

PRE-ANNEXATION AGREEMENT

CITY OF STOUGHTON – KETTLE PARK WEST DEVELOPMENT

This Agreement is made and entered into by the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Kettle Park West, LLC, a Wisconsin limited liability corporation (hereafter referred to as the "Developer").

RECITALS

- A. Developer intends to work with the owners of certain property to petition the City for the annexation of the property described in Exhibit A (the "Subject Property"), the Highway 51 right-of-way adjacent to the Subject Property, and northerly one-half of the Highway 138 right-of-way adjacent to the Subject Property. Hereafter the Subject Property, the Highway 51 right-of-way adjacent to the Subject Property, and northerly one-half of the Highway 138 right-of-way adjacent to the Subject Property, shall be referred to collectively as the "Annexation Property".
- B. Developer acknowledges that Developer and the owners of the Subject Property are voluntarily and of their own accord requesting annexation of the Subject Property to the City, and that the City has not initiated or required the annexation.
- C. Annexation of the Annexation Property is consistent with the City's Comprehensive Plan and is necessary in order to provide urban services to the Subject Property.
- D. The annexation and development of the Subject Property are beneficial to the City if accomplished in accordance with the terms of this Agreement in that such annexation and development will increase the City's tax base; provide lands for needed growth of the City; permit the sound planning and development of the Annexation Property; and otherwise promote the public welfare.
- E. The parties desire that the Subject Property be developed in a manner that complies with the City's Comprehensive Plan, the City's Official Map, and all City ordinances, and in a manner that minimizes the cost of the development to City taxpayers.
- F. The City and Developer acknowledge that they enter into this Agreement for their mutual benefit and in order to address certain obligations and set forth certain understandings relating to the development of the Subject Property in the event the Annexation Property is annexed to the City.

AGREEMENT

In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows.

1. PETITION FOR ANNEXATION.

Developer intends to file a petition for annexation of the Annexation Property to the City, pursuant to Wis. Stat. § 66.0217(2). Developer intends to file the petition with the City on or before May 31, 2013.

2. ZONING AND DEVELOPMENT OF THE SUBJECT PROPERTY.

A. Zoning. The annexation ordinance shall provide a temporary zoning classification for the Subject Property of RH - Rural Holding.

B. Permanent Zoning and Compliance with Plans and Regulations. The City has adopted a Westside Detailed Neighborhood Plan, as Appendix B to the City of Stoughton Comprehensive Plan. The parties anticipate that, following annexation, Developer will apply for permanent zoning of the Subject Property that is consistent with the Westside Detailed Neighborhood Plan. Any development of the Subject Property shall be consistent with the City's Comprehensive Plan, and shall be reviewed and considered in accordance with the City's Comprehensive Plan, and land division, zoning, stormwater management, building and other regulations relating to the development of the Subject Property. The parties agree that the Land Use Map attached as Exhibit C is consistent with the Westside Detailed Neighborhood Plan. The parties anticipate that Developer will apply for zoning, land division and other approvals in a manner that is consistent with the Land Use Map attached as Exhibit C.

C. Phasing. The parties anticipate that the Subject Property will be zoned and developed in phases, in accordance with the phasing plan described in Exhibit D.

D. Public Improvements. Developer shall be solely responsible for the cost of constructing any and all public improvements needed to serve the development of the Subject Property, including the cost of extending any off-site improvements to the Subject Property. The City shall have no obligation to obtain any property interests needed to extend public

improvements to the Subject Property, through the exercise of eminent domain or otherwise.

- E. Other Requirements Apply. Nothing in this Agreement is intended to relieve, nor shall it be construed as relieving, or in any way satisfying, obligations, procedures or requirements to the City of Stoughton pertaining to the future development or division of the Subject Property.

3. TAX INCREMENTAL FINANCING.

- A. The parties anticipate that development of the Subject Property may be facilitated by the use of tax incremental financing, pursuant to Wis. Stat. § 66.1105, and in accordance with one or more agreements to be negotiated by the parties.
- B. The City understands that Developer may request financial assistance of approximately Seven Million Dollars (\$7,000,000.00) as a condition of developing Phases 1a and 1b of the Subject Property, including constructing the improvements and incurring the costs described in Exhibit B, under the headings for Phases 1A and 1B. Developer understands that, as a condition of providing financial assistance, the City may require agreements that protect the City's financial interests. If financial assistance is provided by tax incremental financing, the City may require agreements that guarantee receipt by the City of sufficient tax increment to fund the financial assistance. Developer shall not be bound to undertake development of the Subject Property, and the City shall not be bound to provide financial assistance to Developer, unless the parties execute one or more agreements requiring such development and financial assistance to be undertaken and provided, and then only in accordance with the terms of such agreement or agreements.
- C. Developer acknowledges and understands that this Agreement cannot bind the City to create a tax increment district.

4. FEES AND COSTS.

- A. Urban Service Area Amendment Fees and Costs. Developer and the City cooperated to obtain approval of an amendment (the "Amendment") to the City of Stoughton Urban Service Area. The Capital Area Regional Planning Commission approved the Amendment on June 11, 2011, in Resolution CARPC No. 2011-5, and the Wisconsin Department of Natural Resources approved the amendment by letter dated June 16, 2011. In order

to obtain approval of the Amendment; the City incurred costs totaling \$17,000, and Developer incurred costs totaling \$144,000. The parties agree that, as a final allocation between the City and Developer of the costs of obtaining approval of the Amendment, Developer shall reimburse the City in the amount of \$11,900 (representing the City's costs attributable to Area A and Area B as shown on Exhibit E), and the City shall reimburse Developer in the amount of \$43,200 (representing the Developer's costs attributable to Area C as shown on Exhibit E), resulting in a net payment in the amount of \$31,300 from the City to Developer. This payment shall be made at the time the Developer has filed with the City Clerk, the Town of Rutland Town Clerk, and the State of Wisconsin Department of Administration - Division of Intergovernmental Relations, a complete and legally sufficient petition for annexation of the Annexation Property, in accordance with and pursuant to Wis. Stat. § 66.0217 (2).

- B. Application, Review and Administrative Fees. Developer shall pay to the City, immediately after presentation of a written request for payment, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred or accrued before or after the execution of this Agreement in connection with: (1) the review and processing of petitions, applications and plans for the annexation, rezoning, division or development of the Subject Property; (2) the negotiation, preparation, consideration and review of this Agreement and other agreements relating to the Development of the Property; (3) the rezoning, subdivision or development of the Subject Property. Consulting, planning, engineering, and legal fees shall be the actual costs to the City on the basis of submitted invoices. Administrative fees including city staff time shall be calculated based on the actual cost to the City, including all wages and benefits paid to City employees. Inspection and observation fees during construction shall be the actual cost to the City on the basis of submitted invoices.
- C. Town Taxes. Developer shall reimburse the City for any amounts the City is required by law to pay to the Town of Rutland as a result of the annexation of the Subject Property. Any such reimbursements shall be paid within 30 days after the City requests payment.
- D. Impact and Connection Fees. The City requires the payment of certain impact fees pursuant to Chapter 67 of the Municipal Code of the City of Stoughton. As of the effective date of this Agreement, the City does not require the payment of a fee to connect to the City's sanitary sewer system or water system. Nothing in this Agreement is intended to relieve Developer from paying to the City fees and costs related to the zoning,

division or development of the Subject Property, and required by the City's ordinances or policies.

5. EFFECTIVE DATE AND EXPIRATION OF THIS AGREEMENT.

- A. Effective Date. This Agreement shall be effective upon execution.
- B. Expiration. If the City has not adopted an ordinance annexing the Subject Property on or before 12:00 noon on September 30, 2013, then this Agreement shall automatically, and without any further action, become null and void and of no force or effect, except that Developer shall pay any costs for which it is responsible under Section 4 of this Agreement as of such date.


6. OTHER PROVISIONS.

- A. Duration. This Agreement shall continue until a written release signed by the City and Developer is recorded, or until it automatically terminates under section 5 B.
- B. Governing Law. This Agreement shall be governed by, and enforced in accordance with the laws of the State of Wisconsin. Any claim arising under this Agreement shall be brought in Dane County Circuit Court, Dane County, Wisconsin.
- C. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person shall be valid against the City or Developer.
- D. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement.
- E. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement. This Agreement shall be construed simply and fairly to both parties.

- F. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.
- G. Severability. If any part of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby, and the remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of the Agreement to the greatest extent permitted by applicable law.

IN WITNESS WHEREOF, the parties have executed this Pre-Annexation Agreement.

DEVELOPER:
Kettle Park West, LLC

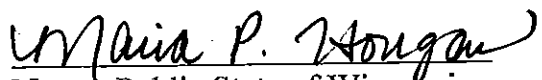
By 
Print Name: DAVE JENKINS
Print Title: MANAGING PARTNER

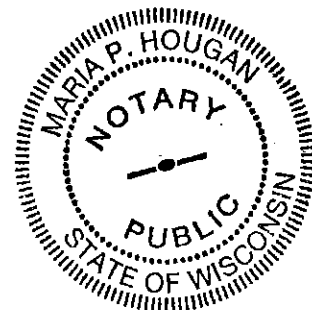
ACKNOWLEDGEMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 19 day of April, 2013, the above-named Dave Jenkins, to me known to be the person who executed the foregoing instrument and acknowledged the same.


Notary Public State of Wisconsin
Name: Maria P. Hougan (Please Print)
My Commission: 8-3-2014



CITY:
City of Stoughton
Dane County, Wisconsin

By: Donna Olson
Donna Olson, Mayor

By: Maria Hougan
Maria Hougan, City Clerk

ACKNOWLEDGEMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 12 day of April, 2013, the above-named Donna Olson and Maria Hougan, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Lisa L. Aude
Notary Public State of Wisconsin

Name: Lisa L. Aude (Please Print)

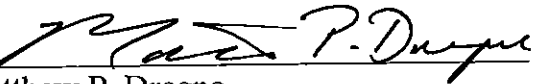
My Commission: 4-14-17

Attachments:

- Exhibit A - Map and Description of the Subject Property
- Exhibit B - Project Costs
- Exhibit C - Land Use Map
- Exhibit D - Description of Phasing Plan
- Exhibit E - Urban Service Area Amendment Area Cost Allocation

Approved as to Form:

STAFFORD ROSENBAUM LLP
Attorneys for the City of Stoughton

By 
Matthew P. Dregne

*This instrument drafted by
and to be returned to:*

Attorney Matthew P. Dregne
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
(608) 256-0226

EXHIBIT A

MAP AND DESCRIPTION OF THE SUBJECT PROPERTY

EXHIBIT B
PROJECT COSTS

(Two pages)

Kettle Park West - Public Improvement Cost Detail

Revised: October 10, 2012

Description	Phase IA Costs	Phase IB Costs	Phase II Costs	Future Costs
Professional Services				
Planning	\$ 175,000.00	\$ -	\$ 75,000.00	\$ -
Engineering	\$ 548,380.00	\$ -	\$ 323,910.00	\$ 440,000.00
Engineering - Detention Pond	\$ 102,700.00	\$ 25,000.00	\$ -	\$ -
Surveying	\$ 152,600.00	\$ -	\$ 65,475.00	\$ 75,000.00
Surveying - Detention Pond	\$ 21,925.00	\$ 10,000.00	\$ -	\$ -
Geotechnical	\$ 30,500.00	\$ -	\$ 13,115.00	\$ -
Geotechnical - Detention Pond	\$ 6,385.00	\$ -	\$ -	\$ -
Archeological	\$ 10,000.00	\$ -	\$ -	\$ -
Environmental	\$ 20,000.00	\$ -	\$ -	\$ -
Wetlands	\$ 26,000.00	\$ -	\$ -	\$ -
Accounting Fees	\$ 35,000.00	\$ -	\$ -	\$ -
Total Professional Services	\$ 1,127,500.00	\$ 35,000.00	\$ 477,500.00	\$ 516,000.00
On Site Costs				
A - General/Misc				
Demolition	\$ 40,000.00	\$ 80,000.00	\$ -	\$ -
Environmental Clean-up	\$ 5,000.00	\$ 20,000.00	\$ -	\$ -
Traffic Control	\$ 5,000.00	\$ -	\$ -	\$ -
Subtotal General/Misc	\$ 50,000.00	\$ 80,000.00	\$ -	\$ -
B - Stormwater Management				
Infiltration Basin	\$ 500,000.00	\$ -	\$ -	\$ -
Water Quality Basin	\$ 350,000.00	\$ -	\$ -	\$ -
Pump Station	\$ 150,000.00	\$ -	\$ -	\$ -
Pressure Pipe	\$ 100,000.00	\$ -	\$ -	\$ -
Subtotal Stormwater Management	\$ 1,100,000.00	\$ -	\$ -	\$ -
C - Site Utilities				
Sanitary Sewer (1100' @ \$87/ft)	\$ 95,965.78	\$ -	\$ -	\$ -
Storm Sewer (2125' @ \$85/ft)	\$ 179,935.80	\$ -	\$ -	\$ -
Water Main (1100' @ \$109/ft)	\$ 119,957.20	\$ -	\$ -	\$ -
Electric	\$ 17,949.80	\$ -	\$ -	\$ -
Gas	\$ 23,991.44	\$ -	\$ -	\$ -
Subtotal Site Utilities	\$ 437,800.00	\$ -	\$ -	\$ -
D - Jackson Street Extension Improvements (580 feet)				
Street Construction (\$258/ft)	\$ -	\$ -	\$ -	\$ 149,750.00
Utilities (\$398/ft)	\$ -	\$ -	\$ -	\$ 230,940.00
E - Oak Opening Drive Improvements (1725 feet)				
Street Construction (\$188/ft)	\$ -	\$ -	\$ 323,438.00	\$ -
Utilities (\$398/ft)	\$ -	\$ -	\$ 686,550.00	\$ -
F - Jackson Street Improvements (1180 feet)				
Street Construction (\$167/ft)	\$ -	\$ -	\$ 198,640.00	\$ -
Utilities (\$516/ft)	\$ -	\$ -	\$ 609,000.00	\$ -
G - Hulte Road (Frontage Road) (1475 feet)				
Street Construction (\$188/ft)	\$ -	\$ -	\$ -	\$ 278,560.00
Utilities (\$398/ft)	\$ -	\$ -	\$ -	\$ 687,050.00
Subtotal Street Improvements	\$ -	\$ -	\$ 1,815,628.00	\$ 1,244,300.00
Total On Site Costs	\$ 1,587,800.00	\$ 80,000.00	\$ 1,815,628.00	\$ 1,244,300.00

<i>Off Site Costs</i>	Phase IA Costs	Phase 1B Costs	Phase II Costs	Future Costs
<u>Purchase Access Rights</u>				
USH 51 - 3/4 Access	\$ 100,000.00	\$ -	\$ -	\$ -
<u>H - Relocate Overhead Utilities</u>				
Private Utility Relocation (Gas & Electric)	\$ 800,000.00	\$ -	\$ -	\$ -
Traffic Control	\$ 20,000.00	\$ -	\$ -	\$ -
Subtotal General/Misc	\$ 820,000.00	\$ -	\$ -	\$ -
<u>I - Stormwater Management - Jackson Street</u>				
Pump Station	\$ 43,575.00	\$ -	\$ 31,425.00	\$ -
Pressure Pipe (2300 FEET)	\$ 43,575.00	\$ -	\$ 31,425.00	\$ -
Overflow Gravity Pipe	\$ 43,575.00	\$ -	\$ 31,425.00	\$ -
Subtotal Stormwater Management	\$ 130,725.00	\$ -	\$ 94,275.00	\$ -
<u>J - Kettle Restoration</u>				
Grading and Landscaping	\$ -	\$ -	\$ -	\$ 174,300.00
Subtotal Kettle Restoration	\$ -	\$ -	\$ -	\$ 174,300.00
<u>K - USH 51 Improvements (1200 feet @ \$1160/ft)</u>				
Street Reconstruction	\$ 240,000.00	\$ -	\$ -	\$ -
50% of USH 51 and STH 138 Roundabout Intersection C and Signals	\$ 750,000.00	\$ -	\$ -	\$ 400,000.00
<u>L - STH 138 Improvements (2100 feet @ \$1075/ft)</u>				
Street Reconstruction	\$ 408,750.00	\$ -	\$ -	\$ -
Intersections - Refer to Exhibit 6-2 Traffic Geometrics				
Intersection A	\$ 200,000.00	\$ -	\$ -	\$ -
Intersection B	\$ 750,000.00	\$ -	\$ -	\$ -
Intersection D	\$ 100,000.00	\$ -	\$ -	\$ -
Delivery Driveway	\$ 50,000.00	\$ -	\$ -	\$ -
50% of USH 51 and STH 138 Roundabout	\$ 750,000.00	\$ -	\$ -	\$ -
<u>M - STH 138 Improvements (700 feet @ \$1266/ft)</u>				
Street Reconstruction	\$ -	\$ -	\$ 136,250.00	\$ -
Intersection E	\$ -	\$ -	\$ 750,000.00	\$ -
Subtotal Street Improvements	\$ 3,248,750.00	\$ -	\$ 886,250.00	\$ 400,000.00
Total Off Site Costs	\$ 4,199,475.00	\$ -	\$ 980,525.00	\$ 574,300.00

Grand Total Public Improvement Costs \$ 6,914,775.00 \$ 115,000.00 \$ 3,273,853.00 \$ 2,333,600.00

PLANNED LAND USE AND RELATIONSHIPS BETWEEN USES

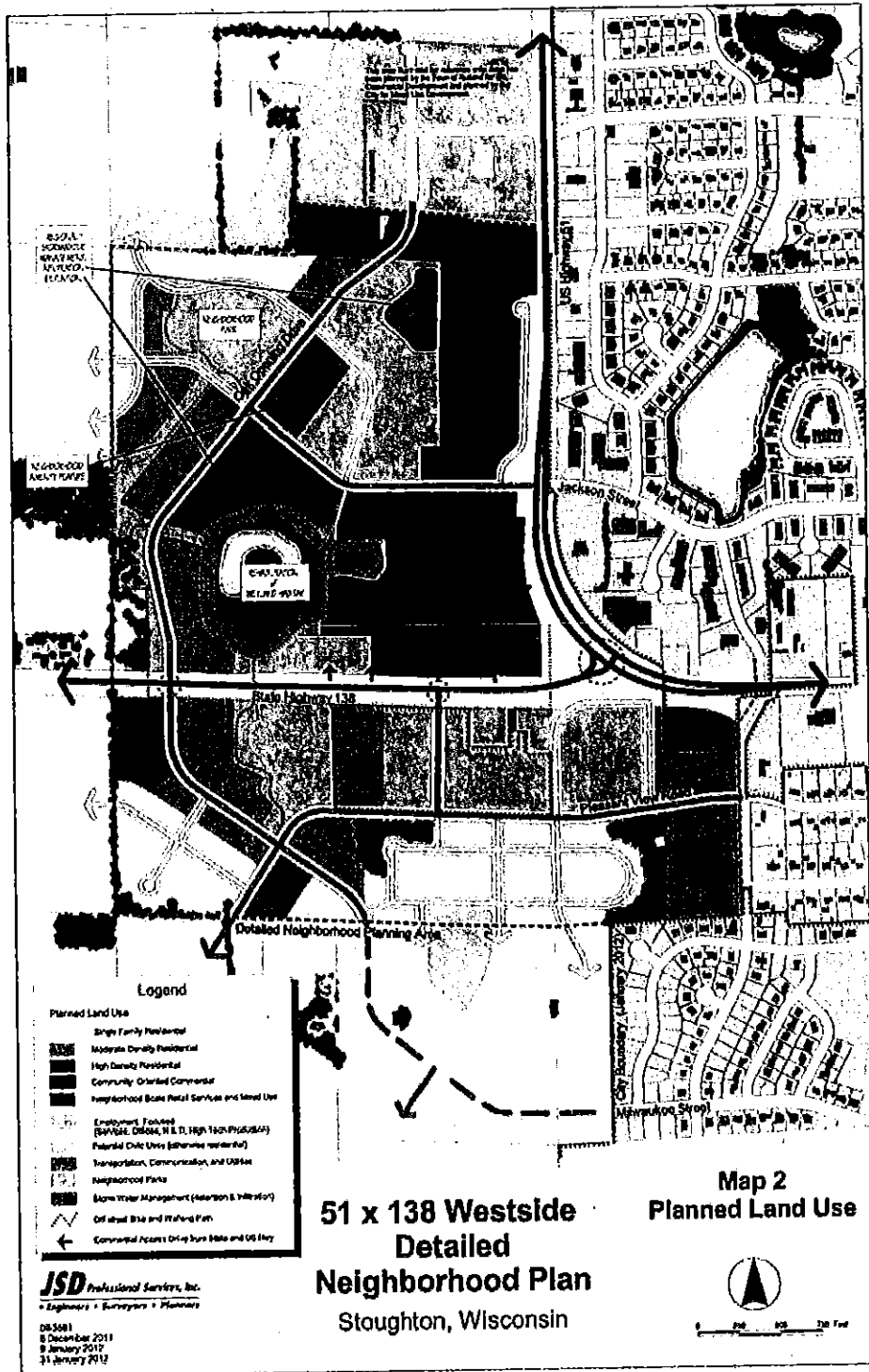


EXHIBIT D

DESCRIPTION OF PHASING PLAN



**KETTLE
PARK
WEST**



JSD
Professional Services, Inc.
• Engineers • Surveyors • Planners

EXHIBIT D

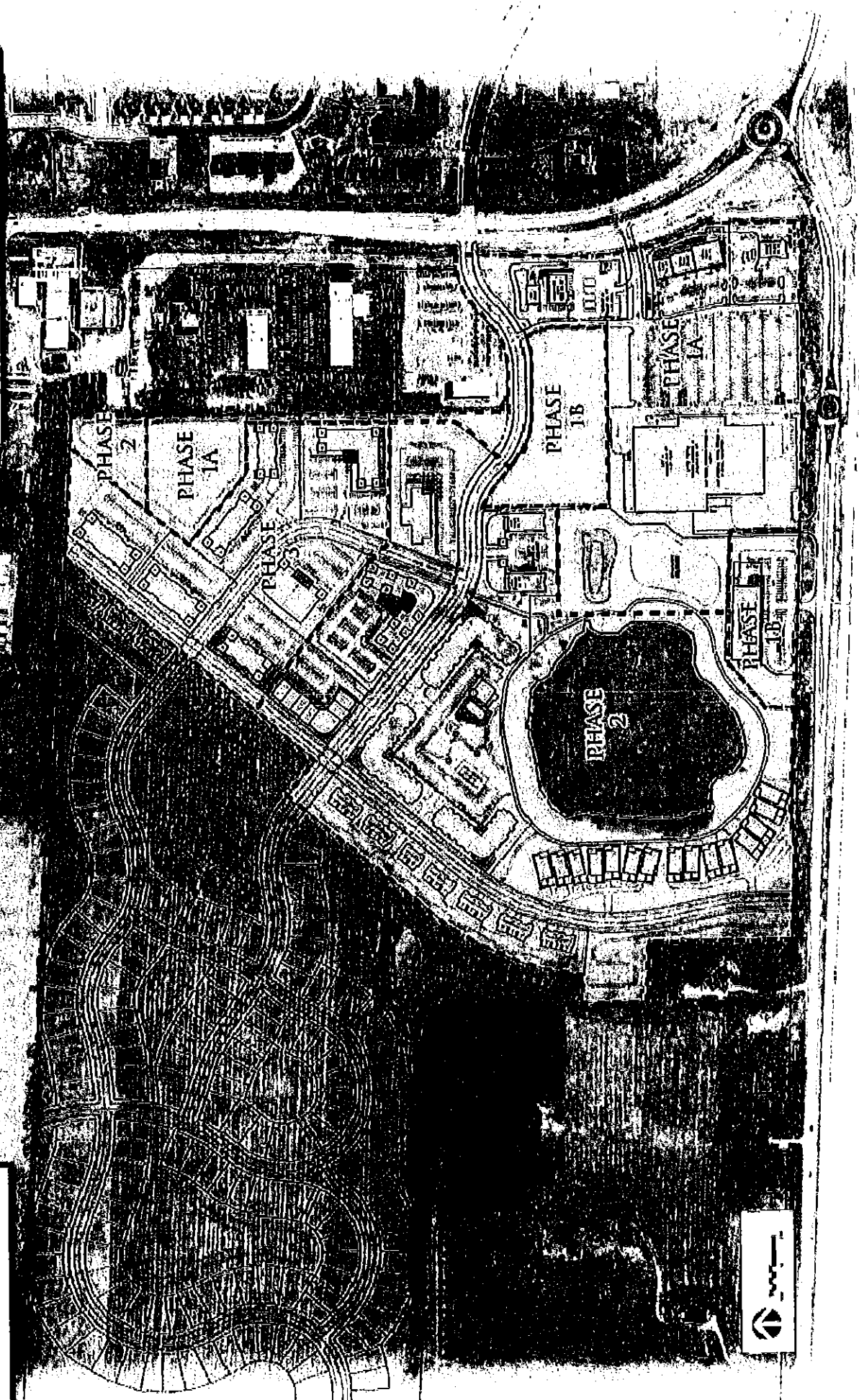


EXHIBIT E

URBAN SERVICE AREA AMENDMENT AREA COST ALLOCATION

(Two pages)

EXHIBIT E

URBAN SERVICE AREA AMENDMENT AREA COST ALLOCATION

Developer USA Costs: \$144,000
City USA Costs: \$ 17,000

Total Urban Service Area Amendment Area = Area A + Area B + Area C

192.79 acres = 34.71 acres + 101.18 acres + 56.90 acres

	<u>Developer Share</u>	<u>City Share</u>
Area A Represents 18% of Amendment Area	\$25,920	\$ 3,060
Area B Represents 52% of Amendment Area	\$74,880	\$ 8,840
Area C Represents 30% of Amendment Area	\$43,200	\$ 5,100

KETTLE PARK WEST
U.S. HWY 51 & STATE HWY 138
STOUGHTON, WI
03/25/2013
FOR PLANNING PURPOSES ONLY

JSD Professional Services, Inc.
Engineers • Surveyors • Planners



URBAN SERVICE AREA

LEGEND:

- PHASE I FDG
- FUTURE DEVELOPMENT PHASES
- EXISTING DEVELOPMENT TOWN OF RUTLAND
- 34.71 ACRES
- 101.18 ACRES
- 56.90 ACRES
- RIGHT-OF-WAY 9.51 ACRES

