE.
- iv. Install and maintain (including mowing) all storm water management facilities including related storm sewers and drainage channels as shown on the plans and specifications approved by the VILLAGE or listed herein.

b. SANITARY SEWER FACILITIES AND LATERALS:

Subject to the approval of the VILLAGE as to size, depth, and slope:

- i. The DISTRICT shall install a sanitary sewer connection from Pheasant Run as approved for the site and extend sanitary main from Red Hawk Tr. within the required roadway connection to the Northern boundary of the PROPERTY. The DISTRICT shall provide utility easements for any facilities installed outside of the public right of way. No installation of underground utilities shall commence until:
 - 1) Plans and specifications have been approved by the VILLAGE and the State of Wisconsin Department of Natural Resources (hereafter DNR), in addition to the other approvals required by this AGREEMENT. When required by the VILLAGE, the sanitary sewer shall be provided in locations, sizes, and depths necessary to serve continued development.
 - 2) The incremental cost for pipe sizes greater than ten inches (10") in diameter will be borne by the VILLAGE and either credited or reimbursed to the DISTRICT. The increment shall be based on the approximate cost of the pipe material only for the different pipe sizes and will be made in accordance with the amounts indicated in EXHIBIT E.

c. WATER MAINS AND SERVICE PIPES:

Subject to the approval of the VILLAGE as to size, depth and slope:

- i. the DISTRICT shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to the limits of the PROPERTY and as required by the plans, specifications, and requirements of the VILLAGE Water Utility and approved by the DNR, in addition to the other approvals required by this AGREEMENT. All hydrants shall include an attached fiberglass Rodon Corp. 5 foot Hydrafinder. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. All other water service laterals three (3) inches and larger shall be completed with a controlling valve and roadbox. All materials used shall conform to the VILLAGE Standard Specifications for Watermain Construction.
- ii. The watermain shall be looped around the FACILITY site as approved by the VILLAGE, with a service connection at Mourning Dove Drive and a secondary service location to be determined by the DISTRICT and the VILLAGE. The on-site watermain will be maintained as private watermain in conformance with State and

VILLAGE standards. Maintenance of the on-site private water main includes the flushing of the hydrants periodically or as directed by the VILLAGE. The watermain loop shall be completed prior to occupancy of the FACILITY.

- iii. The incremental cost for pipe sizes greater than ten inches (10”) in diameter (“oversizing”) will be borne by the VILLAGE and either credited or reimbursed to the DISTRICT. The reimbursement is based on the approximate cost of pipe material only for the different pipe sizes and will be made in accordance with the amounts indicated in EXHIBIT E.
- iv. The DISTRICT shall install a water main to the Northern boundary of the PROPERTY from Mourning Dove Drive and connect this line with the water main on Red Hawk Trail as prescribed by the VILLAGE.
- v. The DISTRICT shall install a water main to the Southern boundary of the PROPERTY from Pheasant Run as prescribed by the VILLAGE to provide for future looping to the south.
- vi. Private fire hydrants and other fire protection equipment shall be installed and located according to the applicable fire code and as approved by the Cottage Grove Fire Department.
- vii. Connection to the mains shall include valves and temporary hydrants to allow for proper flushing of the water system. The DISTRICT shall provide utility easements for any facilities installed outside of the public right of way.

d. STREETS AND RELATED UTILITY IMPROVEMENTS:

The DISTRICT shall:

- i. Complete Red Hawk Trail, Mourning Dove Drive and Pheasant Run, including street and utility IMPROVEMENTS as approved by the VILLAGE, from the existing roadways to the Northern boundary of the PROPERTY at a location to be determined by agreement of the VILLAGE and the DISTRICT. Street IMPROVEMENTS include asphaltic pavement, curb and gutter, street trees, street lighting and a 10 foot wide bike path on one side of the street. The path will include provisions to cross each street with access ramps completing the route to the FACILITY. All sanitary sewer, potable water, storm sewer and private utilities shall be buried throughout the PROPERTY/PROJECT LIMITS and within easements or approved street right-of-way locations.

The DISTRICT may install said street and utility IMPROVEMENTS as provided below or may engage in discussions with the VILLAGE and the developer of the adjacent property to the North to determine final street and utility locations. If the DISTRICT has not installed said street and utility improvements at the time a developer of the adjacent northern property engages the VILLAGE in discussion about potential street and utility locations on that property, the VILLAGE shall consult with the DISTRICT regarding those locations prior to the VILLAGE approving a plat for that property. The Village shall not require a change to the location of the street and utility improvements without the consent of the DISTRICT.

- 1) Provide a 60 foot wide ROW for all interconnected streets.
- 2) Extend Pheasant Run from the existing improvements in 4th Addition to Westlawn Estates using a 30 mph horizontal curve to the north to connect to Mourning Dove Drive in a dedicated street ROW. The street shall be 32 feet face to face.
- 3) Extend Mourning Dove Drive as a Tee intersection with Pheasant Run and to the north to connect with Red Hawk Trail in a dedicated street ROW. The street shall be 36 feet face to face including the north-south extension to the PROPERTY line. The parties anticipate that on-street parking will be allowed on this street section.
- 4) Extend Red Hawk Trail to connect with the streets to the south and to the north PROPERTY line in a dedicated street ROW. The street shall be 32 feet face to face.
- 5) The DISTRICT will provide lots or outlots to buffer the streets from the existing lots in 4th Addition to Westlawn Estates. The minimum width between the street ROW and the east PROPERTY line shall be 120 feet.
- 6) The DISTRICT shall maintain the lots or outlots.
- 7) The curves and intersections will include street lighting.
- 8) The street extensions shall include multi-use path or sidewalks.
- 9) Mourning Dove Drive's bike path shall be continued north in the dedicated street ROW as an off-street trail alongside the street to the north property line.

- 10) Storm sewer and inlets for the street extensions shall be included in the site storm water management plan. Provide stormwater rate control, water quality and infiltration requirements per Chapter 163 of the Village Ordinance.
- ii. The DISTRICT shall install stop signs and street name signs at all intersections. Plans, specifications, and installation shall be approved by the VILLAGE.
- e. STORM WATER MANAGEMENT STRUCTURES:
 - i. The DISTRICT shall be responsible for the construction, operation and maintenance of all on-site storm water management facilities required by VILLAGE ordinance, including related storm sewers, in accordance with plans and specifications approved by the VILLAGE. All costs for said facilities shall be borne by the DISTRICT with no reimbursement from the VILLAGE.
 - ii. The DISTRICT shall record a long-term stormwater maintenance agreement, pursuant to 163-9 C (3) of the VILLAGE ordinances, in a form approved by the VILLAGE, and shall record the same with the Dane County Register of Deeds.
 - iii. New storm sewer and storm sewer extensions shall be completed in conformance with the stormwater maintenance plan approved by the VILLAGE.
- f. OTHER REQUIREMENTS:
 - i. Landscaping shall be installed and maintained by the DISTRICT. The landscaping shall be maintained at locations indicated on an approved landscaping plan.
 - ii. Street lighting shall be installed, and shall be supplied by Alliant Energy, with installation costs paid by the DISTRICT. The DISTRICT shall submit a plan for VILLAGE review showing the locations of streetlights.
 - iii. Ten-foot wide utility easements shall be provide by the District To the Village along the Northern and Southern boundaries of the Property and a twelve-foot wide utility easement shall be provided by the District to the Village along the Eastern side of the Buss Rd. right-of-way along the frontage of the Property along Buss Rd.
- 3. The following IMPROVEMENTS are to be constructed by the VILLAGE with all costs of those IMPROVMENTS billed to the DISTRICT unless specifically provided below:

- a. Complete Buss Road, including street and utility IMPROVEMENTS (sewer and water improvements are not required along Buss Road), as previously approved by the VILLAGE, from the south property line to the north property line. Street IMPROVEMENTS include a 10-foot wide asphaltic multi-use path, asphaltic pavement, curb and gutter, street trees, street lighting and sidewalk connections. All sanitary sewer, potable water, storm sewer and private utilities shall be buried throughout the PROPERTY/PROJECT LIMITS and within easements or approved street right-of-way locations. All cost of these IMPROVEMENTS shall be paid by the DISTRICT unless the property to the west of any portion of these IMPROVEMENTS is annexed into the VILLAGE prior to commencement of construction, in which case such property will be assessed for 50% of such costs.
 - i. The median and outer corners at the driveways and intersection will include street lighting.
 - ii. The median will include street trees spaced every 50 feet.
 - iii. The east side of Buss Road will include a 10 foot wide bike/pedestrian path separated from the street.
 - iv. Storm sewer and inlets for Buss Road shall be included in the site storm water management plan. Provide stormwater rate control, water quality and infiltration requirements per Chapter 163 of the Village Ordinance.
 - b. Completion of a Buss Road/Cottage Grove Road intersection traffic signal/urbanization (the DISTRICT will only be billed for 29% of these costs).
4. Where standards and/or specifications have not been established by the VILLAGE, all work shall be conducted in accordance with established engineering practices as designated and approved by the VILLAGE.

K. DISTRICT TO REIMBURSE THE VILLAGE FOR COSTS INCURRED

1. The DISTRICT shall reimburse the VILLAGE for its actual cost of review and drafting of this AGREEMENT, design, inspection, testing, construction, and associated legal, engineering, accounting and real estate fees for the required IMPROVEMENTS (hereafter referred to as REIMBURSEMENT COSTS). The VILLAGE'S costs shall be determined as follows:
 - a. The cost of VILLAGE employees' time engaged in any way with the required IMPROVEMENTS based on the hourly rate paid to the employee multiplied by a factor determined by the VILLAGE representing the

VILLAGE'S cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.

- b. The cost of VILLAGE equipment employed.
- c. The cost of mileage reimbursed to VILLAGE employees which is attributed to the PROPERTY/FACILITY.
- d. The actual costs of VILLAGE materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 10 percent of the cost of the materials.
- e. The costs incurred by the VILLAGE in connection with the review and approval of the PROJECT/PROPERTY as outlined herein as well as the cost for review and approval of other related documents including deed restrictions.
- f. All consultant fees including legal and engineering fees associated with the PROJECT at the invoiced amount plus administrative costs.
- g. A sum of two percent (2%) of the IMPROVEMENT costs as estimated by the VILLAGE shall be deposited with the VILLAGE upon execution of this Agreement as an initial payment to partially cover costs.

The VILLAGE shall draw against such deposit for payment of all administrative, engineering, legal and other costs incurred by the VILLAGE. If at any time the deposit shall be insufficient to reimburse the VILLAGE for its expenses, the DISTRICT shall deposit additional funds within fifteen (15) days of notice from the VILLAGE.

- h. After the construction of the IMPROVEMENTS has been completed and accepted by VILLAGE, the actual costs shall be totaled and the remaining difference, if any, shall be paid by or remitted to the DISTRICT.

L. BUSS ROAD/ COTTAGE GROVE ROAD ESCROW

The DISTRICT will escrow its proportional 29% share of the Cottage Grove Road/Buss Road intersection and traffic signal/urbanization project in a form acceptable to the VILLAGE. This escrow amount will be based on a previous preliminary cost estimate for this project which identified the estimated total cost of this project to be \$691,920.00 (which included allowances for engineering, surveying and contingency). The escrow shall be received by the VILLAGE no later than April 30, 2021.

ARTICLE II - SUPPLEMENTAL GENERAL CONDITIONS

A. RELATIONSHIP

Neither party shall be considered the agent of the other and absent further written authorization, neither party has general authority to enter into contracts, assume any obligation or make any warranties or representations on behalf of the other.

B. NO VESTED RIGHTS GRANTED

Except as provided by law, or as expressly provided in this AGREEMENT, no vested right in connection with this PROJECT shall inure to the DISTRICT. Nor does the VILLAGE warrant by this AGREEMENT the DISTRICT shall be entitled to any required approvals.

C. NO WAIVER

No waiver of any provision of this AGREEMENT shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this AGREEMENT. The VILLAGE'S failure to exercise any right under this AGREEMENT shall not constitute the approval of any wrongful act by the DISTRICT or the acceptance of any IMPROVEMENT.

D. AMENDMENT/MODIFICATION

This AGREEMENT may be amended or modified only by a written amendment approved and executed by the VILLAGE and the DISTRICT.

E. DEFAULT

Except as otherwise provided herein, a default is defined as the DISTRICT'S breach of, or failure to comply with, the terms of this AGREEMENT. The VILLAGE reserves to itself the right to pursue any available remedies. Remedies shall include, but not be limited to, stopping all PROJECT construction and not issuing approvals

F. ENTIRE AGREEMENT

This written AGREEMENT, any written amendments, and any referenced attachments thereto, shall constitute the entire AGREEMENT between the DISTRICT and the VILLAGE.

G. ATTORNEYS' FEES

Except as otherwise provided herein, the parties will be responsible for their own costs and attorneys' fees in the event of litigation, arbitration or mediation unless otherwise ordered by the court.

H. TIME

For the purpose of computing the time periods provided herein, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be

included if such times have prevented the DISTRICT or VILLAGE from performing obligations under the AGREEMENT.

I. SEVERABILITY

If any part, term, or provision of this AGREEMENT is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the AGREEMENT

J. BENEFITS

The DISTRICT shall not assign its obligations under the AGREEMENT without the express written approval of the VILLAGE, which shall not be unreasonably withheld. The VILLAGE may require an assign to provide financial assurance for any assigned obligations to construct IMPROVEMENTS. Any unapproved assignment is void. The obligations of this AGREEMENT are obligations of the DISTRICT and shall be binding on its heirs, successors, and assigns. However, the DISTRICT shall be relieved of responsibility for any obligations under this AGREEMENT, which are validly assigned under this provision.

K. IMMUNITY

The parties to this agreement are governmental entities entitled to governmental immunity under law, including, but not necessarily limited to, Section 893.80, Wis. Stats. Nothing contained herein, including indemnity provisions, shall waive the rights and immunities to which each party may be entitled under law, including all of the immunities, limitations and defenses under Section 893.80, Wis. Stats., or any subsequent amendments thereof, any federal law, common law or other applicable laws.

L. NOTICE

Any notice required or permitted by this AGREEMENT shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to the DISTRICT: MONONA GROVE SCHOOL DISTRICT
Attn: District Administrator
5301 Monona Drive
Monona, WI 53716

if to VILLAGE: VILLAGE OF COTTAGE GROVE
Attn: Village Administrator
221 Cottage Grove Road
Cottage Grove, WI 53527

M. RECORDING

The VILLAGE may record a copy of this AGREEMENT or Affidavit indicating the existence of this AGREEMENT in the Register of Deeds Office. All cost of recording shall be paid by the DISTRICT.

N. PERSONAL JURISDICTION AND VENUE

Personal jurisdiction and venue for any civil action commenced to enforce the terms of this AGREEMENT by either party to this AGREEMENT shall be deemed to be proper only if such action is commenced in District Court for Dane County. The DISTRICT and the VILLAGE expressly waive any right to bring such action in or to remove such action to any other court, whether state or federal.

(Remainder of Page Intentionally Left Blank)

VILLAGE

VILLAGE OF COTTAGE GROVE
DANE COUNTY, WISCONSIN

DATE

By: _____
Village President, John Williams

DATE

Attest: _____
Village Clerk Lisa Kalata

DISTRICT

DATE

By: _____
Board President, Andrew McKinney

DATE

Attest: _____
Board Clerk, Susan Manning