CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Resolution by the Common Council of the City of Stoughton
Approving Cost Reimbursement Agreement - Stone Crest Development

Committee Action: Finance Committee approved _____ on 01/24/2023 TIME SENSITIVE ITEM

Fiscal Impact: N/A

File Number:	R-14-2023	**Date Introduced:**	January 24, 2023

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

RECITALS

A. This Cost Reimbursement Agreement arises from Developer's wish to develop certain property located in Stoughton, Wisconsin.

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 Territory to the Urban Service Area, and intends to ask the City to review and act upon applications for land division, zoning and stormwater management, all of which will require the City to incur costs for internal review and for professional review.

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

RESOLUTION

The Common Council of the City of Stoughton hereby approves the Cost Reimbursement Agreement City of Stoughton – Stone Crest Development, attached as Exhibit A.

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

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

_____
Tim Swadley, Mayor Date

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

CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: January 17, 2023

To: Finance Committee

From: Rodney J. Scheel
Director of Planning & Development

Subject: Finance Committee Agenda Item
R- - 2023 Approving Cost Reimbursement Agreement – Stone Crest Development

Following the previous approval, the developer requested a change. The revised agreement has been drafted by the City Attorney is recommended for approval.

If you have any questions, please contact me.

COST REIMBURSEMENT AGREEMENT

CITY OF STOUGHTON – STONE CREST DEVELOPMENT

This Agreement is made and entered into by the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Matson Developers, 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 described in the phasing plan attached as Exhibit B (the "Territory").

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 Territory to the Urban Service Area, and intends to ask the City to review and act upon applications for land division, zoning and stormwater management, all of which will require the City to incur costs for internal review and for professional review.

C. 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 TERRITORY.

   A. Zoning and Compliance with Plans and Regulations. The parties anticipate that Developer will apply for zoning of the Territory that is consistent with the City's Comprehensive Plan. Any development of the Territory 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 Territory.

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 Territory, including the cost of extending any off-site improvements to the Territory. The City shall have no obligation to obtain any property interests needed to extend public improvements to the Territory, through the exercise of eminent domain or otherwise.

C. Water Main Looping. Development of the Territory 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 Territory when developed.

D. Sanitary sewer capacity. Development of the Territory shall require evaluation of the capacity of the sanitary sewer infrastructure downstream of the Territory. 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 Territory. For purposes of this section, "development" means the construction of public or private improvements within the Territory.

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 Territory.

2. FEES AND COSTS.

A. Application, Review and Administrative Fees. Developer shall pay to the City, within 15 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 Territory; (2) the negotiation, preparation, consideration and review of this Agreement and other agreements relating to the Development of the Property; (3) the rezoning, subdivision or development of the Territory, including costs incurred in connection with the construction 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.

Administrative fees including city staff time shall be calculated based on the actual cost to the City, including all wages and benefits paid to City employees. Inspection and observation fees during construction shall be the actual cost to the City on the basis of submitted invoices. Before processing any application for approval of any 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 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 Territory, 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 territory, 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 Territory, or the eventual acceptance of all public improvements to be constructed within the Territory 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 15 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 any 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 Territory. Prior to the City applying to add the Territory to the Stoughton Urban Service Area, Developer shall deposit $25,000.00 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 $25,000.00, then the balance of the deposit shall be returned to Developer.

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 Territory, 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. Developer shall be responsible for reimbursing 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: Matson Developers, Inc.
P.O. Box 333
Stoughton, WI 53589

(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 property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby, and the remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of the Agreement to the greatest extent permitted by applicable law.

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

DEVELOPER:

MATSON DEVELOPERS INC

By: _____

CITY:

CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

By:_____
Candee Christen, City Clerk

Exhibits:

A - Stoughton Utilities Reimbursement Agreement
B – Phasing Plan Map

Approved as to Form:

STAFFORD ROSENBAUM LLP
Attorneys for the City of Stoughton

By_____
Matthew P. Dregne

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

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

E. 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.

F. 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:

Matson Developers, Inc.
P.O. Box 333
Stoughton, WI 53589

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.

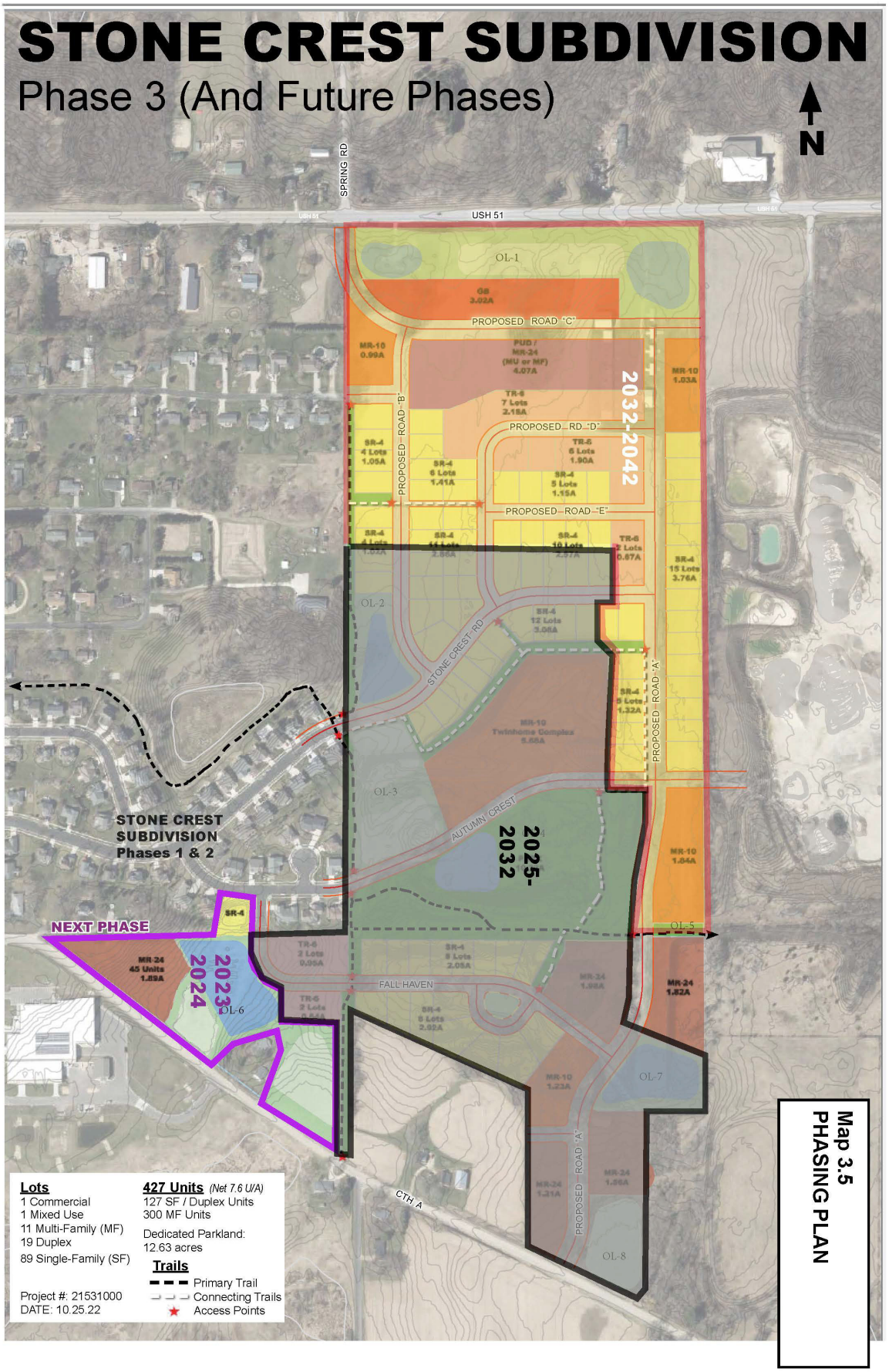
IN WITNESS WHEREOF, the parties have executed this Cost Reimbursement Agreement to be effective when executed by Developer.

_____	By _____
Date	(print name) _____

CITY OF STOUGHTON,
acting through Stoughton Utilities

_____	By _____
Date	Jill Weiss, Utilities Director

EXHIBIT B


STONE CREST SUBDIVISION
Phase 3 (And Future Phases)
N
SPRING RD
USH 51
OL-1
GB
3.02A
PROPOSED ROAD "C"
MR-10
0.99A
PUD /
MR-24
(MU or MF)
4.07A
TR-6
7 Lots
2.15A
PROPOSED RD "D"
TR-6
6 Lots
1.90A
SR-4
5 Lots
1.15A
SR-4
6 Lots
1.41A
SR-4
4 Lots
1.05A
PROPOSED ROAD "B"
PROPOSED ROAD "E"
2032-2042
MR-10
1.03A
TR-6
2 Lots
0.67A
SR-4
15 Lots
3.76A
OL-2
SR-4
12 Lots
3.08A
STONE CREST RD
SR-4
5 Lots
1.32A
PROPOSED ROAD "A"
MR-10
Twinhome Complex
5.65A
OL-3
AUTUMN CREST
2025-
2032
MR-10
1.04A
STONE CREST
SUBDIVISION
Phases 1 & 2
NEXT PHASE
SR-4
MR-24
45 Units
1.89A
2023-
2024
OL-6
TR-6
2 Lots
0.95A
SR-4
8 Lots
2.05A
FALL HAVEN
MR-24
1.98A
MR-24
1.82A
OL-5
SR-4
6 Lots
2.92A
MR-10
1.23A
OL-7
MR-24
1.21A
MR-24
1.56A
PROPOSED ROAD "A"
CTH A
OL-8
Lots
1 Commercial
1 Mixed Use
11 Multi-Family (MF)
19 Duplex
89 Single-Family (SF)
427 Units (Net 7.6 U/A)
127 SF / Duplex Units
300 MF Units
Dedicated Parkland:
12.63 acres
Trails
Primary Trail
Connecting Trails
Access Points
Project #: 21531000
DATE: 10.25.22
Map 3.5
PHASING PLAN