CITY OF STOUGHTON
FINANCE DEPARTMENT
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Date: September 23, 2021

To: Finance Committee

From: Jamin Friedl

Subject: NAFA TIF Guarantee

The City of Stoughton has an Agreement to Undertake Development ("Agreement") with North American Fur Auctions, Inc. ("NAFA"), which allows the City to recover guaranteed amounts if NAFA does not meet its obligations outlined in the Agreement. The Agreement guarantees an assessed value of $3,500,000 as of 1/1/20 and that amount increases to $5,000,000 effective 1/1/21. The current assessed value of the property is $1,078,600 and NAFA is now in default as it relates to the guaranteed value as of 1/1/20 in the amount of $49,782. In addition, the amount to be invoiced in 2022 based on the 1/1/21 assessed value requirement is anticipated to approach $80,000.

During 2020, NAFA sought protection under the Canadian Companies Creditors Arrangement Act ("CCAA"). The City's law firm conducted a search of Canadian firms more familiar with the protections provided under the CCAA to assist the City in determining whether or not it could continue to bill NAFA under the Agreement. On February 9, 2021, the City Council agreed to engage the Canadian firm, Cassels, Brock and Blackwell to assist the City with determining if there is any legal impediment, by virtue of the protections provided under the CCAA, to sending NAFA an invoice for payment of the guaranteed amounts that will come due in 2021.

Cassels, Brock and Blackwell confirmed there is a Canadian Court Order (similar to a stay in a bankruptcy case) that restricts what creditors can to do collect pre-filing claims. However, in this particular instance the City wanted to invoice NAFA for its on-going financial obligation to the City, and was not seeking to collect on a pre-filing claim. As a result, the court order did not prevent the City from sending an invoice and requesting payment of the amount due in 2021. Cassels, Brock and Blackwell informed City staff that if NAFA were to default on the amounts owed in 2021, there would be a stay in effect in the Canadian proceeding. However, if NAFA has not yet sought US recognition of the Canadian reorganization proceedings the City can file suit against NAFA in a US court to collect the amount due. The City would be implicitly breaching the

Canadian court order, but because the City has no operations in Canada, there would be no adverse consequences for the City.

Following conversations with Attorney Dregne it was determined that the City's best course of action is as follows. Verify that NAFA has not sought US recognition of the Canadian reorganization proceedings, and if NAFA has not done so, the City could commence a lawsuit in Dane County Circuit Court, in an effort to obtain a judgement against NAFA for breach of contract. If the City is successful in obtaining a judgment against NAFA that does not mean the City would be successful in collecting on the judgment. In the simplest terms this means that a docket would be created and a lien would be placed on any property NAFA owns in Dane County. If NAFA continues to liquidate the property it owns in Dane County, the City will need work through this process as quickly as possible. Furthermore, if the City is successful in obtaining a judgment on the amount currently owed, the same process will need to be followed each subsequent year that NAFA falls into default as it relates to the Agreement.

Attorney Dregne believes a filing in Dane County Circuit Court will cost the City approximately $5,000. However, if NAFA challenges the claim, the decision to continue moving forward will need to be revisited by the City Council at a later date. At this point we are asking whether or not the Finance Committee would like to move forward with verifying that NAFA has not sought US recognition of the Canadian reorganization proceedings, and if NAFA has not done so, commencing a lawsuit in Dane County Circuit Court, in an effort to obtain a judgement against NAFA for breach of contract.

Respectfully,

Jamin Friedl