

RESOLUTION NO. 2019-21

RESOLUTION BY THE RACINE COUNTY FINANCE AND HUMAN RESOURCES COMMITTEE AUTHORIZING ACCESS TO TAX DELINQUENT PROPERTY FOR WHICH A TAX CERTIFICATE HAS BEEN ISSUED IN THE CITY OF RACINE, WISCONSIN

To the Honorable Members of the Racine County Board of Supervisors:

WHEREAS, Racine County ("County") has, pursuant to § 74.57 of the Wisconsin Statutes, issued tax certificates on tax parcels located in the City of Racine ("City"), on which real estate taxes are unpaid, (the "Tax Delinquent Properties"); and

WHEREAS, § 75.377 of the Wisconsin Statutes allows the County or a person authorized by the County to enter any real property for which a tax certificate has been issued under § 74.57 of the Wisconsin Statutes, to determine the nature and extent of environmental pollution, as defined in § 299.01 (4) of the Wisconsin Statutes; and

WHEREAS, the perception or actual presence of environmental pollution at Tax Delinquent Properties tends to contribute to the likelihood that such properties will remain tax delinquent and contribute to and perpetuate blight in the community; and

WHEREAS, the Redevelopment Authority of the City of Racine ("RDA") have established programs to enter properties for the purpose of investigating and cleaning up environmental contamination and to eliminate blight and encourage the sale, redevelopment and return to productive use of blighted property; and

WHEREAS, the RDA has indicated its intent to request access to one or more Tax Delinquent Properties, as the County's designee under § 75.377 of the Wisconsin Statutes, to determine the nature and extent of environmental pollution, as defined in § 299.01 (4) of the Wisconsin Statutes; and

WHEREAS, the Board of Supervisors and Corporation Counsel have reviewed this matter and, on the condition that the City and the RDA enter all Tax Delinquent Properties at their sole risk and expense, have determined it is in the public interest of the people of Racine County for the Board of Supervisors to authorize and direct the Racine County Treasurer to issue to the RDA upon request authorizations on a case-by-case basis to enter as the County's designee under § 75.377 of the Wisconsin Statutes, in order to facilitate the orderly assessment, cleanup and return to the tax rolls of as many Tax Delinquent Properties as possible in the City.

NOW, THEREFORE, BE IT RESOLVED by the Racine County Board of Supervisors that, pursuant to § 75.377 of the Wisconsin Statutes, the Racine County Treasurer is hereby authorized and directed to authorize, on a case-by-case basis, the RDA and its respective designees to enter Tax Delinquent Properties to determine the nature and extent of environmental pollution, as defined in s. 299.01 (4) of the Wisconsin Statutes; and

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that, any authorization to enter any Tax Delinquent Properties prepared pursuant to the authority granted by this resolution shall be granted subject to the following conditions:

1. The RDA requests access in writing, substantially as set forth in attached Exhibit A;
2. The RDA presents, or the County independently obtains, satisfactory written evidence that the property to which access is sought is subject to one or more tax certificates issued and outstanding pursuant to § 74.57 of the Wisconsin Statutes; and

3
4 3. Any provision by Racine County of authorization to enter any Tax Delinquent
5 Properties shall be in writing, bearing the date, and substantially as set forth in
6 attached Exhibit B, and shall include the condition that any entry of the property
7 pursuant to the authorization shall be at the sole risk and expense of the entity
8 that requested the access, which shall be specified by name, and shall become
9 effective upon delivery to Racine County of a waiver substantially as set forth in
10 attached Exhibit C and signed by each person that enters the Property under
11 authority of Racine County's authorization.
12

13 Respectfully submitted,

14 1st Reading 6-25-19

**FINANCE AND HUMAN RESOURCES
COMMITTEE**

16 2nd Reading 6-25-19

BOARD ACTION

19 Adopted yes
20 For _____
21 Against _____
22 Absent _____

Robert N. Miller
Robert N. Miller, Chairman

Brett A. Nielsen
Brett A. Nielsen, Vice-Chairman

25 VOTE REQUIRED: Majority

Q.A. Shakoor, II
Q.A. Shakoor, II, Secretary

27 Prepared by:
28 Corporation Counsel

Janet Bernberg
Janet Bernberg

John A. Wisch
John A. Wisch

Mike Dawson
Mike Dawson

Thomas Pringle
Thomas Pringle

39 The foregoing legislation adopted by the County Board of Supervisors of
40 Racine County, Wisconsin, is hereby:

41 Approved: X
42 Vetoed: _____

43
44 Date: 7-10-19
45
46 Jonathan Delagrave

47 Jonathan Delagrave, County Executive

MEMORANDUM OF UNDERSTANDING
ACCESS TO TAX DELINQUENT PROPERTIES
TO INSPECT FOR ENVIRONMENTAL POLLUTION

Racine County (the “County”) and the Redevelopment Authority of the City of Racine (the “RDA”) (collectively, the “Parties”) enter this Memorandum of Understanding (“MOU”) for the purpose of more efficiently undertaking legal access to tax delinquent properties for the purpose of determining the scope of environmental pollution.

Background Information

Tax delinquent properties abound in the City of Racine. Such properties attract illicit activity that results in crime, stripping of salvage, deterioration of the structure, unhealthy and unsafe conditions and possible environmental contamination. Costs of managing such problems could be avoided or reduced and property tax revenues could be increased if tax delinquent properties were investigated and transferred to new ownership early in the cycle.

The RDA has statutory authority under Wisconsin Statute s. 66.1333 to prevent and eliminate blight, including blight caused by tax delinquent properties and environmental pollution. The RDA operates a program of environmental investigation, property acquisition and environmental cleanup and redevelopment to prevent and eliminate blight. However, the RDA lacks statutory authority to directly access tax delinquent properties.

The County has statutory authority under Wisconsin Statute s. 75.377 to access or allow its designee to access tax delinquent properties for which a tax certificate has been issued for purposes of inspection for environmental pollution. Currently, County committee and County Board approval are required for each instance of delegated access.

Both the County and the RDA need an efficient means to allow the RDA to legally access tax delinquent properties to inspect for environmental pollution. The current means of obtaining access under Wisconsin Statute s. 75.377 is inefficient, overly consumptive of County and RDA time, and too slow to accommodate most potential buyers. As a result, the opportunity to restore the property to productive use is lost and tax revenue is lower than it could be.

Joint Understandings of the Parties

The County and RDA will, by their resolutions, adopt standard procedures and approve template documents to allow a County department to provide the RDA with access to specified tax delinquent properties on a case by case basis upon receipt of the RDA’s request for access complete with the attachments required by the approved template documents.

Following adoption of the respective resolutions by the County and RDA, the access process will proceed in substantially the following manner:

Mechanics of Implementation:

- A. The RDA will send a letter to County Treasurer requesting access to a specific property, which shall be identified by street address and tax parcel number (the "Subject Property") (example 'template' request letter is attached as Exhibit A).
- B. The County Treasurer will verify that a tax certificate is issued and outstanding for the Subject Property.
- C. The County Treasurer will promptly inform the RDA if a tax certificate is not issued and outstanding for the Subject Property.
- D. The County Treasurer will send the County's response letter to the RDA granting access pursuant to the request subject to receipt of the required signed waiver forms and insurance certificates (example 'template' response letter attached as Exhibit B and example waiver attached as Exhibit C).
- E. The RDA and/or its agents and designees will access the Subject Property at their sole risk and expense, will perform and complete their investigation of the Subject Property, and the RDA will provide the County Treasurer with written notice when all access is complete and a summary of any investigation performed.

Liability Protections and Obligations:

The Parties intend that all reasonable risks of liability be covered by insurance provided by each contractor accessing the Subject Property, that required types of insurance policies name the County and RDA as additional insureds as evidenced by one or more insurance certificates, and that each individual entering the Subject Property under authority of the County's grant of access, whether directly as the County's designee or indirectly as a designee of the RDA, will sign a waiver of personal injury liability with respect to both Parties. In addition, the entire cost of the work done pursuant to any access granted by the County shall be the sole obligation of the RDA.

All contracts for work to be performed at the Subject Property shall include, at minimum, each of the contract clauses enumerated below.

1. Insurance. Prior to commencement of the Work, the RDA shall cause its contractors to provide to the RDA certificates of insurance signed by the insurer's representative evidencing that, at a minimum, the coverage required by this Agreement is in full effect for every contractor who will perform any of the Work for the duration of the Work. The certificates for Commercial General Liability coverage, Commercial Automobile Liability coverage and Contractor's Pollution Liability coverage must list the RDA and Racine County as additional named insureds. All insurance coverage required by this Agreement that is satisfied with a claims made policy shall be maintained in full force for the duration of the Work and 120 days thereafter, except that Contractor's Pollution Liability coverage shall remain in effect for 365 days following completion of the Work. Any Contractor that will not disturb or penetrate the soil at the Property or sample, containerize or move waste or hazardous material at or from the

Property shall be required to provide the insurance coverages and liability limit amounts stated in subsections A, B, C and F below; otherwise, the insurance coverages and liability limit amounts stated in subsections A through F below shall apply to every Contractor that will perform the Work:

A. Workers Compensation (statutory amount) and Employer's Liability (\$1,000,000).

B. Commercial General Liability insurance of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extensions of coverage to include Contractual Liability, Broad Form Property Damage, Products/Completed Operations, Cross Liability. Additionally, the policy shall not exclude X, C or U (Explosion, Collapse, or Underground).

C. Commercial Automobile Liability insurance with minimum limits of \$1,000,000 per occurrence combined single limit of Bodily Injury and Property Damage coverage. Coverage shall extend to all owned, hired, or non-owned vehicles. In addition, coverage shall not contain any exclusion for pollution.

D. Environmental Consultants Professional Liability with minimum limits of \$2,000,000 per claim. Policy shall not exclude claims involving pollution.

E. Contractor's Pollution Liability with minimum limits of \$2,000,000.

F. Excess Liability Coverage (Umbrella) with combined single limit of \$1,000,000.

2. Compliance with Laws. Contractor shall ensure that the Work is conducted in compliance with all applicable federal, state and local laws, ordinances, rules, orders or regulations. Following conclusion of the Work, Contractor shall prepare and deliver to the RDA and the County a brief draft report documenting the Work performed, the quantities of any wastes for hazardous substances found at or removed from the Property, and documentation of disposal of any materials or wastes removed from the Property.

3. Safety. During the performance of the Work, Contractor shall ensure the safety of persons on and off the Property with respect to any hazard resulting from the Work and also from exposure to wastes and contaminated materials at the Property and those removed from the Property.

4. Indemnification. Contractor shall indemnify, defend and hold harmless the RDA and the County and their officers, directors, employees and agents from and against any and all claims, damages, fines, penalties, losses and expenses, including without limitation attorney fees and costs, arising out of or resulting from (i) the negligent acts or omissions or willful misconduct of Contractor, its agents, representatives, contractors and subcontractors while performing the Work; (ii) the failure of Contractor, its agents, representatives, contractors or subcontractors to comply with any and all applicable federal, state or local laws, ordinances, rules, regulations or building and safety codes while performing the Work; and (iii) the injury or damage caused to any person or Property as a result of the Work.

5. Repair of Property. Contractor shall: (1) promptly repair and restore any damage to the Property caused by Contractor or any of the Contractor Parties, or (2) at the RDA's option, the RDA shall repair and restore such damage and Contractor shall promptly reimburse the RDA for the reasonable costs of such repairs and restoration.

6. Governing Law. This Agreement shall be interpreted and construed according to the laws of the State of Wisconsin.

7. Severability of Provisions. If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.

8. Binding Effect. The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns.

9. Entire Agreement. This writing constitutes the entire agreement between the parties hereto, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement may be modified or amended only by written instrument signed by both parties.

10. Attorneys' Fees. In the event of litigation arising out of this Agreement, each party shall be responsible for their own attorneys' fees.

11. Email Signatures and Counterparts. Signatures transmitted via electronic mail shall be binding on the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but which altogether shall constitute one and the same instrument.

[signature pages to follow on separate sheets]

EXHIBIT A

Template – RDA Request to Access Tax Delinquent Property for Environmental Inspection

[Date]

Racine County Treasurer
Racine County
730 Wisconsin Avenue
Racine, Wisconsin 53403

RE: Request for Access to Tax Delinquent Property to Investigate Environmental Pollution;
[insert Tax ID No. and Address] (the “Property”)

Dear _____:

To the best of our knowledge and belief, the referenced Property is tax delinquent with one or more tax certificates outstanding, dated _____. Because a tax certificate has been issued under Wisconsin Statute s. 74.57, Racine County may authorize another to enter the Property at this time.¹

The Redevelopment Authority of the City of Racine (“RDA”) requests the County’s authorization to enter and inspect the Property for the presence of environmental pollution.² Any such entry and inspection would be at the sole risk and expense of the RDA. Following completion of the inspection, the RDA will send you a report of its inspection and notice of withdrawal of the requested authorization.

Also following its inspection, the RDA may evaluate whether to take steps to acquire the Property and how the County could cooperate in such possible acquisition. We will contact the County Corporation Counsel in that regard.

Kindly send to the undersigned the County’s written authorization to access the Property to proceed with the proposed inspection.

¹ 75.377 Inspection of property subject to tax certificate. A county may enter any real property for which a tax certificate has been issued under s. 74.57, or may authorize another person to enter the real property, to determine the nature and extent of environmental pollution, as defined in s. 299.01 (4).

² 299.01(4) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

June 13, 2019

EXHIBIT B

DRAFT – Authorization of Access under authority granted by County Resolution XXX-XX

DATE

Redevelopment Authority of the City of Racine
c/o [Ms. Amy Connolly]
Executive Director
730 Washington Avenue, Rm. 202
Racine, Wisconsin 53403

Re: Authorization to Access Property to Investigate Environmental Pollution
[insert address & tax parcel number] (the “Property”)

Dear [Ms. Connolly],

This letter is sent pursuant to the request of the Redevelopment Authority of the City of Racine (the “RDA”) by letter dated _____, seeking access to the Property to perform inspections to determine the nature and extent of environmental pollution¹ at the Property.

Wisconsin Statute § 75.377 allows a County, or its designee, to enter and inspect any real property for which a tax certificate has been issued under Wisconsin Statute § 74.57.² The County Treasurer has verified that one or more Tax Certificates are issued and outstanding against the Property.

Pursuant to the authority granted to Racine County under Wisconsin Statute § 75.377, and the authority granted to the Racine County Treasurer by the Racine County Board of Supervisors’ Resolution No. 2019-xx, this letter authorizes the RDA and its designee(s), to access the above-referenced Property in accordance with this letter at the sole risk and expense of the RDA and its designee(s) for the purpose of determining the nature and extent of environmental pollution, as defined in Wisconsin Statute § 299.01(4).

This grant of authority to enter the Property shall become effective upon delivery to the undersigned of a waiver substantially in the form attached and signed by every person that will enter the Property under the authority of this authorization letter. This grant of authority to enter the Property shall remain valid for 120 days from the date of this letter or until the RDA withdraws its request for access, whichever comes first. Following conclusion of the entry authorized by this letter, the RDA will send notice of completion of its inspections of the Property to the undersigned along with a summary report of the inspections.

¹ 299.01(4) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

² 75.377 Inspection of property subject to tax certificate. A county may enter any real property for which a tax certificate has been issued under s. 74.57, or may authorize another person to enter the real property, to determine the nature and extent of environmental pollution, as defined in s. 299.01(4).

June 13, 2019

EXHIBIT C

WAIVER, GENERAL RELEASE, INDEMNIFICATION & ACCESS AGREEMENT

THIS WAIVER, GENERAL RELEASE, INDEMNIFICATION & ACCESS AGREEMENT (the "Agreement") is made effective and entered into this _____ day of _____, 2___ by and between _____ ("Visitor"), resident of the State of _____, and Racine County ("County") and the Redevelopment Authority of the City of Racine ("RDA") (collectively, the Visitor, the County, the RDA are the "Parties").

RECITALS

A. The RDA has, pursuant to Wisconsin Statute § 75.377, secured from the County the right to access the property located at _____ in the City of Racine, Wisconsin also known as Tax Parcel No. _____ (the "Premises") provided that all individuals and entities electing to access the Premises pursuant to authority granted by the RDA sign this Agreement prior to their first access of the Premises.

B. Neither the County nor the RDA own the Premises nor have any permission of the owner of the Premises to access or allow anyone to access the premises.

C. Neither the RDA nor the County makes any representations or warranties of any kind as to the condition of the Premises or the degree of safety, fitness, or suitability of Premises for any purpose, including, but not limited to, the purpose of the Visitor entering the Premises.

D. Visitor acknowledges the condition of Premises may present inherent risks, dangers, and hazardous conditions, known or unknown, and that RDA shall under no circumstances, now or in the future, have any duty of care to warn the Visitor or to make or keep Premises safe for any entry or use.

E. The Visitor desires to access the Premises in accordance with and pursuant to this Agreement and understands that any such access shall be at Visitor's sole risk and expense in accordance with this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and mutual agreements that follow, and other good and adequate consideration, the Parties agree as follows:

AGREEMENT

1. Definitions. The following terms shall have the meaning indicated below.

a. "Claim" shall mean: all claims, demands, controversies, suits, actions, causes of action, legal or administrative proceedings arising from or related in any way to the Premises, the

condition of the Premises, the Released Parties' acts and omissions with respect to the Premises, the Released Parties' management and care of the Premises or any hazard or hazardous substance, material or waste or environmental pollution present at the Premises, and, which are or could be made under statute, contract, the common law, or otherwise against the Released Parties by the Visitor or any person or entity acting for or through the Visitor at any time following the execution of this Agreement.

b. "Liability" shall mean: any and all liability, known or unknown, accrued or not accrued, contingent or non-contingent, whether grounded in tort, contract or otherwise, together with every related cost, loss, damage (compensatory and punitive) and expense, including attorneys' fees, incurred by any person including the Visitor and those claiming by right through the Visitor.

c. "Released Parties" shall mean: Racine County and the Redevelopment Authority of the City of Racine and their respective commissioners, officers, directors, members, agents, employees, volunteers, successors and assigns.

2. Release and Waiver of Claims. The Visitor does, by execution of this Agreement, hereby irrevocably waive all Claims between itself and all the Released Parties, individually and collectively, and effectuates a full, final and irrevocable settlement and general release of all of the Released Parties from all Liability.

3. Indemnity and Hold Harmless. The Visitor hereby releases and shall defend, indemnify, and hold harmless (using counsel reasonably satisfactory to RDA and County) all the Released Parties, individually and collectively, from and against any and all Claims and all Liability, arising at any time subsequent to the execution of this Agreement and related in any manner, directly or indirectly, to the Premises, this Agreement, any incident, accident or injury suffered at the Premise, or otherwise related to the Visitors' access of, presence at or work performed at the Premises, and furthermore, Visitor shall reimburse the Released Parties for any and all legal expenses and costs incurred by each of them in connection with enforcing this Agreement.

4. Exception. The release, waiver of claims and duty to indemnify effectuated by this Agreement shall not apply to an obligation, if any, of the RDA to pay compensation for work performed by the Visitor at the Premises pursuant to a written contract or written work authorization signed by RDA with respect to the Visitor and the Premises, if any. For the purposes of this Section 4, this Agreement shall not be deemed a written contract or a written work authorization.

5. Permission to Access Premises.

A. With respect to every instance of access by Visitor to the Premises, Visitor shall be solely responsible and liable for providing the site safety plan, all personal protective equipment and safety training and for exercising the appropriate degree of caution, safety and control as may be necessary and appropriate for access to the Premises.

B. By its signature below and in accordance with and reliance upon this Agreement, the RDA grants the undersigned Visitor access to the Premises for activities involving or related to the purpose of determining the nature and extent of environmental pollution including, without limitation, all activities and work performed by the Visitor at the Premises, whether of the Visitor's own volition or according to a contract or other written authorization signed by the RDA.

C. Visitor's access to the Premises is expressly conditioned upon Visitor's execution of, agreement to, and abidance by this Agreement in addition to any contract or written work authorization signed by the RDA. Any conflict between this Agreement and any contract or written work authorization signed by the RDA shall be controlled by and resolved in favor of this Agreement.

D. Access granted by this Agreement shall commence and terminate on the dates set forth in a separate "Dates of Authorized Access" letter to be signed by the RDA and issued to the Visitor.

6. Survival. Once signed, this Agreement may not be withdrawn and all provisions and obligations established by this Agreement shall be irrevocable and survive the signing and any and all access of the Premises by the Visitor and shall continue in full force and effect for 99 years thereafter, and be fully binding on heirs and assigns.

ACCEPTED AND AGREED TO this _____ day of _____, 2____.

Visitor's signature: _____ [SEAL]

Visitor's printed name: _____

Visitor's mailing address: _____

Visitor's mobile phone: _____

Visitor's email address: _____

REDEVELOPMENT AUTHORITY OF THE CITY OF RACINE

BY: _____ [SEAL]

_____ (print name)

Its: _____

RACINE COUNTY, WISCONSIN

BY: _____

Its: County Executive

BY: _____

Its: Finance Director

BY: _____

Its: County Clerk

Date: _____
Certified to be correct as to form

By: _____
Racine County Corporation Counsel