CITY OF STOUGHTON, 207 S FORREST ST, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL		
Approve cost reimbursement agreement – Stoughton Trailers Hwy 51 Development		
Committee Action:	Finance Committee recommended approval ____on 02/14/2023 TIME SENSITIVE ITEM	
Fiscal Impact:	Net zero impact, but dollar amounts undetermined	
File Number:	R-18-2023	**Date 02/14/23**

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

RECITALS

WHEREAS, the cost reimbursement agreement with STI Holdings, Inc. arises from their wish to develop certain property in the City of Stoughton; and,

WHEREAS, STI Holdings, Inc. would like the City of Stoughton to apply to the Capital Area Regional Planning Commission (CARPC) and Wisconsin Department of Natural Resources to add the property to the Urban Service Area;

WHEREAS, STI Holdings, Inc. intends to ask the City of Stoughton to (a) amend the City's comprehensive plan; (b) approve land division, zoning and stormwater management applications; and (c) provide tax increment financing for the development; and,

WHEREAS, the requests from STI Holdings, Inc. to the City of Stoughton will require the City to incur costs for internal and professional review; and,

WHEREAS, the City of Stoughton requires STI Holdings, Inc. to enter into an agreement to avoid undue expense to the City of Stoughton; and,

WHEREAS, the proposed Cost Reimbursement Agreement for the Stoughton Trailers Hwy 51 Development has been approved by staff, STI Holdings, Inc. and the City Attorney and is attached as Attachment A; and,

WHEREAS, STI Holdings, Inc. would like Stoughton Utilities to review the proposed development plan to identify the impacts it will have on utility services, including any increased need for services; and,

WHEREAS, Stoughton Utilities requests STI Holdings, Inc. to enter into an agreement to avoid undue expense to Stoughton Utilities; and,

WHEREAS, the proposed Cost Reimbursement agreement between Stoughton Utilities and STI Holdings, Inc. has been approved by staff, STI Holdings, Inc. and the City Attorney and is included as Exhibit A and Exhibit B on Attachment A referenced above;

NOW, THEREFORE BE IT RESOLVED, that the Common Council of the City of Stoughton hereby approves the Cost Reimbursement Agreement for the Stoughton Trailers Hwy 51 Development as well as the Stoughton Utilities Development Plan Review Cost Reimbursement Agreement, attached as Attachment A; and,

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

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

_____

Mayor Tim Swadley Date

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

Attachment A

COST REIMBURSEMENT AGREEMENT

STOUGHTON TRAILERS HWY 51 DEVELOPMENT

This Agreement is made and entered into by the City of Stoughton, a Wisconsin municipal corporation (the "City"), and STI Holdings, Inc., a Wisconsin corporation (hereafter referred to as the "Developer").

RECITALS

A. This Cost Reimbursement Agreement arises from Developer's wish to develop certain property located in Stoughton, Wisconsin, and generally described in the Draft Concept map attached as Exhibit B (the "Property").

B. Developer would like the City to apply to the Capital Area Regional Planning Commission and the Wisconsin Department of Natural Resources to add the Property to the Urban Service Area, and intends to ask the City to amend the City's comprehensive plan, to approve land division, zoning, and stormwater management applications, and to provide tax increment financing for the development, all of which will require the City to incur costs for internal review and for professional review.

C. Developer and the City acknowledge that Developer would like to develop the Property in phases, and that whether and how phasing may occur will be determined in the course of the review and action on Developer's proposed division and development of the Property.

D. The City requires Developer to enter into this Agreement to avoid undue expense to the City.

AGREEMENT

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

1. DEVELOPMENT OF THE PROPERTY.

   A. Zoning and Compliance with Plans and Regulations. The parties anticipate that Developer will ask the City to amend its Comprehensive Plan and to

apply for zoning of the Property that is consistent with the City's Comprehensive Plan as amended. Any development of the Property shall be consistent with the City's Comprehensive Plan, and shall be reviewed and considered in accordance with the City's Comprehensive Plan, and land division, zoning, stormwater management, building and other regulations relating to the development of the Property.

B. Public Improvements. Developer shall be solely responsible for the cost of constructing any and all public improvements needed to serve the development of the Property, including the cost of extending any off-site improvements to the Property. The City shall have no obligation to obtain any interests needed to extend public improvements to the Property, through the exercise of eminent domain or otherwise.

C. Water Main Looping. Development of the Property shall require the looping of water main. Developer shall be responsible for the cost of any water modeling the City deems necessary, and for the cost of constructing any off-site water infrastructure the City seems necessary to provide adequate water quality, capacity and pressures to serve the Property when developed.

D. Sanitary sewer capacity. Development of the Property shall require evaluation of the capacity of the sanitary sewer infrastructure downstream of the Property. Developer shall be responsible for the cost of any sanitary sewer capacity study deemed necessary by the City, and for the cost of any off-site sanitary sewer infrastructure the City deems necessary to provide adequate sanitary sewer capacity to serve the development of the Property. For purposes of this section, "development" means the construction of public or private improvements within the Property.

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

2. FEES AND COSTS.

A. Application, Review and Administrative Fees. Developer shall pay to the City, within 30 days after delivery of a written request for payment, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred or accrued before or after the execution of this Agreement in connection with: (1) the review and processing of petitions, applications and plans for the, zoning, division or development of the Property, amending the City's Comprehensive Plan, and tax increment financing; (2) the negotiation,

preparation, consideration and review of this Agreement and other agreements relating to the Development of the Property; (3) the development of the Property, including costs incurred in connection with the construction, inspection or acceptance of public improvements. Consulting, planning, engineering, and legal fees shall be the actual costs to the City on the basis of submitted invoices, copies of which shall be provided to Developer with the City's request for reimbursement of such costs. Administrative fees including city staff time shall be calculated on an hourly basis, using the effective rate the City pays for City employee staff time, which includes wages and benefits paid to City employees. The City shall provide itemized statements showing City staff time for which Developer is responsible upon request. Inspection and observation fees during construction shall be the actual cost to the City on the basis of submitted invoices, copies of which shall be provided to Developer with the City's request for reimbursement of such costs. Before processing any application for approval of any Comprehensive Plan amendment, land division, change in zoning, erosion control or stormwater management plan, or other approval, Developer shall deposit $10,000.00 with the City to secure Developer's payment of costs pursuant to this Section. The City may apply the deposit to pay costs that are past due, in the City's sole discretion. If the deposit amount falls below $5,000.00, the City may require Developer to supplement the deposit by such amount as the City may request, up to a total deposit of not more than $10,000.00. If Developer fails to pay any cost when due, the City may increase the maximum amount of the required deposit up to $25,000.00. If Developer fails to pay any deposit or pay any cost when due, the City may suspend the processing of any and all pending applications, and may order Developer to suspend the construction of public improvements within the Property, and Developer hereby agrees that any legally or contractually imposed time periods for acting on any land division, zoning, acceptance of public improvements or other approvals will be tolled until Developer makes any required deposit or pays any required costs pursuant to this Section. Nothing in this Agreement prevents the City from requiring, in subsequent agreements relating to the division or development of the Property, a letter of credit, performance bond, deposit or other surety to secure the performance of Developer's obligations under this Agreement, subsequent agreements or both. Upon the earlier of the termination of this Agreement, Developer's withdraw of all applications and requests relating to any proposed development of the Property, or the eventual acceptance of all public improvements to be constructed within the Property pursuant to any subsequently executed development agreement, the City shall return any unused portion of the deposit to Developer.

B. Developer shall pay to the City, within 30 days after delivery of a written request for payment, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred by the City in connection with an application to amend the Stoughton Urban Service Area, the Dane County Water Quality Plan or the Dane County Land Use and Transportation Plan to facilitate development of the Property. Prior to the City applying to add the Property to the Stoughton Urban Service Area, Developer shall deposit $15,000.00 with the City which the City shall apply to pay the costs it may incur in connection with the Urban Service Area amendment process. The City shall use the deposit before billing Developer for such costs. If the City's total costs in connection with the Urban Service Area amendment process are less than $15,000.00, then the balance of the deposit shall be returned to Developer. At the time of any City billing to Developer for costs pursuant to this section, and following the completion of the Urban Service Area amendment process, the City shall provide to Developer copies of invoices for outside consultants and a statement of City staff time that support the billing or that were incurred by the City in the process of seeking to amend the Urban Service Area.

C. Impact and Connection Fees. The City requires the payment of certain impact fees pursuant to Chapter 67 of the Municipal Code of the City of Stoughton. As of the effective date of this Agreement, the City does not require the payment of a fee to connect to the City's sanitary sewer system or water system. Nothing in this Agreement is intended to relieve Developer from paying to the City fees and costs related to the zoning, division or development of the Property, and required by the City's ordinances or policies.

D. Interest on unpaid fees and costs. Any amounts not paid when due under this Agreement shall accrue interest at the rate of one percent permonth.

E. Stoughton Utilities Reimbursement Agreement. At or before the time this Agreement is executed, Developer shall execute a Reimbursement Agreement with the City, acting through Stoughton Utilities, in the form attached as Exhibit A.

3. OTHER PROVISIONS.

A. Effective Date. This Agreement shall be effective upon execution.

B. Duration. Either party may terminate this Agreement at any time by giving written notice of termination to the other party. If this Agreement is terminated, Developer shall be responsible to reimburse the City pursuant to

this Agreement for all costs, expenses and staff time incurred by the City through the date of termination.

C. Delivery of Notices and Requests for Payment. Requests for payment and other notices authorized or required by this Agreement shall be made by U.S. Mail, personal delivery or by email as follows:

(1) If to Developer:

St. Marie Law, LLC
Attn: Daniele Thompson
214 S. Forrest Street, Suite 8
Stoughton, WI 53589
dst@stmarie-law.com

(2) If to the City:

Rodney Scheel, Planning Director
207 S. Forrest Street
Stoughton, WI 53589
rjscheel@ci.stoughton.wi.us

D. Governing Law. This Agreement shall be governed by, and enforced in accordance with the laws of the State of Wisconsin. Any claim arising under this Agreement shall be brought in Dane County Circuit Court, Dane County, Wisconsin.

E. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person shall be valid against the City or Developer.

F. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement.

G. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement. This Agreement shall be construed simply and fairly to both parties.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations

between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Severability. If any part of this Agreement or its application to any person or be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby, and the remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of the Agreement to the greatest extent permitted by applicable law.

IN WITNESS WHEREOF, the parties have executed this Agreement.

DEVELOPER:
STI HOLDINGS, INC.

_____

By: _____

Attachment A

CITY:

CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

By:_____
Candee Christen, City Clerk

Exhibits:

A - Stoughton Utilities Reimbursement Agreement
B - General Concept Plan

Approved as to Form:

STAFFORD ROSENBAUM LLP
Attorneys for the City of Stoughton

By_____
Matthew P. Dregne

Attachment A

EXHIBIT A

STOUGHTON UTILITIES
DEVELOPMENT PLAN REVIEW COST REIMBURSEMENT AGREEMENT

Agreement entered into this _____ day of _____, 20__, by and between _____("Developer") and the City of Stoughton, a Wisconsin municipal corporation, acting by and through Stoughton Utilities ("Utility").

RECITALS

E. This Cost Reimbursement Agreement arises from Developer's wish to develop the Property at _____, Stoughton, Wisconsin.

F. Developer would like the Utility to review the proposed development plan ("Development Plan") to identify the impacts it will have on utility services, including any increased need for services, which will require the Utility to incur costs for internal review and for professional review.

G. The Utility requires Developer to enter into this Agreement to avoid undue expense to the Utility rate payers.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, Developer agrees as follows:

SECTION 1. PAYMENT FOR REVIEW SERVICES

1.1. Developer shall pay all costs ("Administrative Costs") incurred by the Utility for internal staff review time and for professional services performed by outside consultants on behalf of the Utility in conjunction with the Development Plan, including but not limited to planning, engineering, inspection, and legal consultation. Developer acknowledges that Administrative Costs will be incurred in connection with, among other things: review of existing utilities; new or proposed utilities construction; review of developments concepts, plans and specifications; review of potential utility infrastructure impacts and all other professional services necessary. Administrative Costs shall be the actual costs for the internal work performed and the actual costs to the Utility on the basis of submitted invoices.

1.2. Bills shall be considered delivered upon personal delivery to Developer or upon mailing to Developer at the following address:

_____

1.3. Developer shall pay the Administrative Costs within thirty (30) days of the time when the Utility delivers its bill. Failure to do so entitles the Utility to withdraw the amount of such unpaid bill from the guarantee of payment under section 2 below.

1.4. Developer acknowledges and understands that the professional consultants retained by the Utility are acting exclusively on behalf of the Utility and not Developer.

SECTION 2. GUARANTEE OF PAYMENT

2.1. Developer shall guarantee reimbursement of the Administrative Costs by depositing with the Stoughton Utilities Finance Manager cash or a cashier's check payable to the Utility in the amount of $10,000.00, subject to refund or release of unused amounts within 60 days following termination of this Agreement as defined in Section 3.

2.2. If at any time the monies on deposit with the Utility pursuant to section 2.1 are insufficient to pay expenses incurred or anticipated by the Utility for Administrative Costs, Developer shall deposit additional amounts within thirty (30) days of written demand by the Utility.

2.3. Violation of this Agreement, including but not limited to failure to pay amounts when due or failure to deposit amounts required under this section 2, shall entitle the Utility to suspend the Utility's work relating to the proposed development plan.

2.4. The remedies provided in this Agreement are cumulative and not exclusive and shall be in addition to, and not in lieu of, any other remedies available to the Utility at law or in equity.

SECTION 3. TERMINATION

3.1. This Agreement shall terminate upon (a) final rejection of the Development Plan by the City Council (b) City Council final approval of the utility infrastructure proposed after Utility review of the Development Plan, or (c) Utility receipt of a written statement from Developer withdrawing the Development Plan from further consideration.

3.2. Developer's obligation to reimburse the Utility for Administrative Costs incurred to and including the date of termination and the Utility's rights and remedies to enforce such reimbursement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Cost Reimbursement Agreement to be effective when executed by Developer.

_____ By _____

Date (print name) _____

CITY OF STOUGHTON,
acting through Stoughton Utilities

_____ By _____

Date Jill Weiss, Utilities Director

Attachment A

EXHIBIT B

General Concept Plan

Attachment A