CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: August 2, 2022

To: Finance Committee

From: Rodney J. Scheel
Director of Planning & Development

Subject: Uniroyal Testing on City Owned Property

Previously, the City approved an Access Agreement for testing on City-owned property. Their test results have confirmed contamination had migrated onto City property. The Access Agreement has expired but additional testing is necessary on City property.

An Access Agreement consistent with the prior Agreement is provided for your consideration.

We recommend approving the Access Agreement and authorizing the Mayor to sign.

If you have any questions, please contact me.

ACCESS AGREEMENT

This Access Agreement ("Agreement") is made between the City of Stoughton ("Stoughton"), a Wisconsin municipality, and Uniroyal Global Engineered Products ("Uniroyal"), a Wisconsin corporation.

RECITALS

A. Stoughton owns the property ("Property") located at 600 4th Street, Stoughton, Wisconsin 53589, and depicted on the attached in Exhibit A. The Property is used by Stoughton Utilities.

B. Uniroyal owns and operates a tank farm located at 501 South Water Street in Stoughton, Wisconsin (the "Tank Farm").

C. Uniroyal has recently undertaken a 20-year inspection of the Tank Farm. As part of this inspection, Uniroyal retained the services of Moraine Environmental (the "Consultant") to perform drilling and sampling of test wells.

D. Analytical results of this sampling detected the presence of a certain plasticizer ("DINA") used in Uniroyal's manufacturing process in one of the test wells.

E. Analytical results also indicated the presence of methyl-ethyl-ketone ("MEK") and tetrahydrofuran ("THF") in certain test wells.

F. The Wisconsin Department of Natural Resources ("DNR") is requesting that Uniroyal undertake additional sampling to determine the extent of contamination in the area.

G. Uniroyal has requested access the Property in order for Consultant to drill test wells and collect groundwater samples to test for the presence of DINA, MEK, and THF, as depicted on the attached as Exhibit A.

H. Stoughton is willing to provide such access subject to the terms of this Agreement.

AGREEMENT

Therefore, Stoughton and Uniroyal agree as follows:

1. Access: Subject to the terms and conditions of this Agreement, Stoughton authorizes Uniroyal's officers, employees, agents, consultants and contractors (collectively, "Personnel") to come onto the Property during normal working hours as reasonably necessary to perform certain work, as describe in Section 3 of this Agreement.

2. Purpose of Activities: The purpose of access to the Property is to evaluate the presence and extent of DINA, MEK, and THF on the Property, which was identified during a previous site investigation at the Tank Farm. Uniroyal accepts all responsibility for any and all contamination that may have migrated from the Tank Farm onto the Property.

3. Scope of Work: In order to determine the presence of DNA, MEK, and THF and to delineate the extent of contamination, Stoughton authorizes Uniroyal and/or its Personnel to perform the following work on the Property (the "Site Work"):

    a. The drilling of four test wells at the locations indicated on the attached as Exhibit A.

    b. The collection of samples from the test wells and the analysis of such samples.

4. Conditions of Access: Uniroyal and/or its Personnel shall:

    a. Notify Stoughton at least two (2) business days in advance of any access to the Property.

    b. Comply with any directions of Stoughton while on the Property and take all reasonable steps to minimize interference of the Site Work with the activities of Stoughton and its officers, employees, agents, consultants and contractors on the Property.

    c. Consult with and obtain Stoughton's prior approval of the method of drilling test wells and any modifications from the location of the test wells as depicted on the attached Exhibit A.

d. If requested, provide Stoughton with split samples collected from the Property, to the extent possible (e.g. sufficient sample volume for splitting may be unable to be collected).

e. Confine its equipment and the activities of Personnel on the Property as directed by Stoughton.

f. Remove all soil cutting, purged groundwater and other investigative wastes generated by Uniroyal and/or its Personnel from the Property promptly, and in all events within five (5) days of generation.

g. Perform and complete the Site Work diligently and expeditiously.

h. Promptly provide Stoughton with copies of all well construction records and other records of activities performed on the Property.

i. Promptly provide Stoughton with copies of all laboratory reports on all samples collected in the course of the Site Work.

j. Provide Stoughton with copies of all reports submitted to the DNR in connection with the Site Work at the time the reports are submitted to DNR.

k. In performing the Site Work and its obligations under this Agreement, Uniroyal and its Personnel shall comply with all applicable federal, state and local laws and regulations, including but not limited to Wis. Stat. § 182.0175 to ensure that all telephone lines and/or other ground utility liens are clearly marked before drilling or excavation activities on the Property.

5. Uniroyal Personnel:

a. Uniroyal shall ensure that all Personnel are appropriately qualified to perform the Site Work. Stoughton may object to any of Uniroyal's Personnel engaged on the Property who, in the reasonable opinion of Stoughton, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent. Uniroyal shall remove such Personnel from the performance of any Site Work on receipt of notice from Stoughton requiring it to do so and shall not re-engage that person in connection with the Site Work without the prior written consent of Stoughton.

b. This Agreement does not create a partnership between the parties or make a party the agent of the other party. Uniroyal's Personnel shall at all times be deemed to be Uniroyal's employees, agents, or

consultants and not employees, agents, or consultants of Stoughton. Uniroyal will ensure that its Personnel comply with Stoughton's obligations under this Agreement and will be responsible for any breach of these obligations by its Personnel.

6. Property "AS IS": Stoughton makes no representations as to any conditions of the Property. Uniroyal and its Personnel will rely solely on their own examination and investigation of the Property and any local or general conditions that might affect the Site Work.

7. Cost of Work: Uniroyal shall be responsible for all costs of the Site Work, including the cost of repairing or replacing any facilities which are damaged by the operations of Uniroyal or its Personnel.

8. Indemnification: Uniroyal shall defend, indemnify and hold harmless Stoughton from and against all claims, damages, actions, losses, expenses or costs, including attorney fees, resulting from performance of the Site Work by Uniroyal or its Personnel.

9. Insurance:

   a. Uniroyal will obtain and maintain the following insurance:

      i. General liability coverage with a limit of not less than $5,000,000 inclusive per occurrence for bodily injury and property damage including loss of use, which policy will include provisions for cross-liability and severability of interest;

      ii. Pollution liability coverage (including on-site, off-site remediation legal liability) of not less than $5,000,000;

      iii. Risks insurance covering loss or damage to machinery, equipment and other property of every kind and description used at the Property for which Uniroyal is responsible or legally liable, to their full insurable value, calculated on a replacement cost basis;

      iv. Workers' compensation coverage that meets at least the minimum requirements under applicable employment standards legislation and employer's liability coverage in an amount not lower than $2,000,000; and

      v. Automotive liability coverage for each owned, non-owned and hired automobile with a limit of not less than $1,000,000.

b. Uniroyal will deliver to Stoughton prior to the commencement of Site Work certificates of insurance certifying that Uniroyal has insurance coverage as set out in this Section 9.

c. Stoughton will be named as additional insured on the policies described in Paragraphs 9.a.i. and 9.a.ii.

d. Uniroyal will ensure that Stoughton is given at least thirty (30) days' prior notice if the insurance policies required by this Agreement are cancelled or their coverage is reduced.

10. Stoughton Observation: Uniroyal understands and acknowledges that Stoughton's officers, employees, consultants or other contractors may observe the Site Work.

11. Restoration: Upon completion of the Site Work to be performed on the Property, Uniroyal shall promptly restore the Property to substantially the same condition it was in before commencement of the Site Work, including repair or replacement of all damage to the Property. Uniroyal shall properly abandon all wells in accordance with state law and administrative code and provide Stoughton with copies of the abandonment forms.

12. Term: This Agreement shall be effective on August 10, 2022 and shall terminate on December 31, 2023 except that Uniroyal's obligations under sections 8 (Indemnification) and 11 (Restoration) above shall survive termination of the Agreement.

a. Either party may terminate this Agreement by written notice if the other party is in default of its obligations under this Agreement and fails to remedy such default within five (5) days after receiving notice thereof.

b. If DNR requires Uniroyal to continue monitoring of wells on the Property after termination of this Agreement, Stoughton and Uniroyal will negotiate in good faith to extend the term of this Agreement.

13. Miscellaneous:

a. This Agreement will be governed by and interpreted in accordance with the laws of the State of Wisconsin.

b. No amendment to this Agreement and no waiver of any rights under this Agreement shall be valid or binding on the parties unless the same is in writing and signed by both parties.

c. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof and supersedes any and all negotiations, agreements and representations made or dated prior hereto with respect to its subject matter.

d. The invalidity of one or more phrases, sentences, clauses or sections contained in this Agreement or any attachments hereto shall not affect the validity of the remaining portions thereof so long as the material purposes of such document can be determined and effected.

e. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or pdf transmission of any signed original Agreement, and retransmission of any facsimile or pdf transmission, will be the same as delivery of an original Agreement. At the request of a party, the other party will confirm facsimile or pdf signatures by signing an original Agreement.

14. Notice: Any notice required under this Agreement shall be in writing and shall be deemed given when personally served, emailed, or three (3) days after the same has been deposited with the United States Post Office, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Stoughton:

City Hall
Attn: Rodney Scheel
Director of Planning and Development
207 S. Forrest Street
Stoughton, WI 53589

and

If to Uniroyal:

Uniroyal Global Engineered Products
Attn: Ron Justice
Director of Facilities and Maintenance
501 S. Water Street
Stoughton, WI 53589

Either party may change its address for the receipt of notice by written notice to the other.

City of Stoughton

By: _____
Title: _____

By: _____
Title: _____

Uniroyal Global Engineered Products

By: _____
Title: _____

By: _____
Title: _____