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

RESOLUTION OF THE COMMON COUNCIL		
Approve Tax Incremental Financing Request – Emmi Roth USA solar panels		
Committee Action:	Finance Committee recommended approval ____ on 01/23/2024 **TIME SENSITIVE ITEM**	
Fiscal Impact:	$1.8 million borrowing plus related interest	
File Number:	R-009-2024	**Date: 01/23/24**

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

RECITALS:

WHEREAS, Emmi Roth USA submitted a request for Tax Incremental Financing (TIF) application to the City of Stoughton requesting $3.5 million to install the planned energy generating facility that was not included in the facility due to significant cost overruns during construction; and,

WHEREAS, the City Council discussed this matter in closed session on October 24, 2023 with R-170-2023 to discuss the TIF application and related term sheet; and;

WHEREAS, the City Council directed negotiation parameters in closed session for negotiations with Emmi Roth USA on the topic of solar panels; and,

WHEREAS, the attached agreement was reached with Emmi Roth USA for issuance of debt proceeds for net cash proceeds of $1.8 million for the addition of solar panels on their Stoughton facility with funding for the debt principal and interest to come from available tax increment within Tax Increment #6 Business Park Expansion;

NOW, THEREFORE BE IT RESOLVED, that the Common Council authorizes the issuance of tax-exempt debt for a net amount of $1.8 million to be paid to Emmi Roth USA as per the attached agreement for the installation of solar panels for their facility located at 1800 Williams Drive in the City of Stoughton.

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

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

_____

Mayor Tim Swadley Date

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

AGREEMENT TO UNDERTAKE DEVELOPMENT IN TAX INCREMENT DISTRICT NO.6

(Emmi Roth Solar Panel Project)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ day of _____, 202_ (this "Agreement"), by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and Emmi Roth USA, Inc., a Wisconsin Corporation (the "Developer").

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:
City Clerk
City of Stoughton
207 S Forrest St,
Stoughton, WI 53589

P.I.N.
281/0611-324-9100-2

RECITALS

WHEREAS, the City of Stoughton has created and amended Tax Increment District No. 6 (the "District"); and

WHEREAS, the City desires to facilitate the installation of solar panels on new developments within the District; and

WHEREAS, Developer has constructed a corporate headquarters and food processing facility ("Headquarters Building") on the real property described on Attachment A attached hereto (the "Property");

WHEREAS, Developer originally intended to install solar panels on the Headquarters Building, but construction cost increases have made it financially infeasible to install solar panels; and

WHEREAS, as an inducement to Developer to install solar panels on its Headquarters Building and in order to make the installation financially feasible and to implement the Project Plan for the District, the City finds it appropriate to provide tax increment development incentive payments for the installation of solar panels on the Property, as described in, and subject to, the reservations contained in this Agreement; and

WHEREAS, the City finds and determines that unless the City provides the tax increment development incentive payments described in this Agreement, Developer will not install solar panels, and the City will not accomplish the objectives of the Project Plan for the District; and

WHEREAS, the City finds that installation of solar panels on 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 accomplishing the City's environmental and sustainability goals, thereby serving public purposes in accordance with state and local law; and

WHEREAS, the City Council on January 23, 2024, adopted Resolution No. _____, approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement.

NOW, THEREFORE, 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. District. City of Stoughton Tax Increment District No. 6 as amended.

2. Property. Property located in the District as described in Attachment A.

3. Project. The installation of solar panels on the Property.

4. City Borrowing. The amount borrowed by the City, through the issuance of bonds or other forms of debt or borrowing, to fund the City Financed Grant provided for in Section B.1 of this Agreement to facilitate the Project.

B. DEVELOPMENT INCENTIVE GRANTS.

1. City Financed Grant. The City shall provide a development incentive grant to Developer in the amount of one million eight hundred thousand dollars ($1,800,000) ("City Financed Grant"). This grant shall be paid to Developer in two installments. The City shall make the first installment payment in the amount of $650,000 within 30 days of the Developer obtaining a building permit for the Project and requesting payment from the City. The City shall make the second installment payment of $1,150,000 to Developer within thirty days of Developer satisfying all of the following conditions to the City's satisfaction:

(a) Developer completing the Project in accordance with the terms of this Agreement.

(b) Providing documentation, such as receipts and invoices, that Developer's Project costs are equal to or exceed $1,800,000.

(c) Providing documentation that the Project comports with the Project specifications in Section C.

(d) Developer requesting payment from the City following completion of the Project.

After completion of the Project, if the Developer's project costs are less than $1,800,000, then the total amount of the City Financed Grant shall be equal to the Developer's actual costs of

installing the Project. Developer shall be responsible for paying any Project costs in excess of $1,800,000.

2. Return of City Financed Grant for Non-Performance. Unless the time period for Developer's obligations has been tolled under Section C.1., in the event that Developer is issued a building permit for the Project, but does not complete construction of the Project by December 31, 2024, subject to Force Majeure (as hereinafter defined) and receipt of the first installment of the City Financed Grant, then Developer shall pay the City an amount equal to the first City Financed Grant installment payment. Developer shall make payment to the City within thirty days of the City's written request for payment under this subsection.

C. DEVELOPER OBLIGATIONS.

1. Timely Proceed With the Project. Developer shall use good faith efforts to construct the Project during 2024, such that the benefits cited in this Agreement and the Project Plan are actually derived by the City and other taxing jurisdictions. In the event that the City does not receive funds from the City Borrowing by April 1, 2024, then Developer's obligations under this Agreement shall be tolled by an amount of time equal to the length of time beginning on April 1, 2024 and ending on the date that the City receives City Borrowing funds.

2. Project Specifications. Developer's Project must satisfy the following minimum specifications:

(a) The size of the Project must be at least 1,120 kilowatts.

(b) The Project must include a rapid shutdown compliant inverter.

(c) The completed Project must have an estimated first year energy production of 1,300,000 kWh.

3. Insurance. Developer shall maintain in effect and furnish to the City evidence of insurance and proof of payment of premiums as follows:

(a) *During Construction*. During the process of construction of the Project, policies of builder's risk completed value non-reporting form of fire and extended coverage, vandalism, and malicious mischief hazard insurance in favor of the City, if provided by the contractor, or equivalent casualty insurance provided by Developer, to the extent of the City's interest in the Project, and covering the Project in at least the amount of the estimated cost of replacement of the Project, with loss payable endorsements in favor of the City with provision that such coverage will not be terminated without 10 days prior written notice to the City.

(b) *After Completion*. After completion of construction of the Project, Developer, and its successors and assigns, shall keep Developer's Headquarters Building adequately insured against loss or damage occasioned by fire, extended coverage perils (to specifically include coverage for wind, storm, and similar natural disaster and hazards), which

shall remain in effect for the life of the District. All insurance policies obtained to satisfy this requirement shall include a provision that they shall not be terminated, amended, or canceled without at least 30 days prior written notice to the City. If any portion of the Project or Headquarters Building is substantially damaged or destroyed by fire, wind, storm, mold, bacteria, or any other cause during the life of the District, Developer shall promptly rebuild or repair the damaged or destroyed portions of the Project or Headquarters Building. Developer shall provide the City with a certificate of insurance from its insurance carrier evidencing the required coverage not later than 30 days after the initial effective date thereof and upon each renewal.

4. Other Approvals/Requirements Apply. This Agreement is intended only to address those special concerns related to implementation of the Project Plan for the District, substantially in accordance with the Project Plan. Nothing in this Agreement relieves Developer from any obligations to obtain all necessary approvals and to follow all applicable local, state, and federal requirements in order to proceed with the Project.

5. Taxability of Property. Developer warrants that, unless agreed to by the City, the Property shall remain taxable for the life of the District. Developer 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. Developer shall not, unless agreed to by the City, 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. Nothing in the foregoing shall prevent the Developer from contesting the assessed valuation of the Property for real estate tax purposes.

D. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before either party's obligations under this Agreement shall become effective.

1. The execution and delivery by the City and Developer of this Agreement.

2. The City's approval and issuance of tax-exempt bonds for the City Borrowing, in the principal amount of not less than $1,800,000, at a true interest cost of not more than 5 percent.

3. The receipt by Developer of all approvals and permits needed to proceed with the Project.

Unless the time period for Developer's obligations has been tolled under Section C.1., if the events described in this Section D are not satisfied by September 30, 2024, then this Agreement shall be null and void.

E. REPRESENTATIONS AND WARRANTIES.

1. Authorization. Developer represents and warrants to the City 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.

2. Available Funds**.** Developer represents and warrants to the City that is has sufficient fund to complete and pay for the costs of the Project that are not paid from the City Financed Grant.

3. Property Liens. Developer warrants that it is the sole owner of the Property, in fee simple, and the Property is not encumbered by any mortgage. Developer covenants it will not allow any lien to be placed upon or taken against the Property prior to the recording of this Agreement with the Register of Deeds for Dane County.

F. 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 other 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. The City shall have the sole discretion to release or not release Developer from the obligations and liabilities under this Agreement.

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. Failure by either party 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. In addition to other remedies provided to the City by this Agreement, the City shall have the right, upon reasonable notice to Developer and in accordance with applicable laws, to impose special assessments or special charges against the Property for any amount to which the City is entitled by virtue of this Agreement. No hearing shall be required prior to imposing special assessments under this section. This provision constitutes the Developer's acknowledgment of special benefit and the Developer's consent to, and waiver of notice and hearing on all proceedings imposing such special assessments or special charges.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto 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 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.

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:	Ed Jones Vice President of Supply Chain 1800 Williams Drive Stoughton, WI 53589
To the City:	Candee Christen City Clerk - City of Stoughton Stoughton City Hall 207 S. Forrest St. Stoughton, WI 53589

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 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 D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Section C of this Agreement, and the City's obligations under Section B 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. Force Majeure. Developer shall not be liable for any substantial interruption, delay or failure to perform any obligation under this Agreement when such interruption, delay or failure is due to causes beyond its reasonable control, including any strikes, lockouts, acts of any government, riot, insurrection or other hostilities, embargo, fuel or energy shortage, fire, flood, pandemic, epidemic, acts of God or general inability to obtain necessary labor, materials or utilities. In any such event, Developer's obligations hereunder shall be postponed for such time as its performance is suspended or delayed on account thereof and it shall have no liability to the City in connection therewith. Developer will promptly notify the City, in writing, upon learning of the occurrence of such event of force majeure. Upon the cessation of the force majeure event, Developer will use commercially reasonable efforts promptly to resume its performance.

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.

23. Counterparts. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.

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

_____
Tim Swadley, City Mayor

ATTEST:

_____
Candee Christen, City Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 202_, the above-named Tim Swadley, the City of Stoughton Mayor, and Candee Christen, the City of Stoughton Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the City's authority.

Subscribed and sworn to before me
This _____ day of _____, 202_.

_____
Notary Public, State of Wisconsin
Print Name:_____
My Commission:_____

DEVELOPER:

By_____

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 202_ the above named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me
This _____ day of _____, 202_.

_____
Notary Public, State of Wisconsin
Print Name:_____
My Commission:_____

Approved as to Form:

_____
Rick Manthe
City Attorney

Attachments:
A – Description of the Property

ATTACHMENT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1 of Certified Survey Map Number 16007, recorded with the Dane County Register of Deeds on May 18, 2022 as document number 5834477in Volume 117, pages 302-303.