

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

RESOLUTION OF THE COMMON COUNCIL- AMENDED

To approve the Second Amended and Restated Agreement to Undertake Development relating to the Kettle Park West Development.

File Number: R-85-2015

Date Introduced: June 9, 2015

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

RECITALS

1. The City of Stoughton ("City") and Kettle Park West, LLC ("Developer") entered into an Agreement to Undertake Development dated as of January 29, 2014 (the "Original Agreement"), which was amended and restated pursuant to that certain Amended and Restated Agreement to Undertake Development dated as of November 13, 2014 (the "Amended and Restated Agreement").
2. The City and Developer wish to replace the Amended and Restated Agreement with a Second Amended and Restated Agreement to Undertake Development.

RESOLUTION

The Second Amended and Restated Agreement to Undertake Development between the City and Kettle Park West, LLC, attached as Exhibit A to this Resolution, is approved, and the Mayor and City Clerk are hereby authorized to execute the Agreement on the City's behalf. Amended as follows: The Common Council of the city of Stoughton voted that that city will not consider the use of any contingency fund outlined in the current developer's agreement until the project has been substantially completed.

The foregoing Resolution was adopted by the Common Council of the City of Stoughton at a meeting held on June 9, 2015.

Council Action: ☒ Adopted

☐ Failed

Vote 7-6 maybe voted

Mayoral Action: ☒ Accept

☐ Veto

Donna Olson

Donna Olson, Mayor

6-9-15

Date

Council Action: _____

☐ Override

Vote _____

Exhibit A

**Second Amended and Restated Agreement to Undertake Development Between
The City of Stoughton and Kettle Park West LLC**

**SECOND AMENDED AND RESTATED AGREEMENT TO UNDERTAKE
DEVELOPMENT**

(Kettle Park West Development)

THIS SECOND AMENDED AND RESTATED AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ ~~13th~~ day of ~~June, 2015~~ November, 2014, by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Kettle Park West, LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

1. The City and Developer entered into an Agreement to Undertake Development dated as of January 29, 2014 (the "~~Original~~" January Agreement"), which was amended and restated pursuant to that certain Amended and Restated Agreement to Undertake Development dated as of November 13, 2014 (the "Amended and Restated Agreement"). The City and Developer wish to replace the Amended and Restated January Agreement with this Agreement. ~~Amended and Restated Agreement to Undertake Development (the "Agreement").~~

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2. Developer proposes to purchase the real property described on Attachment A attached hereto (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. Developer has also requested City approval of a land division plat known as Kettle Park West - Commercial Center.

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

4. Developer is unable to develop the Property without financial assistance in constructing certain public improvements, including improvements to U.S. Highway 51 and State Highway 138. Developer also requires financial assistance to offset the cost of substantial site grading and stormwater management costs within the Property.

5. The City wants to facilitate the development of the Property, but is unable to do so unless certain conditions are satisfied, including the creation of a Tax Increment Finance District that includes the Property, pursuant to Wis. Stat. § 66.1105.

6. In order to make the development financially feasible, the City finds it appropriate to enter this Agreement to set forth certain obligations and understandings in the event a Tax Increment District is created and the other conditions set forth in this Agreement are satisfied, all as described in, and subject to the reservations contained in, this Agreement.

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 Property.

8. The City finds that the development of the Property 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 and creating employment and commercial opportunities, thereby serving public purposes in accordance with state and local law.

9. The City Council on June 11, 2015~~November 11, 2014~~, adopted Resolution No. R-~~135-2014~~ approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement.

AGREEMENT

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

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

1. Actual Tax Increment. The actual cash flow received by the City from the tax increment generated by the District pursuant to Wis. Stat. sec. 66.1105.

2. Annual Debt Service. The Principal and Interest payments due on the City Borrowing. An estimated schedule of Annual Debt Service Payments is attached as Attachment B.

3. City Improvements. The construction of water, sewer and storm sewer mains within the planned Jackson Street crossing of U.S. Highway 51, from approximately the East right-of-way line of U.S. Highway 51 to approximately the West right-of-way line of U.S. Highway 51.

4. District. A Tax Increment District to be created pursuant to Wis. Stat. § 66.1105, which must include the Property within its boundaries, and which must include within its approved Project Plan, as allowable Project Costs, payment of the cost of the Off-Site Public Improvements, the Stormwater Management Improvements, and the Municipal Revenue Obligations provided for in Section C of this Agreement.

5. Excess Tax Increment. Excess Tax Increment has the meaning given in Section D.3.(b)(4).

6. Plat. The land division plat filed by Developer with the City on December 19, 2013, entitled "Kettle Park West - Commercial Center."

7. Project. The construction of a mixed use development in accordance with the Planned Development District zoning for the Kettle Park West Commercial Property approved by City Ordinance No. 0-23-2013, and as such zoning may be amended from time to time.

8. Property. The property described in Attachment A.
9. City Administrative Costs. All costs, including city staff, engineering, legal, planning, and financial consultant costs, incurred by the City relating to: the creation and administration of the District; construction of the Public Improvements, including construction observation and inspection costs; the drafting and negotiation of this Agreement and other agreements relating to the District or the Project; and other costs incurred by the City in connection with the District, the Public Improvements or the Project, and not paid by the Developer pursuant to Section 4. B of the Pre-Annexation Agreement between the City and the Developer.
10. City Borrowing. The amount borrowed by the City through the issuance of bonds or other forms of debt or borrowing, to fund the reimbursement of Developer for the cost of constructing the Off-Site Public Improvements as provided for in Section C.1 of this Agreement, to fund the reimbursement of Developer for the cost of the Stormwater Management Improvements as provided for in Section C.2 of this Agreement, and to fund the City's construction of the City Improvements.
11. Off-Site Public Improvements. The following public improvements to be constructed for the benefit of the District in accordance with detailed plans and specifications to be prepared by Developer and approved by the City Planning Director:
- (a) Utility Relocation: Relocation of overhead electric and underground gas equipment along U.S. Highway 51 and 138.
 - (b) Highway 51 Improvements. Reconstruction of the intersection of Jackson Street and U.S. Highway 51, including sidewalks at the intersection; construction of a turning lane into the Property between Jackson Street and State Highway 138; new traffic signals at Jackson Street and U.S. Highway 51; temporary traffic signals at the intersection of U.S. Highway 51 and State Highway 138. The City may require an off-road shared-use path.
 - (c) State Highway 138 Improvements. Reconstruction of State Highway 138 with asphalt from the West line of the Plat to approximately existing Veck Road; water main from the West lot line of Lot 2 of the Plat to the existing water main in McComb Road; sanitary sewer main from the West line of Lot 2 of the Plat to the East line of Lot 2; roundabout at the primary drive into Lot 2 of the Plat. The City may also require this work to include curb and gutter, sidewalk, and on-road bike accommodations, and may also require an off-road shared-use path.
 - (d) Jackson Street (West). Construction of Jackson Street, from approximately the West right-of-way line of U.S. Highway 51 to approximately the West line of Lot 3 of the Plat, including sanitary sewer, water main, storm sewer, curb and gutter, street, sidewalk, and street lighting. The City may also require this work to include an asphalt shared-use path.

(e) *Jackson Street (East)*. Construction of Jackson Street between the West right-of-way line of U.S. Highway 51 to the East right-of-way line of U.S. Highway 51.

12. Site Grading. All site grading work the Developer is required to complete in connection with the development of the Property, pursuant to grading plans to be prepared by Developer and approved by the City Planning Director in accordance with applicable site grading, erosion control and stormwater management regulations.

13. Stormwater Management Improvements. Regional stormwater management improvements including a regional infiltration basin, a regional water quality basin, a pump station, and a pressure pipe, to be designed by the Developer as part of the stormwater management plan for the Property, and approved by the City Planning Director.

14. On-Site Public Improvements. Public improvements needed to serve the lots within the Plat, but not including the Off-Site Public Improvements. The improvements contemplated herein include the following: Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; and gas and electric utilities, all in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director.

15. Public Improvements. Public Improvements means, collectively, the Off-Site Public Improvements, the On-Site Public Improvements, and the Stormwater Management Improvements.

16. Value Increment. Value Increment has the meaning in Section 66.1105(2)(m) of the 2011-2012 Wisconsin Statutes.

B. DEVELOPER OBLIGATIONS.

1. Construction of Public Improvements.

(a) *Design of Improvements*. Developer shall prepare detailed plans and specifications of the Site Grading, erosion control, and 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) *Public Bidding of Public Improvements.* Developer shall publicly advertise, bid and contract for the construction of the Public Improvements 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. Statutory bid bonds, performance bonds and payment bonds shall be required for all Public Improvements 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 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.

(d) *Prevailing Wage Rates.* Pursuant to Wis. Stat. § 66.0903, the Developer will apply to the Wisconsin Department of Workforce Development to determine the prevailing wage rate for each trade or occupation required to construct the Public Improvements. Once the Department issues its determination of the prevailing wage rates ("Determination"), it shall be considered to be incorporated into and made a part of this Agreement, and attached as Attachment E. The Developer agrees to comply fully with Wis. Stat. § 66.0903, as well as the following: (1) The Determination shall be physically incorporated into and made a part of any contract or subcontract that the Developer or its contractor enters into to perform work necessary to construct the Public Improvements. (2) All Covered Employees (as defined in Wis. Stat. § 66.0903(4)) who perform the work necessary to construct the Public Improvements shall be paid prevailing wage rates according to the Determination, and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay. (3) The Developer and each contractor, subcontractor, or contractor's or subcontractor's agent performing work necessary to construct the Public Improvements shall keep full and accurate records clearly indicating the name and trade or occupation of every Covered Employee performing the work, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. (4) The Developer is hereby notified, and shall notify all contractors and subcontractors, that if DWD finds a contractor violating the prevailing wage law, DWD shall order the payment of the wages and overtime, if any, and shall assess an additional amount equal to 100 percent of the amount owed as liquidated damages. (5) The City may demand and examine, and the Developer and every contractor, subcontractor or contractor's or subcontractor's agent shall keep, and make available for inspection upon request by the City, copies of payrolls and other records and information relating to the wages paid to Covered Employees performing the work necessary to construct the Public Improvements. (6) The Developer shall require that, upon completion of any project involved in construction of the Public Improvements and before receiving final payment for his or her work on the project, each

agent, contractor, or subcontractor shall furnish the Developer the City with an affidavit stating that the agent, contractor or subcontractor has complied fully with the requirements of Wis. Stat. § 66.0903. The Developer shall not authorize final payment until the affidavit is filed in proper form and order. (7) Upon completion of the construction of Public Improvements, and prior to the City's acceptance of the Public Improvements, Developer shall file with the City an affidavit stating that the Developer has complied fully with the requirements of Wis. Stat. § 66.0903 and that the Developer has received an affidavit under the above subsection (6) from each of the Developer's agents, contractors and subcontractors. The City shall not accept the Public Improvements until the affidavit from the Developer is filed in proper form and order.

(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 and the Wisconsin Department of Transportation. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

(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 shall be reviewed and approved by Developer and the City Planning Director. The City shall not be required to reimburse Developer for costs of any change orders relating to the Off-Site Improvements or the Stormwater Management Improvements except those specifically enumerated and agreed upon in written, signed agreements between Developer and the City.

(i) *Indemnification and Insurance.* Developer shall indemnify and hold the City and its officers and employees harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity to the extent such claims, costs and liabilities arise from or relate to the negligence of Developer or its contractors, agents or representatives in the performance of work at the development site and elsewhere pursuant to this Agreement, except where such injury or damage results from the negligence of the City or its contractors or employees. Developer further agrees to aid and defend the City and its officials and employees in the event that the City is named as a defendant in an action concerning the City's performance of work pursuant to this Agreement except where such suit is brought by the Developer, or on the basis of the City's negligence or the negligence of its officials, employees or representatives. Developer is not an agent or employee of the City. Developer and all contractors and subcontractors engaged in the construction of the Public Improvements shall comply with the City contract requirements pertaining to damage claims,

indemnification of the City, and providing insurance coverage that is approved by the City. The policies of insurance required hereunder shall name the City as additional insureds, and Developer and contractors shall maintain current certificates of insurance on file with the City.

(j) *Time of Completion.* The Public Improvements shall be substantially complete within 24 months after all conditions precedent in Section E 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.

(k) *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; (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; and (3) provide to the City the affidavit required to demonstrate compliance with prevailing wage rate requirements. Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and furthermore until all affidavits and lien waivers are received by the City demonstrating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement, and prevailing wage rate requirements have been satisfied where applicable. 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.

(l) *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.

(m) *Surety.* In addition to the statutory performance and payment bonds required in section B.1 (c), Developer shall provide a letter of credit as follows:

(1) Letter of Credit. The Developer shall provide the City with an irrevocable Letter of Credit issued pursuant to Chapter 405 of the Wisconsin Statutes in the amount of 125% of the estimated cost of the On-Site Public Improvements plus 25% of the estimated cost of the Off-Site Public Improvements and the Stormwater Management Improvements, to secure Developer's construction of the Public Improvements and Developer's guarantee of the Public Improvements. The letter of credit shall be in a form acceptable to the City, and shall be issued by an entity that is acceptable to the City, or that has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's. The Letter of Credit shall be payable to the City and shall be conditioned upon and guarantee to the City the performance by the Developer of Developer's obligations to construct and guarantee the Public Improvements under this Agreement. The letter of credit shall be approved as to form by the City Attorney. The letter of credit may be reduced from time to time in amounts equal to the value of the On-Site Public Improvements that have been installed, completed and accepted by the City. In no event shall the letter of credit be reduced below the aggregate of: 125 percent of the estimated cost of the On-Site Public Improvements not yet installed or accepted, plus 25 percent of the cost of On-Site Public Improvements that have been accepted, plus 25 percent of the estimated or actual cost of completed and accepted or uncompleted Off-Site Public Improvements and Stormwater Management Improvements.

(2) 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.

(3) 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.

(4) Notice of Expiration. Developer agrees to provide written notice of the expiration of any Letter of Credit or replacement Letter of Credit provided for herein not less than 60 days before its expiration by sending written notice to the City. The Letter of Credit shall be renewed at least 30 days before its expiration date, or any renewal date, until the completion of the guarantee period specified in Section B.2 (m) of this Agreement.

(5) 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.

C. CITY OBLIGATIONS.

1. Reimbursement to Developer for Off-Site Public Improvements.

(a) *Construction Costs*. The City shall reimburse Developer for the cost of constructing the Off-Site Improvements, up to a maximum reimbursement in the amount of \$2,289,327.00, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$2,289,327.00 for the cost of constructing Off-Site Improvements, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection (d) below.

(b) *Engineering Costs*. The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Off-Site Public Improvements, up to a maximum reimbursement in the amount of \$243,933, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$243,933 for the cost of engineering services, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made Developer to City as provided in subsection (d) below.

(c) *Contingency*. If the construction costs or engineering costs described in Sections C. 1 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$311,707. Developer shall

apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 1 (a) and (b).

(d) *Request for Payment:* As the Off-Site Public Improvements progress, Developer may make requests to the City for progress payments (and a final payment when the Off-Site Public Improvements are formally accepted by the City) not more than once per month. Developer's application for reimbursement shall be submitted to a mutually agreed upon title company serving as escrow agent, the cost of which shall be a City Administrative Cost, and to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work or providing material for which payment is requested, an itemization of the work performed and materials provided, the percentage of work performed or materials provided in that category 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 such other documentation and certification requested by the title company; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested have been deposited in escrow with the title company. Within forty-five days after submittal of a complete application to the title company 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 title company, which shall then issue payment to the contractors, subcontractors and material suppliers for whom payment is requested, up to a maximum total reimbursement as provided in subsections (a), (b) and (c) above. Notwithstanding the foregoing, prior to acceptance of the Off-Site Public Improvements by the City, the City shall reimburse Developer for only 90 percent of the reimbursement to which Developer is entitled under this Section. Following acceptance of the Off-Site Public Improvements by the City, the City shall reimburse Developer for 100 percent of the reimbursement to which Developer is entitled under this Section.

2. Reimbursement to Developer for Stormwater Management Improvements.

(a) *Construction Costs.* The City shall reimburse Developer for the cost of constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$1,247,220, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$1,247,220 for the cost of constructing Stormwater Management Improvements, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection (d) below.

(b) *Engineering Costs.* The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$124,722, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$124,722 for the cost of engineering services, and

any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made Developer to City as provided in subsection (d) below.

(c) *Contingency.* If the construction costs or engineering costs described in Sections C. 2 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$210,355. Developer shall apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 2 (a) and (b).

(d) *Request for Payment:* As the Stormwater Management Improvements progress, Developer may make requests to the City for progress payments (and a final payment when the Stormwater Management Improvements are formally accepted by the City) not more than once per month. Developer's application for reimbursement shall be submitted to a mutually agreed upon title company serving as escrow agent, the cost of which shall be a City Administrative Cost, and to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work or providing material for which payment is requested, an itemization of the work performed and materials provided, the percentage of work performed or materials provided in that category and copies of all supporting invoices from all contractors, subcontractors and material men 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 such other documentation and certification requested by the title company; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested have been deposited in escrow with the title company. Within forty-five days after submittal of a complete application to the title company 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 title company, which shall then issue payment to the contractors, subcontractors and material suppliers for whom payment is requested, up to a maximum total reimbursement as provided in subsections (a), (b) and (c) above. Notwithstanding the foregoing, prior to acceptance of the Stormwater Management Improvements by the City, the City shall reimburse Developer for only 90 percent of the reimbursement to which Developer is entitled under this Section. Following acceptance of the Stormwater Management Improvements by the City, the City shall reimburse Developer for 100 percent of the reimbursement to which Developer is entitled under this Section.

3. Municipal Revenue Obligation. Following the completion of the Site Grading, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation, which request shall include Developer's certification of the cost of the Site Grading and documentation of Developer's payments to contractors for the Site Grading work. 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 lesser of (1) the cost

of the Site Grading work or (2) Five Hundred Fifty Thousand Dollars (\$550,000), in the form attached hereto as Attachment E, under the following terms and conditions:

(a) The Municipal Revenue Obligation shall not bear interest.

(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 Excess Tax Increment, and such Excess 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 the remaining number of years that tax increment generated by the District may lawfully be allocated to make payments on the Municipal Revenue Obligation. On each of the Payment Dates, the City shall pay to Developer the Excess 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 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 Excess 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. TAX INCREMENT GUARANTEES.

1. Anticipated City Borrowing.

(a) The City intends to enter into the City Borrowing for the purposes of financing the Reimbursement for Off-Site Public Improvements and the Reimbursement for Stormwater Management Improvements.

(b) The City intends to pay off the City Borrowing generally in accordance with the schedule shown on Attachment B. Attachment B shows an anticipated schedule of City Borrowing, Annual Debt Service Payments, and Tax Increment. The parties agree that Attachment B is based on estimates and forecasts that may or may not accurately reflect the actual City Borrowing or final schedule of payments. Accordingly, the parties agree that the City may amend Attachment B to reflect the actual City Borrowing schedule and Annual Debt

service schedule when City Borrowings are finalized. It is further understood and agreed that this paragraph shall not preclude the City from any refinancing or restructuring of City Borrowing in order to take advantage of any increased cash flow to the District or lower interest rates.

2. Developer Guarantees to City.

(a) *Guarantee of Tax Increment.* Developer acknowledges and agrees that the Tax Increment received by the City from the District is intended to be sufficient to pay the Annual Debt Service on the City Borrowing. It is further agreed that the Annual Debt Service on the City Borrowing be paid from Tax Increment generated by the District, and/or capitalized interest available under the City Borrowing, in accordance with Wis. Stat. sec. 66.1105.

(b) *Guarantee of Sufficient Actual Tax Increment to Pay Annual Debt Service.* Developer guarantees that, beginning in the calendar year 2018, the Actual Tax Increment will be sufficient to fully pay the Annual Debt Service on City Borrowing. If, in any calendar year beginning with calendar year 2018, the Actual Tax Increment received by the City and allocated as described in Section D. 3 is insufficient to pay the Annual Debt Service due that year, then Developer shall be required to pay to the City, and the City shall be entitled to draw on the Letter of Credit, the amount by which the Actual Tax Increment is insufficient to pay the Annual Debt Service due that year. Withdrawals on the Letter of Credit may be made at any time within 30 days before or after the due date of an Annual Debt Service Payment, and Developer's due date for making any required payment on Developer's guarantee, to avoid withdrawals on the Letter of Credit or interest charges, shall be 31 days before the due date of an Annual Debt Service payment. The City shall provide Developer with written notice of any insufficiency in the Actual Tax Increment 45 days prior to the due date of an Annual Debt Service payment, or as soon thereafter as the amount of the insufficiency is known to the City.

3. Allocation of Actual Tax Increment. Actual Tax Increment shall be applied as follows:

(a) In 2016 and 2017, all Actual Tax Increment shall be allocated to the City to pay City Administrative Costs and other project costs related to the District.

(b) In 2018 through 2034, or until the District is terminated, whichever is sooner, Actual Tax Increment shall be allocated as follows:

(1) First, to pay City Administrative Costs.

(2) Second, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Stormwater Management Improvements.

(3) Third, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Off-Site Public Improvements.

(4) Fourth, "Excess Tax Increment" shall be available for payment of the Municipal Revenue Obligation referred to in Section C.3 of this Agreement. For purposes of this Agreement, "Excess Tax Increment" shall mean Actual Tax Increment remaining each year after paying Annual Debt Service on City Borrowing each year. Excess Tax Increment remaining after the City has paid the Municipal Revenue Obligation payment due on the Payment Date in a given year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date) may be used by the City to pay any District project costs it may chose, in its discretion.

4. Letter of Credit.

(a) Developer shall provide an irrevocable letter of credit issued pursuant to Chapter 405 of the Wisconsin Statutes to the City to secure Developer's tax increment guarantee obligations under Section D.2(b) of this Agreement. The letter of credit shall be in a form acceptable to the City, and shall be issued by an entity that is acceptable to the City, or that has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's. It shall be payable at sight to the City, and shall bear an expiration date not earlier than three years after its initial issuance. The letter of credit shall be payable to the City at any time upon presentation of the following: (1) a sight draft drawn on the issuing bank in an amount to which the City is entitled under this Agreement; (2) an affidavit executed by a person authorized by the City stating that monies are due from Developer pursuant to the guarantee obligations in Section D.2(b); and (3) the letter of credit. After the initial term, Developer shall timely renew the letter of credit for additional terms of not less than one year, so that the amount of the letter of credit is at all times not less than the amount required by this Agreement. The initial and each renewed or replacement letter of credit shall by express language be automatically extended without amendment for a period of one year from its expiration date, unless at least 45 days before such expiration date the issuer of the letter of credit notifies the City in writing that the letter of credit will not be extended for an additional one year period, or notifies the City in writing that the letter of credit will be renewed or replaced by a letter of credit in an amount that is less than the amount required by this Agreement, which amount shall be specified in such written notice. Upon receipt of notice that the letter of credit will not be extended for an additional one year period, or will be extended, renewed or replaced in an amount that is less than the amount required by this Agreement, the City may draw upon the letter of credit an amount sufficient to secure performance of Developer's remaining guarantee obligations.

(b) The amount of the initial and each renewed or replacement letter of credit shall be equal to the total principal and interest payments that remain unpaid on all remaining Annual Debt Service Payments on City Borrowing. For example, based upon the Schedule of Annual Debt Service Payments attached as Attachment B, the amount of the initial letter of credit would be \$6,765,224.60. However, the amount of the required letter of credit may be reduced by the amount of the Annual Debt Service that will be paid by Actual Tax Increment that has been created within the District, and allocated to pay Annual Debt Service as provided in Section D.3. The Annual Debt Service payments that will be paid by Actual Tax Increment that has been created within the District shall be calculated by the City, using the actual Value

Increment that has been created within the District at the time the required amount of the Letter of Credit is calculated, using the mil rate effective at that time.

5. Tax Agreement. Developer shall execute and deliver to the City for recording with the Dane County Register of Deeds the Tax Agreement attached as Attachment D.

6. Payments Made Under Sections D.2(b). Amounts paid to the City under Section D.2(b) or D.4 of this Agreement shall, during the life of the District, be used and allocated in the same way Actual Tax Increment is used and allocated pursuant to this Agreement.

E. 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 Property.
3. A Tax Increment District must be fully and finally approved by the City, the Joint Review Board and the Wisconsin Department of Revenue pursuant to Wis. Stat. § 66.1105. The Tax Increment District must include the Property within its boundaries. The project plan for the District must include, as eligible project costs, the Off-Site Public Improvements, the Stormwater Management Improvements, and payment of the Municipal Revenue Obligation as provided for by this Agreement.
4. A plat, certified survey map or series of certified survey maps that conform substantially to the Plat must be approved by the City and all other approving and objecting authorities pursuant to and in accordance with Chapter 236 of the Wisconsin Statutes.
5. Developer must deliver to the City the letter of credit required by Section B.1(m) of this Agreement.
6. Developer must deliver to the City the letter of credit required by Section D.4 of this Agreement.
7. The lands needed for construction of the Jackson Street improvements must be dedicated to the City.
8. The existing access rights to U.S. Highway 51 and State Highway 138 have been acquired to the extent needed to construct the Off-Site Public Improvements.
9. Developer has received all approvals and permits needed from the Wisconsin Department of Transportation, the Wisconsin Department of Natural Resources, and any and all other governmental entities needed to construct the Public Improvements.

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10. Developer has received, in accordance with the procedures in Section B.(1)(c), a bid for construction of the Off-Site Public Improvements and the Stormwater Management Improvements (the "Bid") that does not exceed the aggregate amount of \$4,058,609 (not including engineering costs). If the Bid exceeds \$4,058,609, then this condition may alternatively be satisfied by increasing the letter of credit required by Section B.1.(m) by the amount by which the Bid exceeds \$4,058,608.

~~10.11. Developer delivers documentation to the City demonstrating that Lot 2 of the Plat has been purchased by Walmart a general merchandise retailer that is ranked by the National Retail Federation to be among the top 25 retailers in the United States based on gross sales revenue.~~

12. Walmart has entered into an agreement with the City, that is acceptable to the City, and that provides for the following: (1) Walmart will complete construction of and open for business a new Walmart on Lot 2 conforming to the General Development Plan and Specific Implementation Plan that have been approved by the City for the new Walmart store on Lot 2 of the Plat, and as such plans may be amended by the City, by not later than December 31, 2017; (2) Walmart provides a tax increment guarantee to the City that Lot 2 of the Plat will have an assessed value for property tax purposes of not less than \$12,000,000, by not later than January 1, 2018 (failure to do so requiring Walmart to pay the City annually (and for each calendar year until the year in which the assessed value of Lot 2 of the Plat equals \$12,000,000) the amount of property taxes that would have been generated if the assessed value of Lot 2 of the Plat equaled \$12,000,000); and (3) the City agrees that, in the event of Developer's failure to timely complete the Public Improvements, the City will either (a) complete the Public Improvements or (b) allow Walmart to complete the Public Improvements, in either case, funding the Public Improvements from the City and Developer sources described in this Agreement.

~~11.13. Developer delivers documentation to the City demonstrating that three lots in the Plat (in addition to Lot 2) have been purchased by commercial enterprises.~~

~~12.14. Developer and all others having an interest in the Property must execute and deliver to the City for recording with the Dane County Register of Deeds, a Tax Agreement in the form attached as Attachment D.~~

~~If the events described in this Section E are not satisfied by AugustJune 30, 2015, then this Agreement shall be null and void.~~

F. 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.

G. 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 successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, and any unapproved assignment is void.

3. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

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

5. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. Remedies include, but are not limited to, drawing on the letters of credit, and charging Developer, on all amounts due to the City not paid by the due date, interest at the rate of 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 Pre-Annexation Agreement executed April 18 and 19, 2013, shall constitute the entire Agreement between Developer and the City as of the date hereof.

7. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

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

9. Indemnification. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and its officers, agents and employees from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Project occasioned wholly or in part by any act or omission on Developer's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time occurring on, at or in the Property, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City. The City shall be entitled to appear in any proceedings to defend itself against such claims, and all costs, expenses and reasonable attorney fees incurred by the City in connection with such defense shall be paid by Developer to the City. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event the City elects to exercise any of the remedies as provided under this Agreement following default hereunder. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment F.

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: Dennis Steinkraus
161 Horizon Drive, Suite 101A
Verona, WI 53593

Developer's Attorney ~~Daniel O'Callaghan~~ ~~Ronald Trachtenberg~~
One South Pinckney ~~33 E. Main Street, Suite~~

700500

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~~P.O. Box 2038~~
Madison, WI ~~53703-4257~~ ~~53701-2038~~

To the City: Laurie Sullivan, Finance Director
City of Stoughton
381 East Main Street
Stoughton, WI 53589

City Attorney Matthew P. Dregne
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784

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

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

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

14. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Plat and the Project, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

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

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

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

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

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

20. Term. Except as provided in Section E, this Agreement shall continue in full force and effect until such time as Developer's obligations under Sections B and D 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. Status of January Agreement. The Agreement to Undertake Development dated as of ~~November 13~~January 29, 2014 is superseded and replaced by this Agreement.

22. 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 _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

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DEVELOPER:
KETTLE PARK WEST LLC

By _____
David Jenkins, Managing Partner

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

Countersigned:

Laurie Sullivan, Finance Director Date

Approved as to Form:

Matthew P. Dregne
City Attorney

Attachments:

- A - Description of the Property
- B Schedule of Annual Debt Service Payments
- C Form of Municipal Revenue Obligation
- D Form of Tax Agreement
- E Prevailing Wage Rate Determination
- F City Contract Insurance Requirements



Forward Development Group
161 Horizon Drive, Suite 101A
Verona, WI 53593

ATTACHMENT A

DESCRIPTION OF AMENDED GENERAL DEVELOPMENT PLAN BOUNDARY

Part of Lot 2, Certified Survey Map No. 3430, Lots 1, 2, and 3, Certified Survey Map No. 3435, Lot 1, Certified Survey Map No. 9632, and Part of the Northwest Quarter, Northeast Quarter, Southeast Quarter and Southwest Quarter of the Southeast Quarter of Section 01, Township 05 North, Range 10 East, City of Stoughton, Dane County, Wisconsin, more particularly described as follows:

Commencing at the Southeast Corner of said Section 01; thence North 00 degrees 17 minutes 13 seconds West along the East line of the Southeast Quarter of Section 01, aforesaid, 185.11 feet; thence North 87 degrees 07 minutes 28 seconds West, 33.05 feet to the Westerly right-of-way line of Veek Road; thence continuing North 87 degrees 07 minutes 28 seconds West, 260.52 feet; thence South 00 degrees 16 minutes 13 seconds East, 5.01 feet to the Northerly right-of-way line of State Trunk Highway '138'; thence North 87 degrees 07 minutes 28 seconds West, 21.50 feet; thence South 00 degrees 12 minutes 45 seconds East, 8.67 feet; thence North 89 degrees 53 minutes 46 seconds West, 343.76 feet; thence North 87 degrees 53 minutes 44 seconds West, 1054.08 feet; thence North 02 degrees 12 minutes 57 seconds East, 63.44 feet; thence North 49 degrees 55 minutes 54 seconds East, 297.24 feet; thence South 87 degrees 53 minutes 44 seconds East, 156.18 feet; thence North 00 degrees 10 minutes 51 seconds West, 468.76 feet; thence South 90 degrees 00 minutes 00 seconds West, 32.23 feet to a point on a curve; thence Northwesterly 337.17 feet along an arc of a curve to the left, having a radius of 1669.65 feet, the chord bearing North 55 degrees 34 minutes 42 seconds West, 336.60 feet; thence South 90 degrees 00 minutes 00 seconds West, 37.73 feet; thence North 00 degrees 00 minutes 00 seconds East, 130.76 feet; thence North 49 degrees 24 minutes 07 seconds East, 363.28 feet; thence South 44 degrees 06 minutes 47 seconds East, 30.27 feet to a point of curve; thence Southeasterly 773.77 feet along an arc of a curve to the left, having a radius of 960.00 feet, the chord bearing South 67 degrees 12 minutes 12 seconds East, 752.99 feet; thence North 00 degrees 06 minutes 55 seconds West, 886.79 feet; thence South 89 degrees 53 minutes 05 seconds West, 230.62 feet; thence North 45 degrees 33 minutes 02 seconds West, 245.18 feet; thence North 44 degrees 26 minutes 58 seconds East, 217.29 feet; thence North 30 degrees 35 minutes 56 seconds East, 51.27 feet; thence South 86 degrees 41 minutes 54 seconds East, 257.20 feet to the West line of Lot 2, Certified Survey Map No. 8144; thence South 00 degrees 05 minutes 12 seconds East along said West line, 195.44 feet to the Southwest corner of said Lot 2 also being the Northwest corner of Lot 4, Certified Survey Map No. 9632; thence South 00 degrees 06 minutes 55 seconds East along said West line of Certified Survey Map No. 9632, a



Forward Development Group
161 Horizon Drive, Suite 101A
Verona, WI 53593

distance of 888.03 feet; thence South 87 degrees 57 minutes 29 seconds East, 1.15 feet; thence South 00 degrees 19 minutes 58 seconds West, 198.79 feet to the Southwest corner of Lot 2, Certified Survey Map No. 9632; thence North 89 degrees 42 minutes 22 seconds East along the South line of said Lot 2 a distance of 519.75 feet to the Westerly right-of-way line of U.S.

Highway '51'; thence South 01 degrees 40 minutes 47 seconds West along said right-of-way line, 170.46 feet to a point of curve; thence Southeasterly 487.72 feet along an arc of a curve to the left, having a radius of 981.47 feet, the chord bearing South 12 degrees 31 minutes 39 seconds East, 482.72 feet to the Westerly right-of-way line of Veek Road; thence South 00 degrees 17 minutes 13 seconds East along said right-of-way line, 322.71 feet to the point of beginning.

Said parcel contains 1,609,687 square feet or 36.953 acres.

ATTACHMENT B
SCHEDULE OF ANNUAL DEBT SERVICE PAYMENTS

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ATTACHMENT B

SCHEDULE OF ANNUAL DEBT SERVICE PAYMENTS

City of Stoughton, Wisconsin

Estimated Cash Flow: Phase 1 First 4 Users

TID Year	Assessment Year	Incremental Assessed Value (Land and Improvements)	Projected Total Incremental RV	Annual Incremental Tax Revenue	Estimated City TID Adm'n Costs	Tax Increment Available for Debt Service	Cumulative Tax Increment	City GO Bond Debt Service	Developer Cash Grant	Annual Tax Increment Available After DS	Cumulative Tax Increment Available After Debt Service
0	2014										
1	2015										
2	2016	\$10,533,029	\$ 10,533,029	\$ -	\$ (15,000)	\$ (15,000)	\$ (15,000)			\$ (15,000)	\$ (15,000)
3	2017	\$ 6,066,380	\$ 17,029,409	\$ 342,891	\$ (5,000)	\$ 237,891	\$ 237,891	\$ (513,932.13)		\$ 44,599	\$ 29,599
4	2018	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 610,548	\$ (380,584.26)		\$ 1,114	\$ 30,713
5	2019	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 948,587	\$ (380,584.26)		\$ 1,114	\$ 31,827
6	2020	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 1,385,965	\$ (380,584.26)		\$ 1,114	\$ 32,940
7	2021	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 1,773,883	\$ (380,584.26)		\$ 1,114	\$ 34,054
8	2022	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 2,181,381	\$ (380,584.26)		\$ 1,114	\$ 35,168
9	2023	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 2,548,079	\$ (380,584.26)		\$ 1,114	\$ 36,282
10	2024	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 2,878,777	\$ (380,584.26)		\$ 1,114	\$ 37,395
11	2025	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 3,184,075	\$ (380,584.26)		\$ 1,114	\$ 38,509
12	2026	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 3,471,173	\$ (380,584.26)		\$ 1,114	\$ 39,623
13	2027	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 3,740,871	\$ (380,584.26)		\$ 1,114	\$ 40,736
14	2028	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 4,000,871	\$ (380,584.26)		\$ 1,114	\$ 41,850
15	2029	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 4,247,588	\$ (380,584.26)		\$ 1,114	\$ 42,964
16	2030	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 4,475,287	\$ (380,584.26)		\$ 1,114	\$ 44,077
17	2031	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 4,689,863	\$ (380,584.26)		\$ 1,114	\$ 45,191
18	2032	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 4,896,391	\$ (380,584.26)		\$ 1,114	\$ 46,305
19	2033	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 5,090,258	\$ (380,584.26)		\$ 1,114	\$ 47,419
20	2034	-	\$ 17,029,409	\$ 342,890	\$ (5,000)	\$ 337,890	\$ 5,271,757	\$ (380,584.26)		\$ 1,114	\$ 48,532
Total		\$ 17,029,409		\$ 6,918,757	\$ (105,000)	\$ 6,813,757		\$ (6,785,234.80)	\$ -	\$ 48,532.31	

Tables I and III show the anticipated project costs and projected tax increment revenues for financing of the proposed public improvement project costs of the District, and the projected cash flow. There are two alternate scenarios: Phase 1 First 4 Users only and Phase 1 Full Build out. The City anticipates financing the proposed project costs outlined in Table I through bond issuance but reserves the right to finance project costs through pay-as-you-go reimbursement and developer cash grants. The City anticipates entering into an agreement with the developer that should the development be successful and generate the revenues as projected upon full build out of Phase 1 that a Developer Cash Grant would be provided.

Tables I and III indicate that projected tax increments are expected to be sufficient to support the project costs through the maximum term of the district, with both alternate scenarios as described.

The retirement of the District, taking into consideration the assumptions identified in Table I (Proposed Project Costs, Public Works & Improvements) and Table II (Projected Development Assumptions), is based on the property tax collection that was in place at the time of the Public Hearing held on October 27, 2014.

ATTACHMENT C

FORM OF MUNICIPAL REVENUE OBLIGATION

TO AGREEMENT TO UNDERTAKE DEVELOPMENT
(Kettle Park West Development)

FORM OF MUNICIPAL REVENUE OBLIGATION

CITY OF STOUGHTON
MUNICIPAL REVENUE OBLIGATION SERIES 20 ____
\$ _____

THIS MUNICIPAL REVENUE OBLIGATION (the "Obligation") is issued pursuant to Wis. Stat. § 66.0621 this ____ day of _____, 20____ by the City of Stoughton, Dane County, Wisconsin (the "City") to Kettle Park West LLC, its successors and assigns ("Developer").

WITNESSETH:

- A. The City and Developer have entered into an Agreement to Undertake Development dated _____, 2014 (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.

1. *Promise to Pay.* The City shall pay to Developer the principal amount of \$ _____, together with interest thereon at a rate of zero percent (0 %) per annum, solely from Excess Tax Increment, in Scheduled Payments in accordance with Schedule 1 attached hereto and made a part hereof. To the extent that on any Payment Date the City is unable to make a payment from Excess Tax Increment at least equal to the Scheduled Payment due on such date as a result of having received, as of such date, insufficient Excess Tax Increment, or as the result of the City Council not having appropriated sufficient Excess Tax Increment, such failure shall not constitute a default under this Obligation and, except as hereinafter provided, the City shall have no obligation under this Obligation, or otherwise, to subsequently pay any such deficiency unless the deficiency is the direct result of the failure of Dane County to timely remit the proper amount of Tax Increment, in which case, such deficiency shall be paid promptly upon remittance by Dane County. Any payments on the Municipal Revenue Obligation, which are due on any Payment Date, shall be payable solely from and only to the extent that, as of such Payment Date, the City has received Excess Tax Increment. If, on any

Payment Date there is insufficient Excess Tax Increment to make the scheduled payment due on such date, or if the City Council shall not otherwise appropriate sufficient Excess Tax Increment to make the scheduled payment due on such date in full, the amount of such deficiency in the scheduled payment shall be deferred and shall be paid with interest at a rate equal to zero percent (0%) per annum, on the next Payment Date on which the City has Excess Tax Increment in excess of the amount necessary to make the scheduled payment due on such Payment Date, and if such deficiency has not been paid in full by the final Payment Date as set forth on Schedule I, then the term of this Obligation shall be extended to include additional successive payment dates on which any Excess Tax Increment will be applied to the payment of such accrued and unpaid deficiencies in the scheduled payments to be made hereunder. In no case, however, 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. The District shall not be terminated until this Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever occurs first.

2. *Limited Obligation of City.* This Obligation shall be payable solely from Excess Tax Increment, and 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, except the Excess Tax Increment, and then only to the extent and in the manner herein specified.

3. *Subject to Annual Appropriations.* Each payment under this Obligation shall be subject to annual appropriation by the City Council in accordance with the requirements for revenue obligations and in a manner approved by the City's bond counsel.

4. *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.

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

Dated this _____ day of _____, _____.

CITY OF STOUGHTON

By _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

Attachment – Schedule 1

Schedule 1

ATTACHMENT D

FORM OF TAX AGREEMENT

TAX AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 2014 (the "Agreement"), by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Kettle Park West, LLC (the "Owner"), a Wisconsin limited liability company.

RECITALS

A. Owner is the sole owner of property (the "Property") in the City of Stoughton, more particularly described in Exhibit A.

B. Owner and the City have entered into or are simultaneously entering into an agreement relating to the development of the Property entitled Agreement to Undertake Development (Kettle Park West Development) (hereafter the "TID Agreement"). The TID Agreement provides that the City may incur principal debt service obligations in the estimated amount of \$5,127,264 ("City Debt Service") to assist Owner in funding offsite and on-site public improvements, and to pay for certain improvements to be constructed by the City, as described in the TID Agreement, subject to repayment of such City Debt Service out of tax increment generated from the Property.

C. Owner and the City wish to enter into this Agreement concerning preservation of the taxable status of the Property to ensure repayment of the City Debt Service.

D. The City's obligations under the TID Agreement are conditioned on Owner signing and recording this Agreement.

E. The City has provided and shall continue to provide public health, safety, fire and police protection, streets and street maintenance, snow removal, and other governmental services ("Municipal Services") with respect to the Property that are funded by property taxes.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises, obligations and benefits provided under this Agreement and the TID Agreement, the receipt and adequacy of which are hereby acknowledged, Owner and the City agree as follows:

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO

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

P.I.N.

1. Recitals Incorporated. The recitals stated above are incorporated in this Agreement by reference.
2. Representations and Warranties by Owner. Owner represents and warrants that Owner: (1) is a Wisconsin limited liability company organized and existing under the laws of the State of Wisconsin; (2) has taken all action necessary to enter into this Agreement; (3) has duly authorized the individual signers of this Agreement to do so; and (4) is the sole owner of the Property, in fee simple.
3. Tax Status of the Property. The Property shall be subject to property taxation and shall not be exempt from property taxation, in full or in part, except as required by law or as expressly set forth in this Agreement until the City Debt Service is retired. Owner shall take all reasonable actions to assure that the Property shall not be exempt from property taxation, in full or in part, except as required by law or as expressly set forth in this Agreement until the City Debt Service is retired. Owner shall not submit any request or application for property tax exemption of the Property, in full or in part, challenge the status of the Property as fully subject to property taxation, or seek any ruling by a court or any statutory change that would entitle the Property to exemption, in full or part.
4. Payment for Municipal Services If Property Becomes Tax Exempt. If in any year (the "Valuation Year") prior to retirement of the City Debt Service, the Property is exempt from property taxation, in full or in part, Owner shall pay the City, as a payment for Municipal Services provided by the City with respect to the Property ("Payment for Municipal Services"), the difference between (1) the amount of property taxes, if any, on the Property, actually received by the City from Owner for the Valuation Year, and (2) the amount of property taxes on the Property that the City would have received for the Valuation Year if the Property were fully subject to property taxation. The City shall send Owner an invoice for the Payment for Municipal Services due. One-half of the Payment for Municipal Services shall be due on January 31 of the year after the Valuation Year. The balance of the Payment for Municipal Services shall be due on July 31 of the year after the Valuation Year. Each payment shall be deemed made when actually received by the City. Any payment made by check shall not be deemed made until the check has cleared all banks. Any amount due that is not paid on time shall bear interest in the same manner and at the same rate as provided by law for unpaid property taxes. The Payment for Municipal Services shall constitute payment for Municipal Services provided with respect to the Property during the Valuation Year. The City and Owner acknowledge and agree that this Payment for Municipal Services would constitute a reasonable and appropriate means of carrying out the intent of the parties and would fairly and reasonably compensate the City for the Municipal Services provided during the Valuation Year.
5. Calculation of Property Taxes As If Property Were Not Exempt Prior to Retirement of the City Debt Service. Prior to retirement of the City Debt Service, if it becomes necessary to calculate the amount of property taxes on the Property that the City would have received if the Property were fully subject to property taxation, this amount shall be calculated as follows: (1) The fair market value of the Property as of January 1 of the Valuation Year shall be determined, in the same manner as provided by law for property that is fully taxable, by the City Assessor or, if the City Assessor is unable or unwilling to do so, by a competent and impartial appraiser selected by the City in its sole discretion. (2) The fair market value, as so determined, shall be divided by the average assessment ratio for the year for property in the City, as determined by the Wisconsin Department of Revenue (for purposes of this Agreement the result shall be the "Equalized Value"). (3) The Equalized Value shall be multiplied by the mil rate at which taxable property in the City is taxed to levy taxes for all taxing jurisdictions to which the Property is subject for the Valuation Year. That amount shall be

deemed the amount of property taxes on the Property that the City would have received if the Property were fully taxable.

6. Binding Effect of Calculation; Dispute Resolution. The amount of any Payment for Municipal Services, determined as provided in this Agreement, shall be binding on the parties unless determined to be excessive in an arbitration proceeding conducted in accordance with chapter 788, Wisconsin Statutes, or any successor statute, by a single arbitrator, chosen by mutual agreement of the Parties or, if they do not agree, by the Circuit Court for Dane County, Wisconsin, on application of either party. The arbitrator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten years experience in the valuation of commercial property. Any demand for arbitration shall be made within thirty days after an invoice for Payment of Municipal Services is sent by the City to Owner. If a demand for arbitration is not made within that time, the parties shall be deemed to have waived arbitration. The party demanding arbitration shall bear all the costs of arbitration. Chapter 788, Wisconsin Statutes, or any successor statute, shall govern the arbitration proceeding, except that Owner and the City each waive any right to trial by jury. Any other dispute between the parties arising out of, related to, or connected with this Agreement shall be arbitrated in the same manner.

7. Special Assessment If Any Required Payment for Municipal Services Is Not Timely Made. Any Payment for Municipal Services that is not made when due shall entitle the City to levy a special assessment against the Property for the amount due, plus interest. Owner hereby consents to the levy of any such special assessment, and pursuant to Wis. Stat. § 66.0703(7)(b), waives any right to notice of or any hearing on any such special assessment.

8. Indemnification. Owner shall indemnify the City for all amounts of attorneys' fees and expenses and expert fees and expenses incurred in enforcing this Agreement.

9. Remedies. The City shall have all remedies provided by this Agreement, and provided at law or in equity, necessary to cure any default or remedy any damages under this Agreement.

10. Term of Agreement. The term of this Agreement shall begin on the date the Agreement is signed by both parties and shall continue until the City Debt Service is retired unless terminated by mutual written agreement. Notwithstanding anything herein to the contrary, in the event that Owner or any subsequent owner of the Property or any part of the Property, desires to terminate this Agreement prior to retirement of the City Debt Service, such Owner may request the City to calculate the amount of property taxes that must be generated by the Property (or the relevant part of the Property) to prepay the outstanding City Debt Service, and this Agreement shall terminate upon payment to the City of the amount so calculated.

11. Successors and Assigns. This Agreement is binding on the successors and assigns of the parties, including, but not limited to, any subsequent owner of the Property, any part of the Property, or any real property interest in the Property or any part of the Property. If at any time the Property has more than one owner, any Payment for Municipal Services due under this Agreement for any Valuation Year shall be allocated among the owners in proportion to the fair market value of their property interests as of January 1 of the Valuation Year, as determined under section 6 of this Agreement.

12. Recording. The City may record this Agreement with the Register of Deeds for Dane County. Owner shall pay the cost of recording this Agreement.

13. Entire Agreement; Amendments. This Agreement encompasses the entire agreement of the parties. Any amendment hereto shall be made in writing, signed by both parties.

14. Severability. If any part of this Agreement is determined to be invalid or unenforceable, the rest of the Agreement shall remain in effect.

15. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

16. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement, neither party shall be deemed the drafter of this Agreement for purposes of its interpretation.

17. Notices. Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, to the party at the address stated below or when actually received by the party, whichever is first. The addresses are:

To City:	Laurie Sullivan, Finance Director City of Stoughton 381 East Main Street Stoughton, WI 53589
City Attorney:	Matthew P. Dregne 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784
To Owner:	Dennis Steinkraus 161 Horizon Drive, Suite 101A Verona, WI 53593
Owner's Attorney:	Daniel O'Callaghan Michael Best & Friedrich LLP 1 South Pinckney Street, Suite 700 Madison, WI 53701-1806

Addresses may be changed by notice given in the manner provided in this section.

18. Governing Law. This Agreement has been negotiated and signed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the United States and the State of Wisconsin.

(Signature pages follow.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY:
CITY OF STOUGHTON

By _____
Donna Olson, Mayor

By _____
Lana C. Kropf, City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, the above-named Donna Olson and Lana C. Kropf, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

Approved as to form:

Matthew P. Dregne
City Attorney

OWNER:
KETTLE PARK WEST LLC

By _____
David Jenkins, Managing Partner

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, the above-named David Jenkins, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission: _____

Exhibit A – Description of the Property

This instrument drafted by:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701
608/256-0226

Exhibit A

Description of the Property

ATTACHMENT E
PREVAILING WAGE RATE DETERMINATION

ATTACHMENT F

CITY CONTRACT INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. Worker's Compensation and Employers Liability Insurance - The Contractor shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

b. Commercial General Liability and Automobile Liability Insurance - The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering. Symbol 1 (any vehicle)

Limits - The Contractor shall maintain **limits** no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence (\$2,000,000 general aggregate if applicable) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the City of Stoughton or the general aggregate including product-completed operations aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering **all** vehicles to be used in relationship to the Agreement
3. Umbrella Liability — Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as

set forth herein.

c. **Required Provisions** - The general liability umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CO 2010, CO 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises occupied or used by the Contractor; and vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City of Stoughton, its elected and appointed officials, officers, employees, or authorized representatives or volunteers **shall not** contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after sixty (60) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the City of Stoughton.
6. Such liability insurance shall indemnify the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Contractor for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.
7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability **with a minimum of a 24 month policy extension**, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
8. All of the insurance shall be provided on policy forms and through companies satisfactory to the City of Stoughton, and shall have a minimum A.M. Best's rating of A- VII.

d. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City of Stoughton. At the option of the City of Stoughton, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

e. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of Stoughton a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. CG 20 10 11 85 covers all bases OR Form CO 20 10 10 01 for ongoing work exposure and Form CG 20 37 10 01 for products-completed operations exposure.

Such evidence **shall include** an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions 1-5.

f. Responsibility for Work - until the completion and final acceptance by the City of Stoughton of all the work under and implied by this agreement, the work shall be under the Contractor's responsibility care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

g. Sub-Contractors - In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

**City of Stoughton
Insurance Endorsement Form
(General Liability)**

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. **Additional Insured:** With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. Additional Insured status shall be endorsed onto this policy in a form at least as broad as (CG 20 10 11 85) This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
 2. **Cross Liability Clause:** The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
 3. **Occurrence Based Policy:** This policy shall be an "occurrence-based policy".
 4. **Primary Insurance:** For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
 5. **Indemnification Clause:** The underwriters acknowledge that the named insured shall indemnify and save harmless the City against any and all claims to the extent resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).
-
6. **Investigation and Defense Costs:** Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
 7. **Reporting provisions:** Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.
 8. **Cancellation:** This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.

9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.

10. Comprehensive Coverage: This policy shall afford coverage at least as broad as Commercial General Liability "Occurrences" Form (CG 00 01) and shall include the following:

A. General Liability

- (1) Comprehensive Form
- (2) Premises/Operations
- (3) Independent Contractors Liability
- (4) Broad Form Property Damage
- (5) Personal Injury
- (6) Products, Completed Operations
- (7) Contractual
- (8) Explosions, collapse, or underground property damage

Note: If this is a Homeowner's Policy in lieu of Commercial General Liability, it shall afford coverage at least as broad as a Homeowners ISO Form II from Wisconsin and shall include comprehensive personal liability.

This policy shall provide the dollar limit specified in paragraph 9 with the following additional coverage where boxes below are checked:

11. NA

12. NA

13. Other _____

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (Date)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

**City of Stoughton
Insurance Endorsement Form
(Business Auto Liability)**

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. **Additional Insured:** With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be names as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
 2. **Cross Liability Clause:** The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
 3. **Occurrence Based Policy:** This policy shall be an "occurrence-based policy".
 4. **Primary Insurance:** For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
 5. **Indemnification Clause:** The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Stoughton against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).
-
6. **Investigation and Defense Costs:** Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
 7. **Reporting provisions:** Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.

8. Cancellation: This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.

9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by the named insured.

10. Comprehensive Coverage: This policy shall afford coverage at least as broad as (Occurrence) Form CA0001692 Code 1 "any auto" and shall include the following:

A. General Liability

- (1) All licensed vehicles and equipment used in the project
- (2) Uninsured or Underinsured Motorists Liability Coverage
- (3) Elimination of Pollution Exclusion (on request)

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (Date)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

f:\common\psw\john\misc\insforms.doc