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: March 17, 2022

To: Finance Committee

From: Rodney J. Scheel
Director of Planning & Development

Subject: Finance Committee Agenda Item
R- - 2022 Approving Agreement to Undertake Development (Parker Cole Addition)

On February 8, 2022, the City Council approved a final plat known as the final plat of Parker Cole Addition for an area of land located in the City of Stoughton, Dane County, Wisconsin, contingent upon the satisfaction of certain conditions set forth in City Council Resolution No. R-27-2022, including the execution of a development agreement. An agreement has been drafted and is recommended for approval.

If you have any questions, please contact me.

CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Resolution by the Common Council of the City of Stoughton
Approving Agreement to Undertake Development (Parker Cole Addition)

Committee Action:	Finance Committee		
Fiscal Impact:	N/A		
File Number:	R--2022	**Date Introduced:**	April 12, 2022

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

RECITALS

On February 8, 2022, the City Council approved a final plat known as the final plat of Parker Cole Addition for an area of land located in the City of Stoughton, Dane County, Wisconsin, contingent upon the satisfaction of certain conditions set forth in City Council Resolution No. R-27-2022, including the execution of a development agreement.

The City's purposes in entering into this Agreement are, among others, to provide for the installation of improvements to serve the Plat, to require the Developer to pay the direct and indirect costs related to the required improvements, and to avoid the harmful effects of substandard subdivisions.

RESOLUTION

The Common Council of the City of Stoughton hereby approves the Agreement to Undertake Development (Parker Cole Addition), attached as Attachment A.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____
Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

Attachment A
AGREEMENT TO UNDERTAKE DEVELOPMENT

(Parker Cole Addition)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ day of _____, 2022, by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and _____ (the "Developer").

THIS SPACE RESERVED FOR RECORDING DATA

Return to:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

PIN:
See Attachment A

RECITALS

1. On February 8, 2022, the City Council approved a final plat known as the final plat of Parker Cole Addition for an area of land located in the City of Stoughton, Dane County, Wisconsin, contingent upon the satisfaction of certain conditions set forth in City Council Resolution No. R-27-2022, including the execution of a development agreement.

2. Chapter 66 of the City of Stoughton Municipal Code requires that an agreement be made for the installation of improvements needed to serve the Property.

3. The City's purposes in entering into this Agreement are, among others, to provide for the installation of required improvements, to require the Developer to pay the direct and indirect costs related to the required improvements, and to avoid the harmful effects of substandard subdivisions, including premature subdivision which leaves property underdeveloped and unproductive.

4. The City Council on _____, _____, adopted Resolution No._____ approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement.

AGREEMENT

In consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Developer and the City agree as follows:

A. **DEFINITIONS.** As used in this Agreement, the following terms, when having an initial capital letter, shall mean:

1. *Plat*. The land division plat entitled "Parker Cole Addition."

2. *Property*. The lands within the Plat.

3. *Public Improvements*. Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; storm sewer and storm water

management facilities; public streets; sidewalks; street signs; and street lamps; improvements required to connect the Property to existing public improvements, facilities or utilities, including any improvements required outside the boundaries of the Plat.

B. **PUBLIC IMPROVEMENTS.**

1. *Design of Improvements.* Developer shall prepare detailed plans and specifications of the Public Improvements for review by and subject to approval by the City Planning Director. Where standards and/or specifications have not been established by the City, all work shall be designed and constructed in accordance with established engineering practices as designated and approved by the City Planning Director. All Public Improvements shall be designed, constructed and installed in accordance with the standard specifications of the City, except as variances to or waivers of those requirements have been granted, and in accordance with plans and specifications approved by the City Planning Director.

2. *Construction of Public Improvements*. Developer shall be responsible for the construction and installation of the Public Improvements. Except as otherwise provided in this Agreement, the Public Improvements will be designed, constructed and installed at Developer's sole expense.

3. *Construction Management*. Two copies of the approved, signed and stamped plans and specifications shall be provided to the City Planning Director, and one copy shall be provided to each contractor. Only stamped and signed copies of the plans and specifications shall be used on the job site.

4. *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Public Improvements are accepted by the City, traffic controls as specified in a traffic control plan to be prepared by Developer and approved by the City Planning Director and the Wisconsin Department of Transportation. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

5. *City Approval of Starting Dates.* No land disturbances or work on the Public Improvements shall begin without the City Planning Director's approval of a starting date and schedule which shall be submitted by the Developer to the City Planning Director a minimum of 20 calendar days before work is scheduled to begin.

6. *Change to Work Order*. No change may be made to the approved plans and specifications for the Improvements without the written approval of the City Planning Director.

7. *Time of Completion*. The Public Improvements shall be substantially complete within 12 months after this Agreement is executed and the Plat is recorded. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

8. *Acceptance*. After the Public Improvements required by this Agreement have been substantially completed, and within 10 days after receiving written notice that the Developer desires the City to inspect the On-Site Public Improvements, the City Planning Director or his designee shall inspect the improvements and, if acceptable to the City Planning Director, the City Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City. Before obtaining certification of any such improvements, Developer shall: (1) present to the City valid lien waivers from all contractors and subcontractors providing materials or performing work on the improvements for which certification is sought; and (2) provide as-built drawings to the City Planning Director consisting of four hard copies on paper, one electronic copy as a pdf file, and in digital format

that is acceptable to the City (See Attachment C). Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and furthermore until all affidavits and lien waivers are received by the City demonstrating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement. Water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, Developer shall clean the storm sewers in accordance with the directives of the City Planning Director.

Stormwater management ponds and detention improvements shall not be accepted by the City until the construction of buildings has been completed on 80 percent of the lots within the Plat. Developer shall provide as-built certification of each stormwater management improvement prior to acceptance by the City. As-built certification shall include a set of drawings, stamped by a professional engineer, comparing the approved stormwater management plan with what was constructed.

The Developer agrees to provide for maintenance and repair of all required Public Improvements until such Public Improvements are formally accepted by the City. Developer shall be responsible for locating sanitary sewer, water and stormwater infrastructure, in response to utility locate (digger's hotline) requests, until such improvements have been accepted by the City.

The City will provide timely notice to Developer whenever inspection reveals that an improvement does not conform to the required standards and specifications or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure the defect. If Developer is unable to cure the defect within 30 days due to an event or circumstance beyond the reasonable control of and without Developer's fault, neglect or negligence, the time to cure the defect shall be extended for such time as the event or circumstance preventing cure is removed.

9. *Guarantee of Public Improvements*. The Developer agrees to guarantee and warrant all work performed on the Public Improvements under this Agreement for a period of one year from the date of final acceptance by the City of the work completed by the Developer against defects in workmanship or materials. If any defect appears during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at its own expense, including total and complete restoration of any disturbed surface or component of the improvements on lands where the repairs or replacement is required, to the standard provided in the approved plans and specifications. All guarantees or warranties for materials or workmanship of suppliers and third-party contractors for work performed under this Agreement which extend beyond the above guarantee period shall be assigned by Developer to the City.

10. *Surety*. Before a starting date will be approved, the Developer shall provide the City with a letter of credit or performance bond in the amount of 120 percent of the estimated cost of constructing the public improvements pursuant to this Agreement. If a letter of credit is provided, it shall have an

initial term of not less than 12 months. Any letter of credit or performance bond shall be acceptable to the City Attorney, in both form and substance.

(a) Letter of Credit. If a letter of credit is provided, it shall be issued by an entity that is acceptable to the City, or that has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's. The Letter of Credit shall be payable to the City and shall be conditioned upon and guarantee to the City the performance by the Developer of Developer's obligations to construct and guarantee the Public Improvements under this Agreement. The letter of credit shall be approved as to form by the City Attorney. The letter of credit may be reduced from time to time in amounts equal to the value of the Public Improvements that have been installed, completed and accepted by the City. In no event shall the letter of credit be reduced below the aggregate of: 120 percent of the estimated cost of the Public Improvements not yet installed or accepted, plus 25 percent of the cost of Public Improvements that have been accepted.

(b) Payment under Letter of Credit. The Letter of Credit shall be payable to the City at any time upon presentation of (1) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; (2) a written statement by a City official that the City is entitled to draw on the Letter of Credit; and (3) the original Letter of Credit.

(c) Accounting. Developer may inspect the City records of payments made using the Letter of Credit upon request at reasonable times. However, the City retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with the Public Improvements. In the absence of fraud or palpable error on the part of the City, the City's decisions on all such matters shall control and shall be final.

(d) Term, Renewal and Extension. The term of the initial letter of credit shall be not shorter than 12 months. The initial and each renewed or replacement letter of credit shall by express language be automatically extended without amendment for a period of one year from its expiration date, unless at least 45 days before such expiration date the issuer of the letter of credit notifies the City in writing that the letter of credit will not be extended for an additional one year period, or notifies the City in writing that the letter of credit will be renewed or replaced by a letter of credit in an amount that is less than the amount required by this Agreement, which amount shall be specified in such written notice. Upon receipt of notice that the letter of credit will not be extended for an additional one year period, or will be extended, renewed or replaced in an amount that is less than the amount required by this Agreement, the City may draw upon the letter of credit an amount sufficient to secure performance of Developer's remaining obligations.

11. *Remedies Not Exclusive*. The remedies provided by a letter of credit or performance bond are not exclusive. The City may use any other remedies available to it under this Agreement, or any remedies available in law or equity in addition to, or in lieu of, the letter of credit or performance bond provided as required by this Agreement.

C. DEVELOPER TO REIMBURSE CITY COSTS AND PAY FEES.

1. *Development Review and Public Construction Costs*. Developer shall reimburse the City for its actual cost of design, inspection, testing, construction and associated legal, engineering and other fees for the Public Improvements. The City's costs shall be determined as follows:

(a) The cost of City employees' time engaged in any way with the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the City Treasurer representing the City's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.

(b) The cost of City equipment employed.

(c) The cost of mileage reimbursed to City employees which is attributed to the Public Improvements.

(d) The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.

(e) The costs incurred by the City in connection with the review and approval of the final plat of subdivision as well as the cost for review and approval of plans and specification for public improvements, the preparation of this Agreement, and the preparation or review of other documents relating to the development of the Plat.

All consultant fees associated with the public improvements shall be paid at the invoiced amount.

Each bill of the City for payment of expenses shall be accompanied by written substantiation regarding the nature, amount and purpose of the expenditure and the basis for payment of such expenditure by the Developer. The City shall provide such additional substantiating information as may be reasonably requested by the Developer.

Bills outstanding for more than thirty (30) days shall accrue interest at the rate of 1-1/2% per month. Bills outstanding for more than ninety (90) days may be forwarded to the Developer's surety agency for payment. Amounts less than $50, may be held for billing by the City until amounts total more than $50, or until the conclusion of project activities.

2. *Impact Fees*. Developer acknowledges that each lot within the Plat shall be subject to payment of impact fees at the time a building permit is issued for the lot, including but not limited to impact fees for park land acquisition and park improvements.

3. *Delinquent Fees.* If any fees owed to the City pursuant to this Agreement become delinquent, Developer agrees that the City may refuse to issue building or occupancy permits for lots within the Plat, and may withhold or rescind any zoning approval associated with the Plat.

4. *Outstanding Charges and Assessments*. Developer shall pay all outstanding charges and assessments levied against lands within the Plat.

D. REPRESENTATIONS AND WARRANTIES.

1. *Authorization*. Developer warrants that Developer's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer, or any law, governmental regulation, court decree, or order applicable to Developer or to the Property.

2. *Title to the Property*. Developer warrants that Developer owns the Property.

E. **GENERAL CONDITIONS.**

1. *No Vested Rights Granted*. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Property shall inure to Developer by virtue of this Agreement. Nor does the City warrant that Developer is entitled to any City approvals required for development of the Property or construction of the Project as a result of this Agreement.

2. *Binding Effect / Assignment*. The obligations of Developer and the City under this Agreement shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, and any unapproved assignment is void.

3. *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 signed by both the City and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

4. *Amendment/Modification*. This Agreement may be amended or modified only by a written amendment approved and executed by the City and Developer.

5. *Remedies upon Default*. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. Remedies include, but are not limited to, drawing on the letters of credit, and charging Developer, on all amounts due to the City not paid by the due date, interest at the rate of 12 percent per annum until the date the unpaid amounts are paid in full.

6. *Entire Agreement/Appendices Incorporated*. This written Agreement shall constitute the entire Agreement between Developer and the City as of the date hereof.

7. *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 invalid part, term, or provision was never part of the Agreement.

8. *Immunity*. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

9. *Indemnification*. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and its officers, agents and employees, including but not limited to the City's contracted engineering consultants, from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained

by any persons or property on account of or arising out of the construction of the Project occasioned wholly or in part by any act or omission on Developer's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time occurring on, at or in the Property, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City. The City shall be entitled to appear in any proceedings to defend itself against such claims, and all costs, expenses and reasonable attorney fees incurred by the City in connection with such defense shall be paid by Developer to the City. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event the City elects to exercise any of the remedies as provided under this Agreement following default hereunder. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment B.

10. *Notice*. Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail as follows:

To Developer:	R.O.B. Real Estate Brokerage and Builders, LLC _____ _____
Developer's Attorney	_____ _____ _____
To the City:	Finance Director City of Stoughton 207 S. Forest Street Stoughton, WI 53589
City Attorney	Matthew P. Dregne 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784

11. *Recordation*. The City may record a copy of this Agreement, or a memorandum thereof, in the office of the Dane County Register of Deeds, against the lots in the Plat.

12. *Personal Jurisdiction and Venue*. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Dane County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

13. *Ratification*. Developer hereby approves and ratifies all actions taken to date by the City, its officers, employees and agents in connection with the District, and in connection with the subdivision, zoning and other approvals relating to the Property.

14. *Compliance with Laws*. Developer shall comply with all federal, state and local laws with respect to the Plat and the Property, including but not limited to laws governing building and construction,

the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

15. *No Partnership*. The City does not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

16. *Good Faith*. Both parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

17. *Applicable Law*. This Agreement shall be construed under the laws of the state of Wisconsin.

18. *No Private Right or Cause of Action*. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

19. *Effective Date*. This Agreement shall be effective as of the date and year first written above.

20. *Term*. This Agreement shall continue in full force and effect until such time as Developer's obligations under this Agreement have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

21. *Construction of Agreement*. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY:
CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

DEVELOPER:
R.O.B Real Estate Brokerage and Builders LLC

By_____

Approved as to Form:
Stafford Rosenbaum, LLP

_____
By Matthew P. Dregne, City Attorney

Attachments:

A	Parcel ID Numbers
B	City Contract Insurance Requirements
C	Stoughton Utilities/City of Stoughton GIS Standard Specification

<u>Attachment A</u>

PARCEL ID NUMBERS

281/0511-083-9560-3

Attachment B

CITY CONTRACT INSURANCE REQUIREMENTS

(To Be Inserted)

Attachment C

Stoughton Utilities / City of Stoughton
GIS Standard Specification

1. GENERAL

This standard specification sets out the standard requirements for GIS deliverables provided to Stoughton Utilities (sanitary sewer and water) and the City of Stoughton (storm sewer). This standard is meant to supplement, and not replace any requirements that may be specified in individual project contracts.

Please contact Stoughton Utilities if conflicts arise in understanding or meeting these standards.

2. COORDINATE PROJECTS AND DATUMS

Projected Coordinate System:	NAD_1983_HARN_WISCRS_Dane_County_Feet
Projection:	Lambert_Conformal_Conic
Linear Unit:	Foot_US
Geographic Coordinate System:	GCS_North_American_1983_HARN
Datum:	D_North_American_1983_HARN
Prime Meridian:	Greenwich
Angular Unit:	Degree

3. DATA ACCURACY

It is expected that all feature points are placed using GPS coordinates. All data deliverables shall be accompanied by a reported data accuracy value. Accuracies shall be defined in feet, and satisfy a 95% confidence level. A minimum of three preexisting utility infrastructure points that were not altered as part of the project shall be included as accuracy reference points.

4. DELIVERABLES

Unless otherwise specified, all data shall be provided in an ESRI based formats

Refer to the online help site for ESRI based formats and resources. https://desktop.arcgis.com/en/arcmap

Accepted formats include:

- ESRI Geodatabase feature class types (file or personal Geodatabase accepted)
- Shapefile (.shp, .shx, .sbn, .sbx, .prj, .dbf)

Data files shall be accompanied with their relevant symbology layer (.lyr) files. When requested, MXD Map documents shall be delivered as a package with all dataset links intact.

5. ATTRIBUTE DATA

All features shall include correct attribute data records. See Exhibit A for minimum attribute data expectations.

EXHIBIT A- Minimum Attribute Expectations

WATER

Curb Stop Valves
- Date Installed
- Diameter
- Type

Hydrants
- Date Installed
- Main Size
- Manufacturer

Lateral Lines
- Date Installed
- Diameter
- Length
- Line Type *(Commercial, Domestic, Fire)*
- Material

Mains
- Date Installed
- Diameter
- Length
- Material
- Type *(Distribution, Hydrant)*

System Valves
- Class *(Distribution, Service, Hydrant)*
- Date Installed
- Diameter
- Manufacturer

SANITARY SEWER

Lateral Lines
- Date Installed
- Diameter
- Material

Mains
- Date Installed
- Diameter
- Downstream Elevation
- Length
- Material
- Shape
- Slope
- Street Name
- Type *(Gravity, Force)*
- Upstream Elevation

Manholes
- Cover Type
- Date Installed
- Diameter
- Invert Elevation(s)
- Material
- Rim Elevation

STORM SEWER

Pipes
- Date Installed
- Diameter
- Downstream Elevation
- Length
- Material
- Shape
- Slope
- Street Name
- Type *(Gravity, Force)*
- Upstream Elevation

Structures
- Cover Type
- Date Installed
- Diameter
- Invert Elevation(s)
- Material
- Rim Elevation