

CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589

RESOLUTION OF THE COMMOM COUNCIL

To approve the Memorandum of Agreement (MOA) Between the City of Stoughton and the Wisconsin Department of Transportation for Revisions to Access to USH 51 and STH 138 in Stoughton, Wisconsin.

File Number: R-106-2015

Date Introduced: July 14, 2015

The City Council of the City of Stoughton, Dane County, Wisconsin, resolves as follows:

RECITALS

WHEREAS, Kettle Park West LLC (the “Developer”) proposes to purchase certain real property described (the "Property"), and intends to undertake commercial development on the Property in accordance with the Planned Development District zoning of the Kettle Park West Commercial Property approved by the City in Ordinance No. 0-23-2013, as the same may be amended (the “Project”);

WHEREAS, the Project requires the Wisconsin Department of Transportation to convey to the City certain access rights to USH 51 and change access on STH 138, at the locations shown in Exhibit A, in accordance with the Memorandum of Agreement (MOA) Between the City of Stoughton and the Wisconsin Department of Transportation for Revisions to Access to USH 51 and STH 138 in Stoughton, Wisconsin, attached as Exhibit B.

RESOLUTION

1. The City endorses the intersections and access points onto USH 51 and STH 138 shown on Exhibit A.
2. The Memorandum of Agreement (MOA) Between the City of Stoughton and the Wisconsin Department of Transportation for Revisions to Access to USH 51 and STH 138 in Stoughton, Wisconsin (the “MOA”), attached as Exhibit B, is approved, and the Mayor and City Clerk are hereby authorized to execute the Agreement on the City's behalf. In addition, the appropriate City officials are hereby authorized to take such actions as may be

necessary to apply for or otherwise facilitate the issuance of the permits referred to in the MOA.

The foregoing Resolution was adopted by the Common Council of the City of Stoughton at a meeting held on July 14, 2015.

APPROVED:

Donna Olson, Mayor

ATTEST:

Lana Kropf, City Clerk

Posted _____

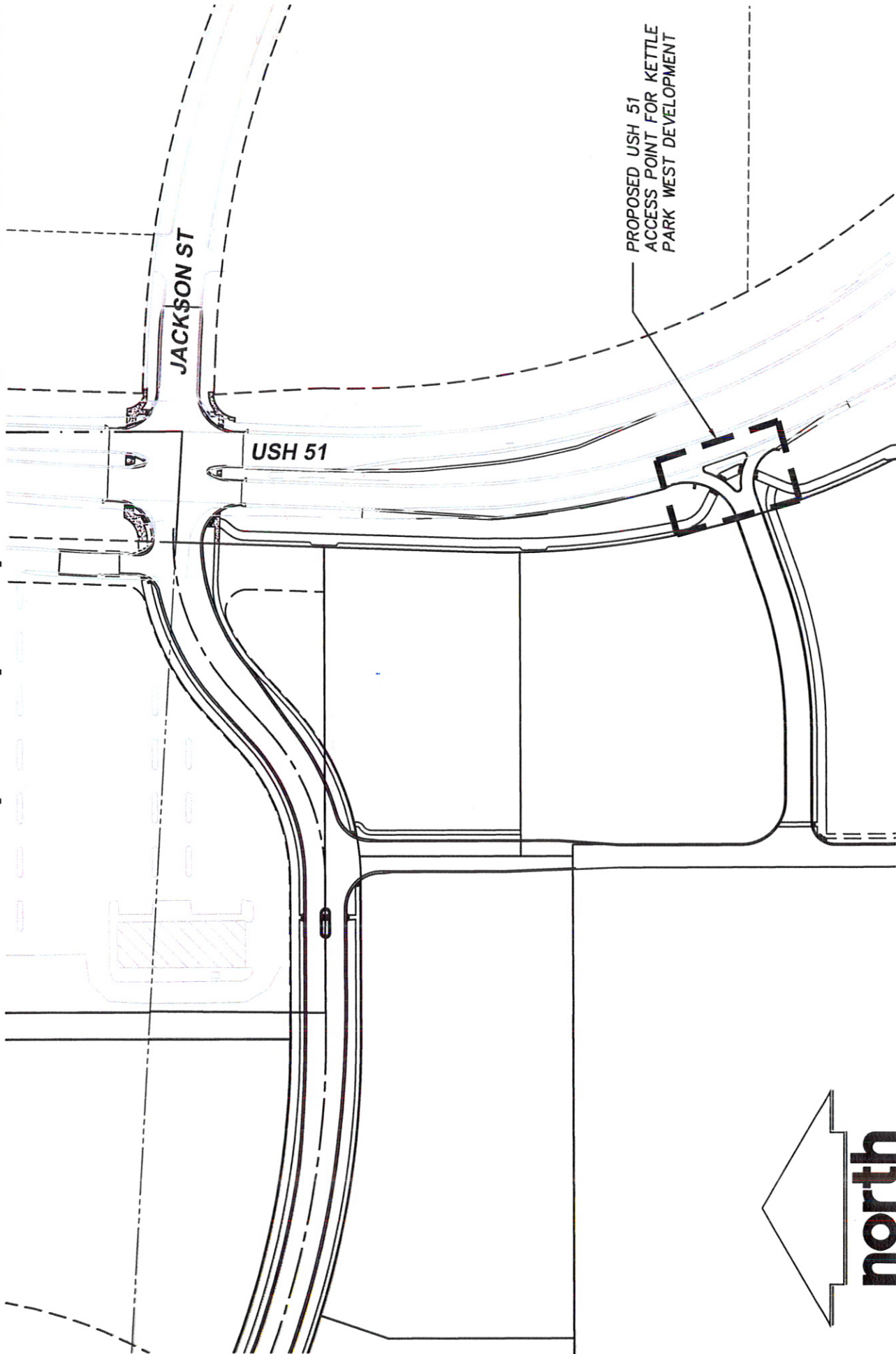
Published _____

Exhibit A

Access Location Exhibit

Exhibit B

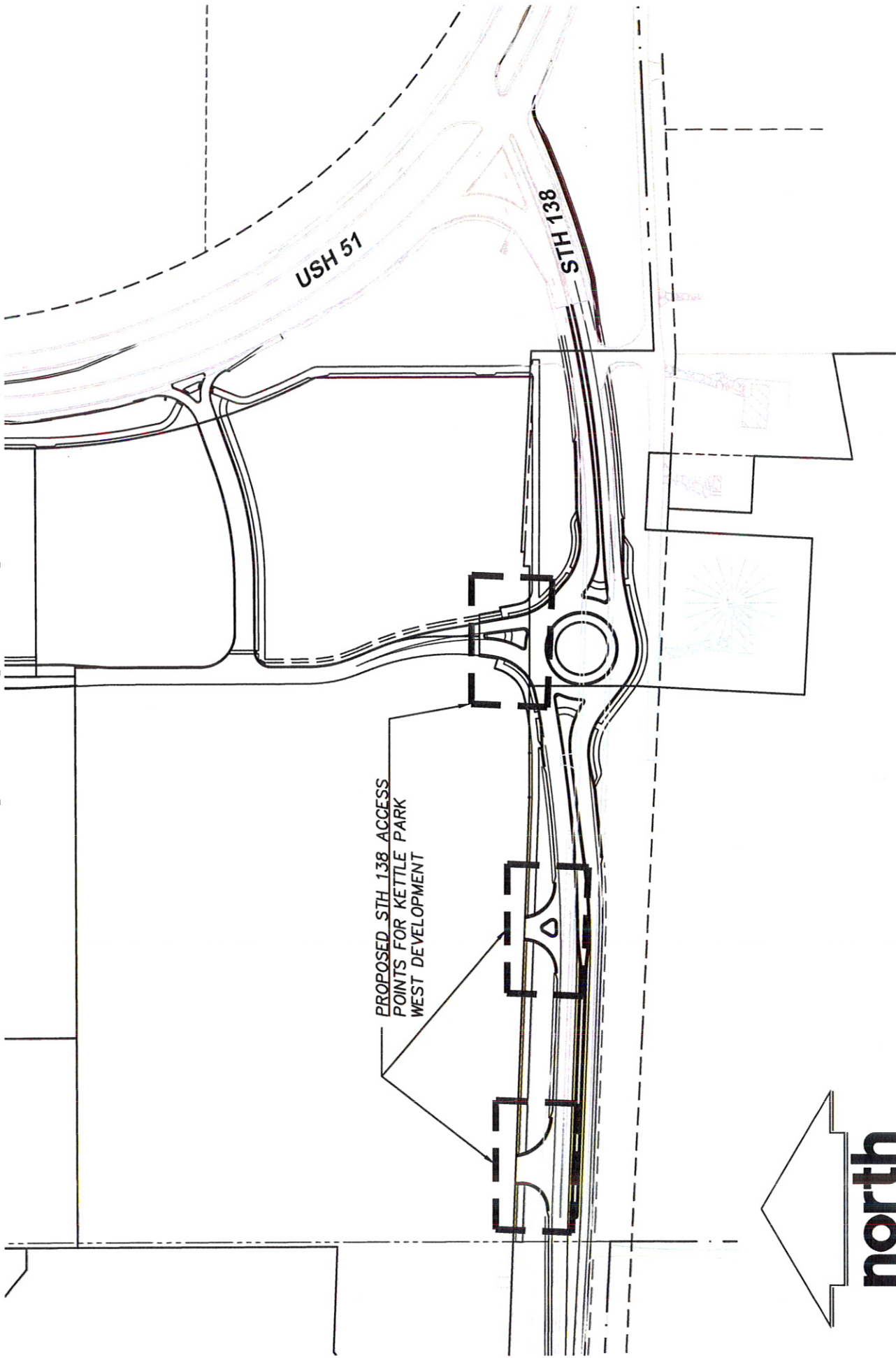
Memorandum of Agreement



<div><div><div>JSD</div><div>Professional Services, Inc.</div><div>• Engineers • Surveyors • Planners</div></div><div>MADISON REGIONAL OFFICE 161 HORIZON DRIVE, SUITE 101 KEOKUK, IOWA 52501 608.848.5060 PHONE 608.848.2255 FAX</div><div>www.isdinc.com</div></div>	PROJECT: KETTLE PARK WEST - COMMERCIAL CENTER	SHEET TITLE: USH 51 ACCESS EXHIBIT	JSD PROJECT NUMBER: 09-3951E	SHEET NUMBER: EX. A
			DRAWN BY: AJW	APPROVED:
			DATE: 04/21/2015	

Scale in Feet

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PROJECT: KETTLE PARK WEST - COMMERCIAL CENTER	SHEET TITLE: STH 138 ACCESS EXHIBIT	JSD PROJECT NUMBER: 09-3951E		SHEET NUMBER: EX. B
		DRAWN BY: AJW	APPROVED:	DATE: 04/21/2015
		JSD Professional Services, Inc. • Engineers • Surveyors • Planners MADISON REGIONAL OFFICE 161 HORIZON DRIVE, SUITE 101 VERONA, WISCONSIN 53593 608.848.5060 PHONE 608.848.2255 FAX www.jsdinc.com		

MEMORANDUM OF AGREEMENT (MOA)
Between The City of Stoughton and the Wisconsin Department of
Transportation for Revisions to Access to USH 51 and STH 138 in
Stoughton, Wisconsin

This Memorandum of Agreement (MOA) is entered into by the City of Stoughton (GRANTEE) and the Wisconsin Department of Transportation (GRANTOR), each a party, together the parties, in order to facilitate the Kettle Park West development being developed by Kettle Park West, LLC (Property Owner), located west of USH 51 and north of STH 138 in the City of Stoughton. GRANTOR currently owns and/or controls all access rights on USH 51 and STH 138. Property Owner is requesting changes to the current access pursuant to its project plan. Changes to the access on USH 51 require GRANTEE to purchase access rights from GRANTOR. Changes to access on STH 138 require Property Owner to obtain modification to the current access restriction. This MOA is entered into under Wis. Stats. §§ 84.09, 84.25, and 86.07 and is in the public interest regarding support of economic development and continued management of access resulting in safe and operational highways. This agreement states the responsibilities of GRANTOR with respect to facilitating the requested changes.

Background

GRANTEE has entered into a development agreement with Property Owner regarding development of land in the northwest quadrant of the intersection of USH 51 and STH 138 in and around Stoughton, WI. GRANTEE's agreement provides that Property Owner will design and construct all required public improvements for the development including the highway connections provided for in this MOA and GRANTEE will be responsible for the outcomes of that work and shall provide reasonable oversight and review of documents and actions as necessary to effectuate the terms of this MOA. GRANTEE requires Property Owner to present all necessary permits (from any authority) no later than the closing date identified in the development agreement. Revised and recorded CMS will be recorded at closing between GRANTEE and Property Owner.

WHEREAS, GRANTOR owns and/or controls all access rights on USH 51 and STH 138; and

WHEREAS, GRANTEE desires GRANTOR to allow access changes in order to provide additional access for Property Owner regarding its development plan; and,

WHEREAS, GRANTOR, in selling owned access, must abide by state law and evaluate the value of its property interest being sold, said interest only releasable through the sale of same; and

WHEREAS, GRANTOR, by revising access restrictions and allowing an access point under

permit on STH 138 GRANTOR must adhere to state law regarding revisions to statutory access controls, and

WHEREAS, GRANTOR, notwithstanding any conveyance or change of access rights or restrictions, must comply with its obligations regarding access to protect the safety of the travelling public and to protect the investment of GRANTOR in the highway.

NOW THEREFORE, the Parties hereby acknowledge and understand the following:

This MOA between GRANTOR and GRANTEE for access changes and improvements along USH 151 and STH 138 as more specifically described in this MOA provides continued access control along those highways which protects the public investment in the highways, enhances safety in the affected area, and maintains reasonable traffic flows through the area. Conveyance of access rights on USH 151 shall be to GRANTEE. All required permits for access onto STH 51 or STH 138 will be issued to the Property Owner (where requested and granted). GRANTEE shall facilitate all required permits and other documents and shall ensure compliance with the same via enforcement of any stated restrictions. This MOA does not bind Property Owner nor does it convey any rights to Property Owner who is not a party to this MOA. However, any permits issued to Property Owner as a result of this MOA shall be binding on Property Owner as stated in those permits and related documents pursuant to GRANTOR's authority to issue the same.

Purchase of Access on USH 51

1. GRANTOR shall quit claim to GRANTEE access rights for the location on HWY 51 which is more specifically described in Exhibit A attached hereto and incorporated herein. Conveyance will be made only upon payment by Property Owner of the full appraised value of the land rights conveyed (\$109,000). The GRANTOR shall pay all recording costs and provide one (1) copy of recorded documents to GRANTEE.
2. Property Owner may, upon conveyance as provided in paragraph 1, apply for a permit work on right of way DT1812 and driveway connection permit DT1504, pursuant to Wis. Stats. 86.07, at the location specified in the conveyance. A permit for this location shall be conditioned as a right in, right out, only permit. The permit will be effective until such time as GRANTOR determines the permitted access requires closure or alteration as otherwise determined in the sole discretion of GRANTOR.
3. GRANTOR may revise access including by revocation of any permit and/or acquisition of any land rights necessary for the management of the state highway system. Accordingly, GRANTOR may acquire the land rights conveyed in paragraph 1, or any other land rights necessary for its management obligations including but not limited to where:

- a. GRANTOR determines that any safety or operational issues identified in Paragraph 14 of this MOA for the right-in, right-out access point negatively impact the safety of the public or the operation of USH 51; or
- b. GRANTOR determines that the right-in, right-out access point must be closed to accommodate a future USH 51 improvement project; or
- c. GRANTOR determines that the GRANTEE has breached any of the terms, provisions, or conditions of the MOA.

Modification of Access Controls on STH 138

4. GRANTOR agrees to review, and approve as appropriate, a request for access control change (DT2234) on STH 138 which is a controlled access highway under Wis. Stats. 84.25, upon request of Property Owner. GRANTEE will facilitate preparation of the required DT2234 request for connection to state trunk highway required to revise access on a Wis. Stats. 84.25 access controlled highway. GRANTEE will also facilitate preparation of three (3) work on right of way permits (DT1812) for three (3) entrance locations within the STH 138 frontage of Kettle Park West development at the locations agreed to by GRANTOR and as depicted in Exhibit B which is attached hereto and incorporated herein. GRANTOR shall pay all recording costs and provide one (1) copy of recorded documents to GRANTEE.
5. GRANTOR shall condition approved driveway locations as follows:
 - a. The westernmost access point shall be restricted to right-in, right-out movements by delivery vehicles only which shall be controlled by median restrictions and enforced by GRANTEE and other authorized jurisdictional authorities;
 - b. The central access point shall be restricted to right-in, right-out movements only which shall be controlled by median restriction and enforced by GRANTEE and other authorized jurisdictional authorities;
 - c. The easternmost access point shall be a public street connection;
 - d. Property Owner shall provide interconnectivity within the Kettle Park West development through local street connections or other means acceptable to the GRANTOR in order to provide reasonable alternative access in the event any of these access points to STH 138 are required to be altered or closed by GRANTOR. In order to accommodate the CMS process in GRANTEE/Property Owner development agreement, as referenced in the Background section of this MOA, GRANTEE will authorize access based on the reviewed Certified Survey Map (CSM) establishing the required interconnectivity to STH 138 as required by GRANTOR. Authorization to revise controlled access under Wis. Stat 84.25 is revocable. In the event Property Owner revises the CSM subsequent to GRANTOR review and prior to recordation,

GRANTOR may revoke the revised access provided under the DT2234 issued as part of this MOA.

Additional Provisions

6. The parties acknowledge that GRANTOR will be constructing repairs to USH 51 during 2015. GRANTEE agrees to schedule its necessary improvements in a manner that does not interfere with or delay work being done by GRANTOR.
7. The parties agree that additional improvements may be necessary based on further development in the area. Any development of lands in the area outside of the development identified in this MOA affecting the provisions of this MOA shall require GRANTEE to coordinate with GRANTOR prior to development. The parties will cooperatively review the proposed development and associated traffic generating potential upon determination that an effect is likely.
8. The design of intersections and access points to the Kettle Park West development are being performed by Property Owner subject to review and approval by GRANTEE. All work to be performed on GRANTOR right of way requires Property Owner to obtain from GRANTOR the appropriate permit (DT 1812). No construction on highway right of way may commence prior to issuance of the appropriate permit by GRANTOR.
9. All construction within GRANTOR right-of-way shall conform to requirements set forth in the work on right-of-way and state highway connection permit approval process by GRANTOR. Notwithstanding that Property Owner will obtain all permits and perform all work, GRANTEE shall facilitate the permit process as required by GRANTOR to approve such permit.
10. Property Owner install underground equipment for traffic signal facilities at Jackson Street and USH 51 in conformance with an approved work on right-of-way permit (DT1812) issued by GRANTOR. Costs of design and construction of underground facilities shall be the responsibility of the Property Owner.
11. Installation of above ground signal facilities will be required at the time traffic meets the signal warrants at the intersection of Jackson Street and USH 51 or as otherwise approved and agreed to by GRANTOR. GRANTEE shall provide traffic projections and warrant criteria to GRANTOR for review and approval in advance of installation. The cost of the above ground signal facilities shall be borne by GRANTEE or Property Owner as GRANTEE has arranged in its development agreement with Property Owner. GRANTOR will operate and maintain the signals once installed.

12. Costs and design for additional modifications to signal facilities resulting from actions performed under this MOA, including to the intersection of Hults Road and Jackson Street shall be the responsibility of GRANTEE.
13. Determination of any future modifications for access to STH 138 and USH 51 is the sole responsibility of GRANTOR. GRANTOR agrees to discuss any future changes, modifications, or closures of those highways with the GRANTEE prior to implementation.
14. GRANTOR reserves the right to require GRANTEE to conduct periodic engineering studies no less frequent than every two years, by a qualified engineering firm chosen by GRANTEE, of any of the Kettle Park West development access points, at GRANTEE's cost, or in the event that:
 - a. Motor vehicle crashes associated with any access point meets or exceeds GRANTOR statewide crash rate for this type of roadway facility as determined by GRANTOR; or
 - b. Any access point regularly contributes to queuing of vehicles onto USH 51 or STH 138.
15. Nothing in this agreement referencing or resulting in costs that could be or will be incurred by the GRANTEE is intended to limit the GRANTEE's ability to pass those costs on to the Property Owner, or other land owners or developers through development agreements, land divisions improvements, zoning approvals, special assessment proceedings, impact fees, or other legal means.
16. Enforcement: The provisions of this MOA are intended to be enforceable between the parties. In the event of a dispute between the parties, they shall meet and attempt to resolve the dispute informally. In the event any access is created or permitted in violation of the terms of this agreement or in violation of access previously established or acquired by GRANTOR, the GRANTOR may take action to close said access. GRANTOR shall indemnify GRANTEE for all costs associated with identification and correction of access changes which violate the provisions of this MOA or the access controls of GRANTOR and the same may be set-off against local highway aids due to the City of Stoughton. This MOA shall be recorded in a manner agreed to by all parties to ensure all affected persons have full and equal access to this MOA. Nothing herein shall limit the statutory obligations and privileges of the GRANTOR.
17. This MOA is effective on the date the document is duly executed by all signatories..

THE WISCONSIN DEPARTMENT OF TRANSPORTATION

David Vieth, Southwest Region Director

Date

CITY OF STOUGHTON,

a Wisconsin municipal corporation

By: _____

Donna Olson, Mayor

Date of Execution: _____

ATTEST:

Lana C. Kropf, City Clerk

Countersigned:

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney

Resolution

List of Exhibits:

Exhibit A – USH 51 access rights conveyance and map

Exhibit B - Diagram of all access points