CITY OF STOUGHTON, 207 S. Forrest Street, Stoughton, WI 53589

RESOLUTION OF THE FINANCE COMMITTEE	
Approving the Agreement to Undertake Development by and among the City of Stoughton, the City of Stoughton Redevelopment Authority and Stoughton Riverfront Development, LLC. Committee Action: Redevelopment Authority recommended approval – 6-0 on 8/19/21 Finance Committee recommended approval – 5-0 on 8/24/21 and amended version _-_ on 9/14/21 Fiscal Impact: Cost of Remediation and Public Improvements – Offset by Actual Tax Increment	
File Number: R- 139-2021	**Date Introduced:** September 14, 2021

WHEREAS, Stoughton Riverfront Development, LLC ("Developer") proposes to purchase the real property (the "Phase 1 Land") as described in the Agreement to Undertake Development ("Agreement"), and intends to undertake multi-family residential development on the Phase 1 Land, and construct certain public improvements needed to serve the Phase 1 Land, in accordance with Planned Development District zoning to be approved by the City; and

WHEREAS, Developer is unable to develop the Phase 1 Land and construct the necessary public improvements without financial assistance; and

WHEREAS, the City has created Tax Increment District No. 8, to facilitate redevelopment of the Phase 1 Land; and

WHEREAS, the City finds and determines that unless the City provides the tax increment development assistance described in this Agreement, Developer will not develop the Phase 1 Land; and

WHEREAS, the City finds that the development of the Phase 1 Land and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents, by expanding the tax base, remediating environmental contamination and redeveloping the Phase 1 Land, creating needed housing, thereby serving public purposes in accordance with state and local law.

NOW, THEREFORE, BE IT RESOLVED the City Council approves this Agreement and authorizes the City, through its duly authorized officials and agents, to execute this Agreement.

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

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

_____

Tim Swadley, Mayor Date

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

AGREEMENT TO UNDERTAKE DEVELOPMENT

(Riverfront Redevelopment – Phase 1)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ day of _____, 2021, by and among the City of Stoughton, a Wisconsin municipal corporation (the "City"), the City of Stoughton Redevelopment Authority, a body corporate and politic (the "RDA)") and Stoughton Riverfront Development, LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

1. The City, the RDA and Developer entered into a Real Estate Purchase and Sale Agreement effective _____ (the "Purchase Agreement").

2. Developer proposes to purchase the real property described as Lot 1 on Attachment A attached hereto (the "Phase 1 Land"), and intends to undertake multi-family residential development on the Phase 1 Land, and construct certain public improvements needed to serve the Phase 1 Land, in accordance with Planned Development District zoning to be approved by the City.

3. The Purchase Agreement and Chapter 66 of the City of Stoughton Municipal Code require that an agreement be made for the installation of improvements needed to serve the Phase 1 Land.

4. Developer is unable to develop the Phase 1 Land and construct the necessary public improvements without financial assistance.

5. The City has created Tax Increment District No. 8, to facilitate redevelopment of the Phase 1 Land.

7. The City finds and determines that unless the City provides the tax increment development assistance described in this Agreement, Developer will not develop the Phase 1 Land.

8. The City finds that the development of the Phase 1 Land and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents, by expanding the tax base, remediating environmental contamination and redeveloping the Phase 1 Land, creating needed housing, thereby serving public purposes in accordance with state and local law.

9. The City Council on _____, adopted Resolution No. R-____-2021 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, the RDA 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. Actual Tax Increment. Eighty percent of the tax increment actually received by the City from taxes levied on the Phase 1 Land in a given year, as reasonably calculated by the City. As of the effective date of this Agreement, the Department of Revenue calculates the combined tax increment generated by all tax increment districts in the City, using a methodology reflected on Wisconsin Department of Revenue form PC-202. The parties agree that the City may reasonably calculate the tax increment actually received by the City by multiplying the total "interim rate" from form PC-202 for the applicable year by the Value Increment for that year. The total interim rate is obtained by dividing the combined levies from each taxing jurisdiction (the sum of the apportioned levies in column A on form PC-202) by the total equalized value of all taxable property in the City, excluding the value increment of all tax increment districts in the City (the amount used in column B on form PC-202). If the Wisconsin Department of Revenue discontinues or modifies form PC-202, or otherwise modifies the manner in which it calculates tax increment, the City may calculate tax increment in such other reasonable manner as it determines appropriate. The City may make such adjustments in calculating tax increment needed so that, if tax increment is so calculated for all parcels in the District, the sum does not exceed the total tax increment received by the City from taxes levied on all property in the District.

Deleted: The

2. Affiliate. In relation to Developer, any other entity which: (i) directly or indirectly controls, is controlled by, or under common control with, the Developer; (ii) directly or indirectly owns or holds more than fifty percent (50%) of the equity interests in the Developer; or (iii) directly or indirectly owns or holds more than fifty percent (50%) of the voting stock or other equity interest held by the Developer. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of the Developer, whether through the ownership of voting securities, by contract or otherwise. Base Value. The parties agree that the Base Value is zero.

3. Public Improvements. The following public improvements to be constructed for the benefit of the District in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director:

(a) *Utility Relocation*:

(1) Sewer main to serve the Project with a stub to facilitate connection to future development adjacent to the Phase 1 Land.

(2) Water main to loop between Fourth Street and South Street through Seventh Street.

(3) Storm sewer to convey water from Fourth Street and from South Street to the Yahara River.

(4) Storm sewer within the River Street right-of-way to convey storm water from the Project to stormwater management facilities.

(b) *Future River Street Parallel to the Yahara River*: Public street, curb, gutter, sidewalk, street lighting, street trees and sanitary sewer, water, and storm sewer utility infrastructure and associated site grading work located between the East right-of-way line of existing Fourth Street and a point approximately 420 feet East of the East right-of-way line of existing Fourth Street.

(c) *Fourth Street*: Curb, gutter, sidewalk, and street trees within the Fourth Street right-of-way adjacent to the Riverfront Site.

(d) *Stormwater management*: Stormwater management facilities to be constructed on the lands described as Outlot 1 in Attachment A, to serve the development of the Phase 1 land, including a regional infiltration basin and a regional water quality basin, in accordance with site grading, erosion control and stormwater management plans to be prepared by Developer and subject to approval by the City.

(e) *Additional public improvements*: Any public improvements necessary to serve the Project as reasonably determined by the City during the course of reviewing plans for the Project or the Public Improvements.

4. District. Tax Increment District No. 8.

5. Existing Contamination. Environmental contamination located on the Phase 1 Land and elsewhere within the Riverfront Site, as of the date the Phase 1 Land is conveyed to Developer, including without limitation, the contaminants described in the open DNR files identified as BRRTS number 02-13-583169, 02-13-554724, and 02-13-585835; closed DNR files identified as BRRTS number 02-13-579312, 02-13-258425; and general property DNR file identified as BRRTS number 07-13-563581.

6. Materials Management Plan. A plan to be approved by the Wisconsin Department of Natural Resources for managing the Existing Contamination during construction of the Project and the Public Improvements.

7. Remedial Action Plans. Plans to be approved by the Wisconsin Department of Natural Resources for remediating Existing Contamination within Area 1, Area 2, Area 3, Area 4 and Area 5, as those areas are generally depicted on Attachment E.

8. Project. The construction of two, multi-family residential buildings on the Phase 1 Land in accordance with Planned Development District zoning to be approved by the City.

9. Phase 1 Land. The land described as Lot 1 in Attachment A.

10. Riverfront Site. An approximately 10.9-acre tract of land located in the City of Stoughton, Dane County, Wisconsin, bounded on the west by Fourth Street, on the east by a line extending generally south from Seventh Street, on the north by South Street and on the south by the Yahara River.

11. Value Increment. The fair market value of the Phase 1 Land in a given year, as shown on the real property tax bill for the Phase 1 Land for that year, minus the Base Value.

B. **DEVELOPER OBLIGATIONS.**

1. Construction of Public Improvements and Remediation of Environmental Contamination.

(a) *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.

(b) *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.

(c) *Remediation of Environmental Contamination*.

(1) Developer shall comply with the Materials Management Plan during the course of constructing the Project and the Public Improvements.

(2) Developer shall be responsible for remediation of the Existing Contamination in accordance with the Remedial Action Plans, through case closure by the Wisconsin Department of Natural Resources.

(3) Developer shall be responsible for any continuing obligations relating to the Phase 1 Land, imposed in a closure approval letter, at Developer's cost. The City shall be responsible for any continuing obligations relating to lands other than the Phase 1 Land, imposed in a closure approval letter, at the City's cost.

(d) *Public Bidding of Public Improvements and Remediation of Environmental Contamination*. Developer shall publicly advertise, bid and contract for the construction of the Public Improvements and the remediation of the Existing Contamination pursuant to the Remedial Action Plans, in accordance with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, under the supervision of the City Planning Director and City Attorney. Statutory bid bonds, performance bonds and payment bonds shall be required for all Public Improvements and for the remediation of Existing Contamination, in a form, and from sureties, approved by the City, and shall be issued for the express benefit of Developer and the City. Developer shall prepare all public bidding documents, contracts and bonds, subject to review and approval by the City Planning Director and the City Attorney. Construction contracts shall expressly grant the City the same rights to enforce the contract against contractors and sureties as Developer. The bid opening and bid evaluation shall be conducted jointly by the Developer and the City. All contracts for construction of the Public Improvements and the remediation of Existing Contamination shall be awarded by Developer to the lowest responsible bidder. In the event of a disagreement between the City and Developer regarding which bid is the lowest responsible bid, the City's determination shall be final. In the case of an asserted mistake, omission or error in a bid, the parties shall follow the requirements of Wisconsin law, including Wis. Stat. § 66.0901(5). In the event of a disagreement regarding whether to allow correction or withdrawal of a bid, the City's determination shall be final. Once a contract has been awarded pursuant to this section, no change order that increases the contract price for the work may be approved without the City's prior written consent.

(e) *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.

(f) *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. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

(g) *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.

(h) *Change to Work Order*. All change orders for the Public Improvements and for the remediation of Existing Contamination shall be reviewed and approved by Developer and the City Planning Director. Except as otherwise provided in this Agreement, or subsequently agreed to in writing by the parties, the City shall not be required to reimburse

Developer for costs of any change orders relating to the Public Improvements or the remediation of Existing Contamination.

(i) *Time of Completion*. The Public Improvements shall be substantially complete within 18 months after all conditions precedent in Section D have been satisfied, or before the time the Project is completed, whichever is sooner. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

(j) *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 one electronic copy in a digital format that is acceptable to the City. 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 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.

The Developer agrees to provide for maintenance and repair of all required Public Improvements until such Public Improvements are formally 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.

(k) *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.

(l) *Surety*. In addition to the statutory performance and payment bonds required in section B.1 (d), Developer shall provide to the City, by not later than the closing on the conveyance of the Phase 1 Land to Developer, a letter of credit or performance bond in the amount of 125 percent of the estimated cost of constructing the Public Improvements. Any letter of credit or performance bond shall be acceptable to the City, in both form and substance. The following provisions will apply if a letter of credit is provided:

(1) 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.

(2) 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.

(3) Notice of Expiration. 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 up to the letter of credit amount required by this Agreement.

(4) Remedies Not Exclusive. The remedies provided in this Section are not exclusive. The City may use any other remedies available to it under this Agreement, any performance or payment bonds, or any remedies available in law or equity in addition to, or in lieu of, the remedies provided in this Section.

2. Complete the Project. Developer must complete the Project.

3. Park Land and Park Improvement Impact Fees. Developer acknowledges that as a condition of receiving building permits for the Project, Developer will be required to pay impact fees to the City for the acquisition of parkland and for the improvement of parkland, pursuant to Chapter 67 of the City of Stoughton Code of Ordinances.

C. **CITY OBLIGATIONS.**

1. Reimbursement to Developer for Cost of Material Management and Environmental Remediation.

(a) *WEDC Brownfields Grant*. Pursuant to the Purchase Agreement, Developer is responsible to prepare and submit an application to the Wisconsin Economic Development Corporation ("WEDC") Brownfields Grant Program seeking a grant ("Brownfield Grant") to pay eligible costs that will be incurred in managing materials and remediating the Existing Contamination. Developer, the RDA and the City shall cooperate with one another in pursuing the WEDC Brownfield Grant and in seeking out and maximizing any other potential grant opportunities to address the Existing Contamination.

(b) *City Payment of Reimbursable Remediation Costs.* For purposes of this Section C. 1., "Reimbursable Remediation Costs" means the costs reasonably incurred by Developer pursuant to the contract awarded under Section B.1(d) to comply with the Materials Management Plan and remediate Existing Contamination, and to obtain Case Closure from the Wisconsin Department of Natural Resources, to the extent those costs are not covered by the Brownfield Grant or any other grants that may be awarded for managing materials or remediation of the Existing Conditions. The City shall be responsible to pay Reimbursable Remediation Costs in accordance with this Section C.1.

(c) *Request for Payment:* As work on the Project and Public Improvements progresses, Developer may make requests to the City for payment of Reimbursable Remediation Costs not more than once per month. Developer's application for reimbursement shall be submitted to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work for which payment is requested, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested. Within forty-five days after submittal of a complete application to

the City Planning Director demonstrating entitlement to reimbursement under this Section, and subject to approval by the City Planning Director that the payment request is in conformity with the provisions of this Agreement, the City shall make its reimbursement payment to the contractors, subcontractors and material suppliers for whom payment is requested.

2. Municipal Revenue Obligation for Public Improvement Costs. Following the completion and City acceptance of the Public Improvements, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation in the amount of the actual cost of constructing the Public Improvements pursuant to the contract awarded under Section B.1(d) of this Agreement. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, together with a certification by Developer and Developer's engineer that the request for issuance of the Municipal Revenue Obligation is true and correct; and (2) documentation demonstrating the interest rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements. Within forty-five days after submittal of a complete written request for issuance of the Municipal Revenue Obligation with the required certification and documentation, the City shall issue a Municipal Revenue Obligation to Developer, in the principal amount of the actual cost of constructing the Public Improvements so demonstrated, and in the form attached hereto as Attachment C, under the following terms and conditions:

(a) The Municipal Revenue Obligation shall bear interest at the lesser of five percent per annum or the rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements.

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(b) Any payment on the Municipal Revenue Obligation which is due on any Payment Date shall be payable solely from and only to the extent that the City has received as of such Payment Date Actual Tax Increment, and such Actual Tax Increment has been appropriated by the Common Council to payment of the Municipal Revenue Obligation.

(c) For purposes of the Municipal Revenue Obligation, a "Payment Date" shall mean each of the Scheduled Payment Dates set forth on a schedule to be prepared by the City and attached to the Municipal Revenue Obligation when issued. The scheduled payment dates shall be prepared such that the payments on the Municipal Revenue Obligation are amortized over fifteen years. Notwithstanding the foregoing, the City may prepare the schedule in a manner that reduces payments to the extent reasonably necessary to avoid projected deficits in the District fund balance, may use negative amortization to avoid such deficits, and may extend the payments beyond 15 years. When projecting City debt service payments needed to fund District obligations, for purposes of preparing the schedule, the City shall consider only District obligations incurred before the date of this Agreement, obligations incurred by the City pursuant to this Agreement, and additional obligations incurred to fund those projects described in Attachment F. On each of the Payment Dates, the City shall pay to Developer the Actual Tax Increment, up to the Scheduled Payment Amount shown on the schedule attached to the Municipal Revenue Obligation, together with such additional amounts, if any, deferred from

Deleted: the remaining number of years that tax increment generated by the District may lawfully be allocated to make payments on the Municipal Revenue Obligation.

prior years as may be payable on the Payment Date as provided under the terms of the Municipal Revenue Obligation, that has been appropriated for that purpose by the Common Council in accordance with the requirements for revenue obligations.

(d) The City covenants and agrees that Actual Tax Increment held by the City as of a given Payment Date shall not be appropriated for any other use, if not appropriated for the Municipal Revenue Obligation due as of such Payment Date, until the City has paid the Municipal Revenue Obligation payment due on the Payment Date in that year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date), or until said Municipal Revenue Obligation has been paid. The District shall not be terminated until the Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever first occurs.

D. **CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.**

All of the following must occur before either party's obligations under this Agreement shall become effective.

1. The City and Developer must approve and execute this Agreement.

2. Developer must acquire fee simple title to the Phase 1 Land in accordance with the Purchase Agreement.

3. Developer must deliver to the City the letter of credit required by Section B.1.(l)(1) of this Agreement.

If the events described in this Section D are not satisfied by February 28, 2022, then this Agreement shall be null and void.

E. **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.

F. **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 Project 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 grantors, successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, except that Developer may assign its interest in this Agreement to (i) a lender in connection with the financing of the construction of the Public Improvements or the Project, (ii) an Affiliate of Developer.

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 the City, the RDA 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, the RDA 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 2 percent over the rate then payable by the City under the City Borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Purchase 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 the RDA and their officers, agents and employees 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 or the Public Improvements 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 or the Riverfront Site, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City or the RDA. The City and the RDA shall be entitled to appear in any proceedings to defend themselves against such claims, and all costs, expenses and reasonable attorney fees incurred by the City or the RDA in connection with such defense shall be paid by Developer to the City or the RDA, as the case may be. 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 or the RDA elect 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 D.

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:	Stoughton Riverfront Development, LLC 701 E. Washington Ave., Ste. 105 Madison, WI 53703 Attention: Curt Brink Telephone: 608.575.4845 Email: curtbrink@hotmail.com
Developer's Attorney:	Carlson Black O'Callaghan & Battenberg LL 222 West Washington Avenue, Suite705 Madison, WI 53703 Attn: Daniel A. O'Callaghan Telephone: 608.888.1685 Email: dan.ocallaghan@carlsonblack.com
To the City:	Jamin Friedl, Finance Director City of Stoughton 207 S. Forrest Street Stoughton, WI 53589 Telephone: 608.873.6691 Email: jFriedl@city.stoughton.wi.us

City Attorney	Stafford Rosenbaum LLP 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784 Attn: Matthew P. Dregne Telephone: 608.259-2618 Email: mdregne@staffordlaw.com

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.

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 RDA and the City, their officers, employees and agents in connection with the District, and in connection with the zoning and other approvals relating to the Phase 1 Property and the Project.

14. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Phase 1 Property, the Project, and the Public Improvements, 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 and the RDA do 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. Except as provided in Section D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Section B of this Agreement, and the City's obligations under Section C of 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_____
Timothy Swadley, Mayor

CITY OF STOUGHTON REDEVELOPMENT AUTHORITY

By_____
Dale Reeves, Chair

ATTEST:

_____
Candee Christen, City Clerk

DEVELOPER:
STOUGHTON RIVERFRONT DEVELOPMENT, LLC

By_____
Curt Brink, Manager

Provision has been made to pay the liability that will accrue under this Agreement:

Countersigned:

_____ _____
Jamin Friedl, Finance Director Date

Approved as to Form:
Stafford Rosenbaum LLP

_____
By: Matthew P. Dregne
City Attorney

Attachments:

A – Certified Survey Map
B [Intentionally Left Blank]
C Form of Municipal Revenue Obligation
D City Contract Insurance Requirements
E Phase 1 Development and Remedial Action Areas
F Additional District Obligations

ATTACHMENT A
Certified Survey Map

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN

"Received for recording this _____ day of _____, 20___, at _____ o'clock ___.M., and recorded in Volume _____ of Certified Surveys, pages _____

_____
Kristi Chlebowski, Register of Deeds

ONEIDA ENGINEERING SOLUTIONS
5100 EASTPARK BOULEVARD, SUITE 200
MADISON, WI 53718

LAND SURVEYOR CERTIFICATE

I, Francis R. Thousand, registered land surveyor, hereby certify that in full compliance with the provisions of Chapter 236, Wisconsin Statutes and the subdivision regulations of the City of Stoughton and according to the instructions and descriptions furnished to me by the owners listed hereon, I have surveyed this property and that such Certified Survey Map correctly represents all exterior boundaries and subdivision of the land surveyed and is described as:

Lots 2 through 8, 14, 15 and part of Lots 1 and 9 though 13, Block 35, Original Plat of the City of Stoughton, Parcels A, B and part of C, Certified Survey Map No. 1645, all being part of the SE 1/4 and the SW 1/4 of the NE 1/4 of Section 8, T5N, R11E, in the City of Stoughton, Dane County, Wisconsin, to-wit:

Commencing at the Northwest corner of said NE 1/4; thence S00°02'22"W, 1344.24 feet; thence S89°21'14"E, 751.39 feet to the Northwest corner of said Block 35 and the point of beginning; thence continuing along the North line of South Street, S89°21'14"E, 132.00 feet to the Northwest of Lot 13, said Block 35; thence along the west line of said Lot 13, S00°40'09"W, 132.00 feet; thence S89°21'14"E, 231.00 feet; thence N47°28'00"E, 28.81 feet; thence S00°40'09"W, 10.50 feet; thence N44°31'26"E, 80.11 feet; thence N00°40'09"E, 65.04 feet to the south line of South Street; thence along said South line, S89°21'14"E, 484.58 feet to the Northeast corner of Lot 2 of said Block 35; thence S00°49'44"W, 297.29 feet to a found survey nail; thence S89°16'17"E, 25.16 feet to a found 1" iron pipe; thence S00°49'44"W, 349.35 feet to a meander line along the Yahara River; thence along said meander line, S88°21'14"W, 116.46 feet; thence continuing along said meander line, N78°45'47"W, 277.05 feet; thence continuing along said meander line, N52°12'38"W, 221.29 feet; thence continuing along said meander line, N67°50'23"W, 166.25 feet; thence continuing along said meander line N89°27'50"W, 176.96 feet; thence continuing along said meander line N79°13'17"W 52.59 feet to the East side of Fourth Street; thence along said East side, N00°40'09"E, 397.71 feet to the point of beginning. Together with all land between the meander line and the river. This parcel contains 455370 sq. ft. 10.454 Acres to the meander line and 476000 sq. ft. 10.9 Acres to the river.

Dated this _____ day of _____, 2019.

Madison, Wisconsin _____
Francis R. Thousand
Land Surveyor # S-1363

CITY OF STOUGHTON COMMON COUNCIL RESOLUTION

"Resolved that this Certified Survey Map located in the City of Stoughton was hereby approved by resolution adopted on this _____ day of _____, 20___ and that said resolution further provided for the acceptance of those lands and rights dedicated by said Certified Survey Map to the City of Stouhtion for Public use.

Dated this _____ day of _____, 20__".

_____

Mayor, City of Stoughton

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

DATE APRIL 12, 2021
JOB # 2019046

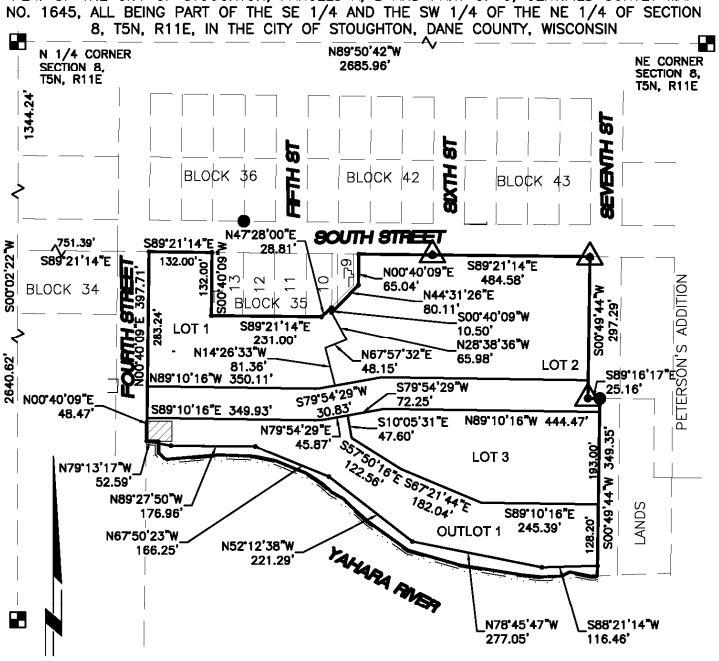
THIS INSTRUMENT WAS DRAFTED BY FRANCIS THOUSAND

SHEET 1 OF 3

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN



NOTES:
ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN COUNTY COORDINATE SYSTEM – DANE ZONE, NAD83(2011). THE NORTH LINE OF THE NE ¼ BEARS N89°50'42"W.

LEGEND
- ■ BRASS CAP IN CONCRETE FOUND
- ● IRON STAKE FOUND
- ○ 1 1/4" X 30" REBAR 4.30 LBS/FT PLACED
- △ SURVEY NAIL FOUND
- 7/8" X 24" REBAR 2.04 LBS/FT PLACED
- (263.56') RECORDED AS DATA
- 263.51' MEASURED DATA
- ▨ EXISTING BUILDING

SCALE 1" = 200'
0' 100' 200' 400'

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

DATE April 12, 2021
JOB # 2019046

THIS INSTRUMENT WAS DRAFTED BY JOHN THOUSAND

SHEET 2 OF 3

EXHIBIT A: DRAFT CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP

LOTS 2 THROUGH 8, 14, 15 AND PART OF LOTS 1 AND 9 THROUGH 13, BLOCK 25, ORIGINAL PLAT OF THE CITY OF STOUGHTON, PARCELS A, B AND PART OF C, CERTIFIED SURVEY MAP NO. 1645, ALL BEING PART OF THE SE 1/4 AND THE SW 1/4 OF THE NE 1/4 OF SECTION 8, T5N, R11E, IN THE CITY OF STOUGHTON, DANE COUNTY, WISCONSIN

OWNERS CERTIFICATE

The City of Stoughton, as owner, does hereby certify that it caused the land described on this Certified Survey Map to be surveyed, divided, mapped and dedicated as represented hereon.

In Witness whereof, said City of Stoughton, has caused these presents to be signed by _____, its _____, at Stoughton, Wisconsin, this _____ day of _____20___.

_____ _____

Authorizes Representative

STATE OF WISCONSIN)
)S.S.
COUNTY OF DANE)

Personally came before this _____ day of _____, 20___. the aboved named _____ to me known to be the person who executed the foregoing instrument and acknowledge the same.

My Commission Expires _____

_____

Notary Public

SURVEYED FOR:
CURT VAUGHN BRINK LLC
701 E WASHINGTON AVE #103
MADISON, WI 53703

DATE APRIL 12, 2021
JOB # 2019046

THIS INSTRUMENT WAS DRAFTED BY FRANCIS THOUSAND

SHEET 3 OF 3

ATTACHMENT B
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ATTACHMENT C
Form of Municipal Revenue Obligation

MUNICIPAL REVENUE OBLIGATION

CITY OF STOUGHTON
MUNICIPAL REVENUE OBLIGATION SERIES 20__
$_____

THIS MUNICIPAL REVENUE OBLIGATION (the "Obligation") is issued this _____ day of_____, 20__ by the City of Stoughton, Dane County, Wisconsin (the "City") to Stoughton Riverfront Development, LLC, a Wisconsin limited liability corporation ("Developer").

WITNESSETH:

A. The City and Developer have entered into a Tax Increment Grant Agreement dated _____ (the "Development Agreement").

B. This Obligation is issued by the City pursuant to the Development Agreement.

C. Terms that are capitalized in this Obligation that are not defined in this Obligation and that are defined in the Development Agreement shall have the meanings assigned to such terms by the Development Agreement.

D. *Promise to Pay*. The City shall pay to Developer the principal amount of _____ US Dollars ($_____), together with interest thereon at a rate of _____ percent (__ %) per annum, in Scheduled Payments in accordance with Schedule 1 attached hereto and made a part hereof, provided however that the amount of any Scheduled Payment installment shall not be in excess of the amount of Actual Tax Increment. Interest shall accrue beginning on the date on which this Obligation is issued. Any payments due on the Municipal Revenue Obligation, which are due on any Payment Date, shall be payable only to the extent the City has received Actual Tax Increment. To the extent that on any Payment Date the amount of Actual Tax Increment received by the City is less than the Scheduled Payment due on such date, such failure shall not constitute a default under this Obligation, and the amount of any deficiency in the Scheduled Payment shall be deferred and shall be paid on the next Payment Date to the extent that it does not exceed the Actual Tax Increment received by the City. Interest shall accrue only on unpaid principal, and shall not accrue on deferred interest. In no case shall the term of this Obligation and the City's obligation to make payments hereunder extend beyond the termination date of the District, (as defined in the Tax Increment Law). Nor shall the City be obligated to pay any amount not appropriated for such purpose by the City Council. This Obligation shall terminate and the City's

obligation to make any payments under this Obligation shall be discharged, and the City shall have no obligation and incur no liability to make any payments hereunder, after the termination date of the District.

E. *Limited Obligation of City*. This Obligation shall not constitute a charge against the City's general credit or taxing power. The City shall not be subject to any liability hereunder, or be deemed to have obligated itself to pay Developer any amounts from any funds to the extent that it would exceed the Actual Tax Increment, and then only to the extent and in the manner herein specified.

F. *Subject to Annual Appropriations*. Each payment under this Obligation shall be subject to annual appropriation by the City in accordance with the requirements for revenue obligations and in accordance with the Development Agreement.

G. *Prepayment Option.* To satisfy in full the City's obligations under this Obligation, the City shall have the right to prepay all or a portion of the outstanding principal balance of this Obligation at any time, at par and without penalty.

H. *Miscellaneous.* This Obligation is subject to the Tax Increment Law and to the Development Agreement.

Dated this _____ day of _____, _____.

CITY OF STOUGHTON

By _____
_____, Mayor

ATTEST:

_____
_____, City Clerk

Attachment – Schedule 1

ATTACHMENT D
City Contract Insurance Requirements

City of Stoughton
INSURANCE REQUIREMENTS

CONTRACTOR'S INSURANCE WITH BOND AND PROPERTY INSURANCE REQUIREMENTS

The Contractor shall not commence work until proof of insurance required has been provided in writing to the applicable department before the contract or purchase order is considered for approval by the City of Stoughton

It is hereby agreed and understood that the insurance required by the City of Stoughton is primary and non-contributing coverage and that any insurance or self-insurance maintained by the City of Stoughton, its officers, council members, agents, employees or authorized volunteers will not contribute to coverage of any loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

1. COMMERCIAL GENERAL LIABILITY COVERAGE

A. Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

1.	Each Occurrence limit	$1,000,000
2.	Personal and Advertising Injury limit	$1,000,000
3.	General aggregate limit (other than Products–Completed Operations) **per project**	$2,000,000
4.	Products–Completed Operations aggregate	$2,000,000
5.	Fire Damage limit — any one fire	$50,000
6.	Medical Expense limit — any one person	$5,000

7. Watercraft Liability, (Protection & Indemnity coverage)"**if**" the project work includes the use of, or operation of any watercraft, then Watercraft Liability insurance must be in force with a limit of $1,000,000 per occurrence for Bodily Injury and Property Damage.
8. Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work.

2. BUSINESS AUTOMOBILE COVERAGE

A. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of $1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1– "Any Auto" basis.

3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY-as required by Wisconsin State Statute or any Workers Compensation Statutes of a different state. Also, if applicable to the work coverage must include Maritime (Jones Act) or Longshore & Harbor Worker's Compensation Act coverage.

A. Must carry coverage for Statutory Workers Compensation and an Employers Liability with limits of:
(1) $100,000 Each Accident
(2) $500,000 Disease Policy Limit
(3) $100,000 Disease – Each Employee

B. Employer's Liability limits must be sufficient to meet umbrella liability insurance Requirements

4. **UMBRELLA LIABILITY** providing coverage at least as broad as all the underlying liability policies with a minimum limit of $2,000,000 each occurrence and $2,000,000 aggregate, and a maximum self-insured retention of $25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by the City of Stoughton. Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work.

5. **AIRCRAFT LIABILITY**, if the project work includes the use of, or operation of any aircraft or helicopter, then Aircraft Liability insurance must be in force with a limit of $5,000,000 per occurrence for Bodily Injury and Property Damage including Passenger liability and including liability for any slung cargo.

6. **UNMANNED AIRCRAFT LIABILITY** – if the project work includes the use of, or operation of any unmanned aircraft then unmanned aircraft liability insurance must be carried with a limit of $1,000,000 per occurrence for bodily injury liability, property damage liability and invasion of privacy liability.

7. **PROPERTY INSURANCE COVERAGE (BUILDERS RISK INSURANCE)** to be provided by the contractor, if the exposure exists.

A. The "property" insurance amount must be at least equal to the total value of the structure(s), plus or minus any change orders. It must also include value of Engineering or Architect fees, claims preparation costs, and owner furnished equipment.

B. Covered property must include property on the project work sites, property in transit, property stored off the project work sites, and any equipment furnished by the City of Stoughton.

C. Coverage must be on a **Replacement Cost basis,** with no co-insurance penalties.

D. The City of Stoughton, Consultants, architects, architect consultants, engineers, engineer consultants, contractors, and subcontractors must be added as named insureds to the policy.

E. Coverage must be written on a "special form" or "all risk" perils basis. Coverage to include collapse.

F. Coverage must include coverage for Water Damage (including but not limited to flood, surface water, hydrostatic pressure) and Earth movement.

G. Coverage must be included for Testing and Start up.

H. If the exposure exists, coverage must include Boiler & Machinery including mechanical or electrical breakdown coverage.

I. Coverage must include Building Ordinance or Law coverage with a limit of at least 5% of the contract amount.

J. The policy must cover/allow Partial Utilization by owner.

K. Coverage must include a "waiver of subrogation" against any named insureds or additional insureds.

L. Contractor will be responsible for all deductibles and coinsurance penalties.

8. **INSTALLATION FLOATER / CONTRACTOR'S EQUIPMENT** - The contractor is responsible for loss and coverage for these exposures. The City of Stoughton will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the contractor or its subcontractors or are to be built, installed, or erected by the contractor or its subcontractors. This includes but not limited to property owned, leased, rented, borrowed, or otherwise in the care, custody or control of the contractor or sub-contractor of any tier. See additional requirements for subcontractors below.

9. **PROFESSIONAL LIABILITY COVERAGE**-if project includes the use of engineers, architects, or other professionals the below coverage and limits apply.

A. Limits
(1) $1,000,000 each claim
(2) $1,000,000 annual aggregate
B. Must comply with claims-made requirements listed below

10. **BOND REQUIREMENTS**

A. Bid Bond. The contractor will provide to the owner a Bid Bond, which will accompany the bid for the project. The Bid Bond shall be equal to 5 percent of the contract bid.

B. Payment and Performance Bond. If awarded the contract, the contractor will provide to the owner a Payment and Performance Bond in the amount of the contract price, covering faithful performance of the contract and payment of obligations arising thereunder, as stipulated in bidding requirements, or specifically required in the contract documents on the date of the contract's execution.

C. Acceptability of Bonding Company. The Bid, Payment and Performance Bonds shall be placed with a bonding company with an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI.

INSURANCE REQUIREMENTS FOR ALL SUBCONTRACTOR(S)

All subcontractors shall be required to obtain the above coverages as applicable. This insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Contractor requirements.

APPLICABLE REQUIREMENTS AND PROVISIONS FOR LIABILITY INSURANCE OF CONTRACTORS / SUBCONTRACTORS / SUB-SUB CONTRACTORS

A. Primary and Non-contributory requirement – all insurance must be primary and non-contributory to any insurance or self-insurance carried by the City of Stoughton
B. Acceptability of Insurers - Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
C. Additional Insured Requirements – The following must be named as additional insureds on all Liability Policies for liability arising out of project work – The City of Stoughton, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 10 07 04 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 07 04 or their equivalents for a minimum of 3 years after acceptance of work. This does not apply to Workers Compensation or Professional Liability Policies.

D. Waivers of Subrogation - All contractor and subcontractor liability, workers compensation, and property policies, as required herein, must be endorsed with a waiver of subrogation in favor of the City of Stoughton, its officers, council members, agents, employees, and authorized volunteers.

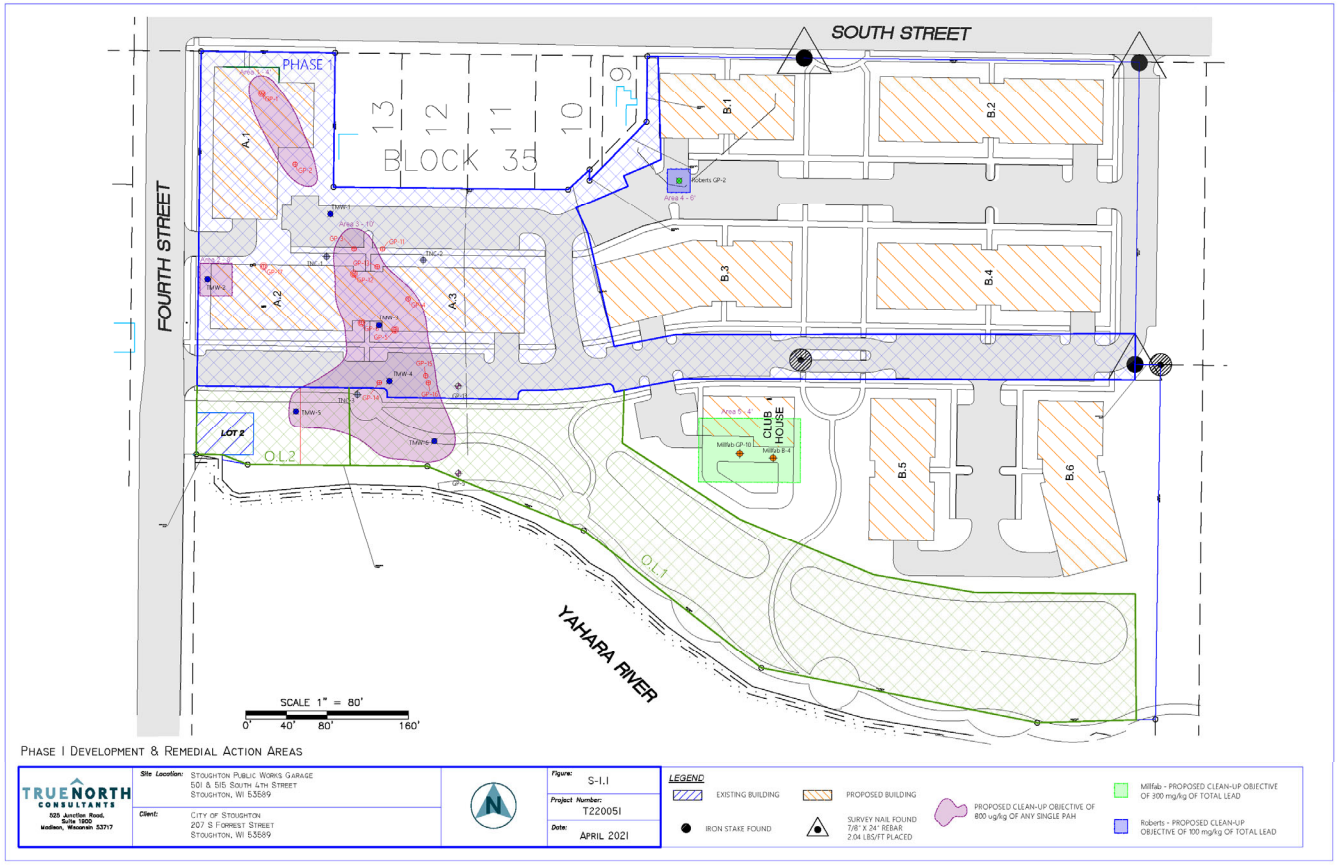
E. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention in the contractor's policy must be declared to the City of Stoughton and satisfied by the contractor.

F. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of Stoughton a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this agreement. In addition form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

G. Limits and Coverage- The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of Contractor under this Agreement.

H. Claims Made Coverage – If any coverage is maintained on a claims-made basis, the following shall apply:

    I. The retroactive date must be shown, and must be before the date of the contract or the beginning of the contract services.
    II. Insurance must be maintained and evidence of insurance must be provided for a minimum of three years after completion of the contract services.
    III. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three years after completion of the contracted services.

I. Cancellation/Non-Renewal – No policy of insurance required to be maintained hereunder shall be cancelled, non-renewed, or voided without 30 days prior written notice to the City of Stoughton, except where cancelation is due to the non-payment of premiums, in which event, 10-days prior written notice shall be provided.

ATTACHMENT E
Phase 1 Development and Remedial Action Areas