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

RESOLUTION OF THE COMMON COUNCIL		
Contract for appraisal services to determine appropriate market rental value for 600 S. Fourth St.		
Committee Action:	Finance Committee recommended approval ____ on 09/12/2023	
Fiscal Impact:	To be determined	
File Number:	R-xxx-2023	**Date: 09/26/23**

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

RECITALS:

WHEREAS, Stoughton Utilities has been renting space from the City of Stoughton located at either 516 S. Fourth St. and 600 S. Fourth St beginning January 1, 1995; and,

WHEREAS, the lease for the current property located at 600 S. Fourth St. was amended effective March 1, 1998 with annual increases based upon the Consumer Price Index-Urban (CPI-U) for the Madison area; and,

WHEREAS, the lease for the current property was amended with Resolution R-20-2018 effective March 1, 2018 through February 28, 2023 with annual increases based upon the CPI-U for the Madison area; and,

WHEREAS, Boardman Clark, the attorney for Stoughton Utilities, has indicated that any facility rent by the City of Stoughton charged to Stoughton Utilities has to be at or below current rental market values; and,

WHEREAS, a due diligence search by the Finance Department in network files cannot locate any documentation for past rental charges being compared to current rental market values; and,

WHEREAS, Stafford Rosenbaum, the attorney for the City of Stoughton, has recommended a market rent analysis be performed by an appraisal firm; and,

WHEREAS, the following market rent analysis proposals have been received:

A. Landretti & Company, LLC, Middleton, WI - $2,500
B. INSERT SECOND PROPOSAL INFORMATION HERE; and,

WHEREAS, the market rent analysis benefits both the City of Stoughton and Stoughton Utilities to help ensure that rent charges paid by Stoughton Utilities is at or below current market rates;

NOW THEREFORE BE IT RESOLVED, that the Common Council directs the appropriate city staff to contract with _____ for a market rental analysis of 600 S. Fourth St; and,

BE IT FURTHER RESOLVED, that the fees charged to the City of Stoughton shall be split equally with Stoughton Utilities.

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

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

_____

Mayor Tim Swadley Date

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

Landretti & Company, LLC
PO Box 628543, Middleton, Wisconsin 53562
Phone: (608) 298-5506 Mobile: (608) 575-6861
***.landretti.com Email: appraisal@landretti.com

September 6, 2023

City of Stoughton
C/O Matthew Dregne
Stafford Rosenbaum
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53701

Dear Mr. Dregne:

It is my understanding that you have agreed to hire Landretti & Company, LLC to perform market rent study for the property located at 600 S Fourth Street, Stoughton, Wisconsin.

The services and the terms of the engagement will include:

1. A market rent study will be provided in an appraisal report format
    a. An opinion of market rent along with market lease terms will be provided.
    b. The client will be the City of Stoughton and the intended users will be the client and Stafford Rosenbaum.
2. The report will comply with the requirements established in the Uniform Standards of Professional Appraisal Practice.
3. The report will be delivered electronically on or before September 29, 2023.
4. The fee for the appraisal will be $2,500 with payment to be made no later than 30 days from delivery of the completed appraisal.
5. Any issues, concerns, or discrepancies with the appraisal report must be disclosed to Landretti & Company, LLC within six months of the report date otherwise it is assumed the client accepts the appraisal and the client does not have any further rights for legal action against Landretti & Company, LLC after said period.
6. Additional services relating to and after the market rent study is complete will be charged at $300 per hour.

If you agree to the services, please sign below and return a copy of this engagement letter. Please contact me with any questions.

Best Regards,

Dominic Landretti

Dominic Landretti, MAI, AI-GRS
Owner – Valuation Consultant
Landretti & Company, LLC

I, _____, approve the services above.

_____ _____
Signature Date

Dave Ehlinger

From: Shannon Statz <SStatz@stoughtonutilities.com>
Sent: Friday, August 4, 2023 12:40 PM
To: Dave Ehlinger
Subject: FW: Stoughton Utilities' Building Rental from City of Stoughton (23134-0)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

More of the email chain…

Shannon Statz
Utilities Finance Manager
Stoughton Utilities
600 South Fourth Street
Stoughton, WI 53589
608-877-7415
sstatz@stoughtonutilities.com

From: Matthew Dregne <MDREGNE@staffordlaw.com>
Sent: Friday, August 4, 2023 12:37 PM
To: Anita T. Gallucci <agallucci@boardmanclark.com>; Jill Weiss <JWeiss@stoughtonutilities.com>
Cc: Shannon Statz <SStatz@stoughtonutilities.com>; Charlene Beals <cbeals@boardmanclark.com>
Subject: RE: Stoughton Utilities' Building Rental from City of Stoughton (23134-0)

Thanks Anita, your summary is spot on. I think the City should have a reasonable factual basis to support the amount of "rent." Yesterday Dave mentioned that someone was contacting one or more people familiar with the rental market in Stoughton to gather information on this topic.

STAFFORD ROSENBAUM

Celebrating 140 Years of Excellence

Matthew P. Dregne
MDregne@staffordlaw.com | 608.259.2618 |
222 West Washington Avenue, Suite 900
P.O. Box 1784 | Madison, Wisconsin 53701-1784
www.staffordlaw.com | Profile | vCard | LinkedIn

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From: Anita T. Gallucci <agallucci@boardmanclark.com>
Sent: Wednesday, August 2, 2023 3:21 PM
To: Jill Weiss <JWeiss@stoughtonutilities.com>
Cc: Shannon Statz <SStatz@stoughtonutilities.com>; Matthew Dregne <MDREGNE@staffordlaw.com>; Charlene Beals <cbeals@boardmanclark.com>
Subject: [External] - Re: Stoughton Utilities' Building Rental from City of Stoughton (23134-0)

Jill,

I just got off the phone with Matt Dregne (I've copied him on this email). We are in agreement regarding the following:

1. The terms of the rental transaction between the city and Stoughton Utilities should be spelled out in a document. Matt does not think a lease is appropriate; rather, he prefers a memorandum or even a council resolution laying out the terms of the deal. I am fine with that as long as the document (be it a resolution or a memorandum) clearly states the applicable terms and conditions and states that the city has determined that the rent being charged is at or below market rate. It is important that Stoughton Utilities be charged a reasonable rate so that the city does not run afoul of Wis. Stat. s. 66.0811, pertaining to the proper use of electric/water utility revenues.

2. I explained to Matt the importance of the utility writing a check to the city for the rent. After I spoke with Matt, I spoke again with you. You explained that the city pays its electric bill to Stoughton Utility via a physical check. The same should occur here. Matt is ok with that.

One issue Matt and I did not discuss was the allocation of rent responsibility among the various "tenants" in the building. As we discussed, it is reasonable for the rent to be allocated among the tenants based on the percentage of the space within the building that is exclusively used by each tenant.

Matt,

Please weigh in if I've failed to accurately reflect the gist of our conversation today.

Thanks,

Anita

BoardmanClark

ANITA T. GALLUCCI (SHE/HER)
ATTORNEY

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From: Jill Weiss <JWeiss@stoughtonutilities.com>
Sent: Wednesday, August 2, 2023 2:18 PM
To: Anita T. Gallucci <agallucci@boardmanclark.com>
Cc: Shannon Statz <SStatz@stoughtonutilities.com>
Subject: RE: Stoughton Utilities' Building Rental from City of Stoughton

Anita,
Just to close the loop, did you talk with Matt Dregne about the lease/transfer thinking? I ask only because we feel that the City Finance Director was looking to follow what Matt had determined to be the best solution going forward. We are anticipating some confusion and just want to know if you had the opportunity to talk with Matt about the issue.
Thank you!!!
Jill

Jill M. Weiss, P.E. | Utilities Director
Stoughton Utilities
600 South Fourth Street
Stoughton, WI 53589
608.877.7423
920.650.6888
jweiss@stoughtonutilities.com

From: Jill Weiss <JWeiss@stoughtonutilities.com>
Sent: Tuesday, August 1, 2023 9:51 PM
To: Anita T. Gallucci <agallucci@boardmanclark.com>
Subject: Re: Stoughton Utilities' Building Rental from City of Stoughton

Anita,
Absolutely! I understand (I believe) the lease concerns but I don't like the the transfer approach either. I feel that it is only going to further cause a lack of clear documentation.
Thank you for your help!
Jill

Jill M. Weiss, P.E. | Utilities Director
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jweiss@stoughtonutilities.com

On Aug 1, 2023, at 5:09 PM, Anita T. Gallucci <agallucci@boardmanclark.com> wrote:

Jill,

Do you mind if I call Matt Dregne to have a better understanding of things from his (and the city's) point of view?

<image002.gif>

ANITA T. GALLUCCI (SHE/HER)
ATTORNEY

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From: Jill Weiss <JWeiss@stoughtonutilities.com>
Sent: Tuesday, August 1, 2023 4:47 PM
To: Anita T. Gallucci <agallucci@boardmanclark.com>
Cc: Shannon Statz <SStatz@stoughtonutilities.com>; Charlene Beals <cbeals@boardmanclark.com>; Julia Potter <JPotter@boardmanclark.com>
Subject: Stoughton Utilities' Building Rental from City of Stoughton

Anita,
Please see the attached email. (I included your memo regarding excess utility revenue because I feel that my concerns are tied in part to that memo.) We need your assistance in determining our best approach going forward as it relates to the our renting of a city owned building. (A lot of this stems from our efforts to require the city to document the allocations that we currently pay, these include: rent for this building, allocations for CIP projects (what is a city cost and what is a utility cost) and 'administrative costs'. Sadly there is little or no documentation. I want everything documented and clear so that what we are paying is fair/accurate and there is justification for what we pay. Further, with this documentation others in the future can make sense of what is being done and have a basis for changes if and when those are appropriate.)

So more about the building rent…
SU has rented the building (600 S 4th St., Stoughton) that we use for most of our services (warehouse, utility office, garage) for many years. The lease came to an end so there was an effort to renew it. It is my understanding that the city attorney does not feel that a lease is the best appropriate and so a different document has been prepared, we believe by the City Finance Director. I am not sure if the lease is the best mechanism or not, but I am not comfortable with the new approach. Based on the new 'transfer' approach, I feel that this is implying that there are "excess" utility funds. There are also many important elements not covered in this transfer document.

Some additional issues for the utility related to the building…
In 2018/2019 the Human Resources/Risk Management Department moved into our part of the building. HR pays nothing for their space. Their footprint has only grown since they have arrived. Early in 2023, EMS requested more of our space as well, which we have not agreed to nor do we have. The

utility pays 100% of the maintenance for the building – HVAC repairs, roof, parking lot, mowing. Also, the Food Pantry has space in this building but they do not come up in any document - original lease or in the new 'transfer' document. (Further, Food Pantry continues to take up more of our space in this building.) In an effort to document what we should be paying for rent, Shannon Statz worked with a 'recommended' realtor to see what market value is for the space but we were never provided any follow up information to this effort. (This was done about a year ago.)

Can you please help us navigate the best way to formalize an agreement with the city to rent their building? Please note that I don't expect at this point for all of the issues to be resolved but I want to protect the utility from approving anything that could put us at risk for additional unforeseen issues.

Thank you!!!
Jill

Jill M. Weiss, P.E. | Utilities Director
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<image003.jpg>

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REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 1995 (Date), by and between CITY OF STOUGHTON ("Landlord"), and STOUGHTON ELECTRIC UTILITY ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Agreement, leases to Tenant THE FORMER KING EDWARD BUILDING (the "Premises") located at 516 SO. FOURTH ST., STOUGHTON, WI. 53589.

TERM. The lease term shall commence on January 1, 1995 and shall terminate on December 31, 1997.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period based on the terms of the following Lease Payments paragraph. Such holdover shall constitute a month to month extension of this Lease.

LEASE PAYMENTS. Tenant shall pay to Landlord LEASE PAYMENTS OF $6960 PER MONTH IN ADVANCE, ON THE FIRST DAY OF EACH MONTH, UPON "MOVE IN", WHICH IS ESTIMATED TO BE ABOUT SEPTEMBER 1995. Such payments shall be made to the Landlord at 381 E.MAIN, STOUGHTON, WI 53589, as may be changed from time to time by Landlord.

LATE PAYMENTS. Monthly payments not paid by the due date shall bear interest at 10.00% per annum until paid.

POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

REMODELING OR STRUCTURAL IMPROVEMENTS. Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above, and may construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. At the end of the lease term, Tenant shall be entitled to remove (or at the request of Landlord shall remove) such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease.

MAINTENANCE. Tenant shall have the obligation to maintain the Premises in good repair at all times. This obligation shall include:

- the roof, outside walls, and other structural parts of the building
- the parking lot, driveways, and sidewalks including snow and ice removal
- the sewer, water pipes, and other matters related to plumbing
- the electrical wiring
- the air conditioning system
- the heating system

LEASEBACK ADDENDUM TO
AMENDMENT AND
EXTENSION OF REAL ESTATE LEASE

Agreement made by and between the City of Stoughton ("the City"), and Stoughton Electric Utility ("the Utility"), as a further amendment to the parties' Real Estate Lease, which was effective January 1, 1995, and as an addendum to the parties' Amendment and Extension of Real Estate Lease, as follows:

WHEREAS, The City is the owner of that certain real estate commonly known as the "Stoughton Municipal Utility Building", located at 600 South Fourth Street, Stoughton, Wisconsin 53589 ("the Utility Building").

WHEREAS, The Utility is the Lessee of the entirety of the Utility Building under the parties' Real Estate Lease ("the Lease"), effective January 1, 1995. By agreement of the parties, the Utility has entered into several subleases of portions of the Utility Building to Uniroyal Engineered Products and Stoughton Area School District.

WHEREAS, The City desires to lease from the Utility certain space in the Utility Building described herein; the City has made certain improvements to the space to be rented by the City from the Utility; and the City and the Utility desire to enter into this Leaseback Addendum to Amendment and Extension of Real Estate Lease or "Leaseback Agreement" for the purpose of memorializing the terms and conditions of their agreement.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Utility hereby leases to the City, and the City hereby leases from the Utility, the portion of the Utility Building described in Section 2 below, for a period, at the rental and upon the terms and conditions hereinafter specifically set forth:

1. TRIPLE NET LEASE. This Leaseback is a triple net lease. For purposes of this Leaseback, the term "triple net lease" means the City shall pay the base rent (as defined in Section 5) and all of the expenses related to the Leaseback Premises (as defined in Section 2) including, but not limited to, all taxes (if any), utilities, and contents insurance, and the City shall be responsible for its proportionate share of the maintenance and other operating expenses of the Leaseback Premises, either through the Base Rent (See, 5.A.) or through direct payment by the City for maintenance and services. The City has paid for the construction costs of the leasehold improvements in the Leaseback Premises (defined in Section 3).

2. DESCRIPTION OF LEASEBACK PREMISES. The portion of the Utility Building which is hereby leased to the City shall hereinafter be referred to as the "Leaseback Premises". The precise location of the Leaseback Premises is set forth on Exhibit A which is attached hereto and made a part hereof. The Leaseback Premises shall consist of an area within the Utility Building, in the northeast quadrant, of approximately 11,625 square feet. The City shall also have the right to use of the adjacent parking lot ("parking spaces").

3. PRE-LEASEBACK IMPROVEMENTS. The City and the Utility acknowledge that the City has undertaken and completed a build-out of the Leaseback Premises ("the Leaseback Improvements"). Certain improvements have been undertaken and completed by the Utility since the City's purchase of the property and the parties' entry into the Lease, effective and prior to construction of the Leaseback Improvements ("Pre-Leaseback Improvements"). Additional improvements were necessary to the Leaseback Premises for the City's occupancy and use of the Leaseback Premises ("the Leaseback Improvements").

A. ACCOUNTING FOR PRE-LEASEBACK IMPROVEMENTS. The Utility has accounted to the City for Pre-Leaseback Improvements in and affecting the Leaseback Premises, and the City and the Utility have worked out terms and conditions of the City's payment to the Utility for such Pre-Leaseback Improvements.

The City shall pay for Pre-Leaseback Improvements within the Leaseback Premises during the term of this Leaseback Agreement. The cost of the Pre-Leaseback Improvements shall be paid by the City to the Utility by amortizing a proportionate share of the Pre-Leaseback Improvements cost over the term of the Leaseback Agreement. This Pre-Leaseback Improvements payment shall be converted to a per square foot amount, which shall be added to the base rent. The Pre-Leaseback Improvements cost shall be fully paid during the 20 year extension term, at the end of which time the monthly Pre-Leaseback Improvements cost amount shall be terminated. The City may, at anytime, at its sole option, pay the Utility the remaining balance due for Pre-Leaseback Improvements. This would satisfy in full and extinguish this element of monthly rent (under Section. 5.C., below).

B. LEASEBACK IMPROVEMENTS. The City's Leaseback Improvements consist generally of partitions, flooring, carpeting, plumbing, doors, windows, HVAC equipment, electrical equipment and facilities, and all related improvements which the City may require for the Leaseback Premises. Exhibit A includes a layout of the Leaseback Premises showing the general configuration of the Leaseback Improvements which have been agreed to by the City and the Utility.

C. CONSTRUCTION AND FINANCING COSTS. It is anticipated that the City will obtain a loan from a financial institution to finance the Leaseback Improvements and will pay the entire project cost, including architectural services, fixtures and furnishings costs, and other related items. The City will also be responsible for all financing costs related to its costs for the project.

4. TERM.

A. LEASEBACK TERM. The initial term of the Leaseback term shall be twenty (20) years (the "Initial Term") commencing on March 1, 1998, and expiring February 28, 2018.

B. THE CITY'S RIGHT TO RENEW. The City shall have the right, to be exercised as hereinafter provided, to renew the term of this Lease for two (2) consecutive periods of five (5) years each (each such period shall hereinafter be referred to as a "Renewal Period").

(a) SAME TERMS. Except for the changes in the calculation of Base Rent and the City's portion of Operating Expenses (as described in Section 5.A. and B.), and except as otherwise stated herein or agreed by amendment, each Renewal Period shall be on the same terms, covenants, and conditions as provided in this Leaseback. This Leaseback Agreement may be extended beyond the second Renewal Period upon the written agreement of the parties hereto.

(b) MANNER OF RENEWAL. The City shall exercise its rights to renew in the following manner.

(i) At least three (3) months prior to the expiration of the Initial Term of this Leaseback, or the first Renewal Period, the City shall notify the Utility as provided in this Leaseback Agreement of its election to exercise its option to renew the term of this Leaseback for the first or second Renewal period, as the case may be.

(ii) On the giving of such notice of election to renew as provided in (i) above, this Leaseback, subject to the terms of this provision, shall be deemed to be renewed for the applicable Renewal Period, without any further lease or instrument.

5. RENTAL.

A. BASE RENT. The City shall pay to the Utility Leaseback payments of $1,540.31 per month in advance, on the first day of each consecutive month, until February 28, 2001, the period of the first subterm (two or three year periods within the extension) ("Base Rent"). The twenty (20) year Leaseback Term and the Renewal Period(s) shall be broken down into three-year and two-year subterms, with the two-year subterm, in each instance, coming in the final two years of the term or period. This Base Rent for the final subterm equals $1.59 per square foot per year. The Base Rent shall be adjusted for each subterm using the same methodology as is used in the City of Stoughton – Stoughton Electric Utility Real Estate Lease (using the CPI-U for the Madison area for the prior three years or three percent per year, whichever method results in a larger rate increase), so the Base Rent adjustment under this Leaseback Agreement and the Utility's rent adjustment under the Lease shall be the same at all times and subterms.

B. CITY'S OPERATING EXPENSES. The City shall pay to the Utility, in addition to the Base Rent, the City's proportionate share of Operating Expenses (defined in Section 5.B.(a) below) paid or accrued during the particular Leaseback month in question.

(a) THE CITY'S PROPORTIONATE SHARE. As used herein, the City's proportionate share of Operating Expenses shall be as set forth on the attached Exhibit B

(totaling $0.087 per square foot per year currently), for the expenses shown on that exhibit. The City's proportionate share of operating expenses shall be calculated annually using the same methodology set forth in Exhibit B. On or before January 1st of each succeeding lease year the City and Utility shall agree to the City's proportionate share of operating expenses for the coming calendar year.

(b) PAYMENT OF OPERATING EXPENSES. The City shall pay to the Utility, on the first day of each calendar month during the entire term and any renewal(s) of this Leaseback Agreement, an amount equal to 1/12th of the City's proportionate share of Operating Expenses, currently calculated at $84.28 per month.

C. PRE-LEASEBACK IMPROVEMENTS RENT. The City shall also pay to the Utility on a monthly basis, on the first day of each consecutive month, at the same place that the Base Rent is to be paid, in addition to the Base Rent and the City's proportionate share of Operating Expenses, the Pre-Leaseback Improvements rent ("Improvements Rent") during the initial term of this lease, with each monthly payment of Improvements Rent to be in the amount of $697.50 ($0.72 per square foot per year), in equal monthly payments, without provision for change or increase. This payment shall cease at the end of the Initial Term of this Leaseback Agreement. This rent amount may also be terminated by the City, by its prepayment of the balance due, as mentioned in Section 3.A., above (see also, Exhibit D, which contains a calculation of the initial balance due).

6. OTHER OPERATING EXPENSES. All costs and expenses for maintaining, resurfacing, repairing and replacing, cleaning, snow and ice removal, repair and replacement of exterior lighting fixtures, line painting and landscaping of all vehicle parking areas and other outdoor common areas for the Utility Building shall be the responsibility of the Utility. The Leaseback Premises have natural gas and electric services which are metered separately from the balance of the Utility Building, and all costs of such service shall be paid directly by the City to the applicable utility company. The City's expenses of occupying a portion of the Utility Building shall not include costs and expenses related to the maintenance, upkeep, or repair of lease space within the Utility Building occupied by other tenants, or occupied by the Utility itself.

7. ASSIGNMENTS AND SUBLETTING. The City shall be permitted to assign this Lease to anyone without the prior written approval of the Utility. The City shall have the right to sublease portions of the Leaseback Premises to subtenants, with each such sublease to be made expressly subject to all the terms, conditions and provisions of this Lease.

8. SIGNS. The City shall have the right at its own cost and expense, to erect and maintain a sign or signs advertising the business and/or services to be provided in the Utility Building (including any and all interior or exterior directories) and such sign(s) may be displayed and placed either in the interior of the Utility Building or on the exterior of the Utility Building.

9. ALTERATIONS, FURNISHINGS, AND REMOVAL OF IMPROVEMENTS.

A. ALTERATIONS. The City may without the Utility's prior written consent, make any alterations, additions or utility installations upon the Leaseback Premises portion of the Utility Building. The term "utility installations," as used herein, shall include, without limitation, power sources and panels, space heaters, fluorescent fixtures, conduits and wiring.

B. FIXTURES, FURNISHINGS AND PERSONAL PROPERTY. It is the City's responsibility, at its expense, to equip the Utility Building with all trade fixtures, furniture, furnishings, special equipment, movable partitions, shelving and other items of personal property necessary for the use of the Leaseback Premises by the City and the proper and efficient operation of the City's businesses.

C. REMOVAL OF IMPROVEMENTS. The City shall own the Leaseback Improvements. The Leaseback Improvements, or any part thereof, may be removed from the Leaseback Premises by the City. All trade fixtures, furniture, furnishings and signs installed in the Leaseback Premises by the City and paid for by the City shall remain the property of the City and may be removed upon the expiration or termination of this Leaseback.

10. MAINTENANCE.

A. THE UTILITY'S OBLIGATIONS. It shall be the Utility's responsibility to keep and maintain the parking lot and driveways in good, sightly and reasonably attractive condition; properly illuminated, in accordance with sound safety principles; and reasonably free of snow and ice, debris and other obstructions, and the Utility shall further be responsible for maintaining all landscaping. Further, it shall remain the Utility's obligation and responsibility to, as the parties agreed in the Lease, to maintain the Utility Building and the Pre-Leaseback Improvements in good repair (see, Real Estate Lease, attached as Exhibit C, "MAINTENANCE" Section, pages 1-2).

B. OBLIGATIONS REGARDING LEASEBACK PREMISES. The City shall keep in good condition and repair, these Leaseback Improvements constructed by the City in the Leaseback Premises, including, but not limited to, the heating, air conditioning, ventilating, electrical, lighting, plumbing and sewer systems, interior doors, window frames, interior and any nonstructural wall, partitions, and carpeting, and shall make any replacements thereof and of all broken and cracked glass which may become necessary during the initial term of this Leaseback or any Renewal Period.

11. OBLIGATIONS OF THE CITY.

A. PAYMENT OF RENTS. The City shall pay to the Utility at the time and in the manner heretofore specified the Base Rent and Operating Expenses herein required.

B. THE UTILITY'S ACCESS. The management and control of the Leaseback Premises shall be the responsibility of the City. The Utility shall only have access to the Leaseback Premises under the limited conditions established in this subsection. Upon 24 hours notice or in the event of an emergency, the Utility may access the Leaseback Premises

for the purpose of examining those Premises or to make any necessary repairs or alterations to the Utility Building or the Pre-Leaseback Improvements. In the event of such access, the Utility may make repairs or alternations to the Leaseback Improvements only in the case of an emergency.

12. INSURANCE AND INDEMNITIES. The City shall obtain, at the City's expense, beginning on January 1, 1998, and shall maintain through the expiration or termination of this Lease, the following insurance coverages regarding the Leaseback Improvements and Premises:

A. PROPERTY. A policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the Utility insuring the entire Utility Building, including the Leaseback Premises and all appurtenances thereto.

B. PUBLIC LIABILITY. A policy of commercial general liability insurance insuring against injury to property, person or loss of life arising out of the use, occupancy or maintenance of the Leaseback Premises with limits of general liability not less than $5,000,000 in the aggregate.

C. OTHER. It shall be the City's responsibility to insure any and all of its personal property, fixtures, furnishings, equipment and any other such items kept on or about the Leaseback Premises.

13. GENERAL PROVISIONS.

A. SEVERABILITY. The invalidity of any provision of this Leaseback Agreement, or of its application to any person or circumstances as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof and each term, covenant, condition and provision of this Leaseback shall be valid and be enforced to the fullest extent permitted by Law.

B. TIME OF ESSENCE. Time is of the essence as to all matters set forth in this Lease.

C. CAPTIONS. Section captions are not a part of this Leaseback Agreement and are only for the convenience of the parties.

D. INCORPORATION OF PRIOR AGREEMENTS. This Leaseback Agreement and the attached exhibits set forth all the agreements, terms, covenants and conditions between the Utility and the City concerning the Leaseback Premises and there are no agreements, terms, or covenants, oral or written, between them other than those herein contained. No amendment, change or addition to this Lease shall be binding upon the Utility and the City unless it is in writing and signed by each party.

E. BINDING EFFECT; CHOICE OF LAW. This Leaseback Agreement shall bind the parties, as well as their respective successors and assigns. This Leaseback shall be governed by and be construed and interpreted in accordance with the laws of the State of Wisconsin.

CITY OF STOUGHTON:

Dated: 10/28/98

Robert A Barnett
By: Robert E. Barnett, Mayor

Dated: 10/28/98

Judy A Kinning
By: Judy A. Kinning, City Clerk

STOUGHTON ELECTRIC UTILITY:

Dated: 10-28-98

Robert P. Kardasz
By: Robert P. Kardasz, Utilities Director

d:utility\leasebackaddendum

LEASEBACK ADDENDUM TO
AMENDMENT AND
EXTENSION OF REAL ESTATE LEASE

Agreement made by and between the City of Stoughton ("the City"), and Stoughton Electric Utility ("the Utility"), as a further amendment to the parties' Real Estate Lease, which was effective January 1, 1995, and as an addendum to the parties' Amendment and Extension of Real Estate Lease, as follows:

WHEREAS, The City is the owner of that certain real estate commonly known as the "Stoughton Municipal Utility Building", located at 600 South Fourth Street, Stoughton, Wisconsin 53589 ("the Utility Building").

WHEREAS, The Utility is the Lessee of the entirety of the Utility Building under the parties' Real Estate Lease ("the Lease"), effective January 1, 1995. By agreement of the parties, the Utility has entered into several subleases of portions of the Utility Building to Uniroyal Engineered Products and Stoughton Area School District.

WHEREAS, The City desires to lease from the Utility certain space in the Utility Building described herein; the City has made certain improvements to the space to be rented by the City from the Utility; and the City and the Utility desire to enter into this Leaseback Addendum to Amendment and Extension of Real Estate Lease or "Leaseback Agreement" for the purpose of memorializing the terms and conditions of their agreement.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Utility hereby leases to the City, and the City hereby leases from the Utility, the portion of the Utility Building described in Section 2 below, for a period, at the rental and upon the terms and conditions hereinafter specifically set forth:

I. TRIPLE NET LEASE. This Leaseback is a triple net lease. For purposes of this Leaseback, the term "triple net lease" means the City shall pay the base rent (as defined in Section 5) and all of the expenses related to the Leaseback Premises (as defined in Section 2) including, but not limited to, all taxes (if any), utilities, and contents insurance, and the City shall be responsible for its proportionate share of the maintenance and other operating expenses of the Leaseback Premises, either through the Base Rent (See, 5.A.) or through direct payment by the City for maintenance and services. The City has paid for the construction costs of the leasehold improvements in the Leaseback Premises (defined in Section 3).

2. DESCRIPTION OF LEASEBACK PREMISES. The portion of the Utility Building which is hereby leased to the City shall hereinafter be referred to as the "Leaseback Premises". The precise location of the Leaseback Premises is set forth on Exhibit A which is attached hereto and made a part hereof. The Leaseback Premises shall consist of an area within the Utility Building, in the northeast quadrant, of approximately 11,625 square feet. The City shall also have the right to use of the adjacent parking lot ("parking spaces").

3. PRE-LEASEBACK IMPROVEMENTS. The City and the Utility acknowledge that the City has undertaken and completed a build-out of the Leaseback Premises ("the Leaseback Improvements"). Certain improvements have been undertaken and completed by the Utility since the City's purchase of the property and the parties' entry into the Lease, effective and prior to construction of the Leaseback Improvements ("Pre-Leaseback Improvements"). Additional improvements were necessary to the Leaseback Premises for the City's occupancy and use of the Leaseback Premises ("the Leaseback Improvements").

A. ACCOUNTING FOR PRE-LEASEBACK IMPROVEMENTS. The Utility has accounted to the City for Pre-Leaseback Improvements in and affecting the Leaseback Premises, and the City and the Utility have worked out terms and conditions of the City's payment to the Utility for such Pre-Leaseback Improvements.

The City shall pay for Pre-Leaseback Improvements within the Leaseback Premises during the term of this Leaseback Agreement. The cost of the Pre-Leaseback Improvements shall be paid by the City to the Utility by amortizing a proportionate share of the Pre-Leaseback Improvements cost over the term of the Leaseback Agreement. This Pre-Leaseback Improvements payment shall be converted to a per square foot amount, which shall be added to the base rent. The Pre-Leaseback Improvements cost shall be fully paid during the 20 year extension term, at the end of which time the monthly Pre-Leaseback Improvements cost amount shall be terminated. The City may, at anytime, at its sole option, pay the Utility the remaining balance due for Pre-Leaseback Improvements. This would satisfy in full and extinguish this element of monthly rent (under Section. 5.C., below).

B. LEASEBACK IMPROVEMENTS. The City's Leaseback Improvements consist generally of partitions, flooring, carpeting, plumbing, doors, windows, HVAC equipment, electrical equipment and facilities, and all related improvements which the City may require for the Leaseback Premises. Exhibit A includes a layout of the Leaseback Premises showing the general configuration of the Leaseback Improvements which have been agreed to by the City and the Utility.

C. CONSTRUCTION AND FINANCING COSTS. It is anticipated that the City will obtain a loan from a financial institution to finance the Leaseback Improvements and will pay the entire project cost, including architectural services, fixtures and furnishings costs, and other related items. The City will also be responsible for all financing costs related to its costs for the project.

4. TERM.

A. LEASEBACK TERM. The initial term of the Leaseback term shall be twenty (20) years (the "Initial Term") commencing on March 1, 1998, and expiring February 28, 2018.

B. THE CITY'S RIGHT TO RENEW. The City shall have the right, to be exercised as hereinafter provided, to renew the term of this Lease for two (2) consecutive periods of five (5) years each (each such period shall hereinafter be referred to as a "Renewal Period").

(a) SAME TERMS. Except for the changes in the calculation of Base Rent and the City's portion of Operating Expenses (as described in Section 5.A. and B.), and except as otherwise stated herein or agreed by amendment, each Renewal Period shall be on the same terms, covenants, and conditions as provided in this Leaseback. This Leaseback Agreement may be extended beyond the second Renewal Period upon the written agreement of the parties hereto.

(b) MANNER OF RENEWAL. The City shall exercise its rights to renew in the following manner.

(i) At least three (3) months prior to the expiration of the Initial Term of this Leaseback, or the first Renewal Period, the City shall notify the Utility as provided in this Leaseback Agreement of its election to exercise its option to renew the term of this Leaseback for the first or second Renewal period, as the case may be.

(ii) On the giving of such notice of election to renew as provided in (i) above, this Leaseback, subject to the terms of this provision, shall be deemed to be renewed for the applicable Renewal Period, without any further lease or instrument.

5. RENTAL.

A. BASE RENT. The City shall pay to the Utility Leaseback payments of $1,540.31 per month in advance, on the first day of each consecutive month, until February 28, 2001, the period of the first subterm (two or three year periods within the extension) ("Base Rent"). The twenty (20) year Leaseback Term and the Renewal Period(s) shall be broken down into three-year and two-year subterms, with the two-year subterm, in each instance, coming in the final two years of the term or period. This Base Rent for the final subterm equals $1.59 per square foot per year. The Base Rent shall be adjusted for each subterm using the same methodology as is used in the City of Stoughton — Stoughton Electric Utility Real Estate Lease (using the CPI-U for the Madison area for the prior three years or three percent per year, whichever method results in a larger rate increase), so the Base Rent adjustment under this Leaseback Agreement and the Utility's rent adjustment under the Lease shall be the same at all times and subterms.

B. CITY'S OPERATING EXPENSES. The City shall pay to the Utility, in addition to the Base Rent, the City's proportionate share of Operating Expenses (defined in Section 5.B.(a) below) paid or accrued during the particular Leaseback month in question.

(a) THE CITY'S PROPORTIONATE SHARE. As used herein, the City's proportionate share of Operating Expenses shall be as set forth on the attached Exhibit B

(totaling $0.087 per square foot per year currently), for the expenses shown on that exhibit. The City's proportionate share of operating expenses shall be calculated annually using the same methodology set forth in Exhibit B. On or before January 1st of each succeeding lease year the City and Utility shall agree to the City's proportionate share of operating expenses for the coming calendar year.

(b) PAYMENT OF OPERATING EXPENSES. The City shall pay to the Utility, on the first day of each calendar month during the entire term and any renewal(s) of this Leaseback Agreement, an amount equal to 1112th of the City's proportionate share of Operating Expenses, currently calculated at $84.28 per month.

C. PRE-LEASEBACK IMPROVEMENTS RENT. The City shall also pay to the Utility on a monthly basis, on the first day of each consecutive month, at the same place that the Base Rent is to be paid, in addition to the Base Rent and the City's proportionate share of Operating Expenses, the Pre-Leaseback Improvements rent ("Improvements Rent") during the initial term of this lease, with each monthly payment of Improvements Rent to be in the amount of $697.50 ($0.72 per square foot per year), in equal monthly payments, without provision for change or increase. This payment shall cease at the end of the Initial Term of this Leaseback Agreement. This rent amount may also be terminated by the City, by its prepayment of the balance due, as mentioned in Section IA., above (see also, Exhibit I), which contains a calculation of the initial balance due).

6. OTHER OPERATING EXPENSES. All costs and expenses for maintaining, resurfacing, repairing and replacing, cleaning, snow and ice removal, repair and replacement of exterior lighting fixtures, line painting and landscaping of all vehicle parking areas and other outdoor common areas for the Utility Building shall be the responsibility of the Utility. The Leaseback Premises have natural gas and electric services which are metered separately from the balance of the Utility Building, and all costs of such service shall be paid directly by the City to the applicable utility company. The City's expenses of occupying a portion of the Utility Building shall not include costs and expenses related to the maintenance, upkeep, or repair of lease space within the Utility Building occupied by other tenants, or occupied by the Utility itself.

7. ASSIGNMENTS AND SUBLETTING. The City shall be permitted to assign this Lease to anyone without the prior written approval of the Utility. The City shall have the right to sublease portions of the Leaseback Premises to subtenants, with each such sublease to be made expressly subject to all the terms, conditions and provisions of this Lease.

8. SIGNS. The City shall have the right at its own cost and expense, to erect and maintain a sign or signs advertising the business and/or services to be provided in the Utility Building (including any and all interior or exterior directories) and such sign(s) may be displayed and placed either in the interior of the Utility Building or on the exterior of the Utility Building.

9, ALTERATIONS, FURNISHINGS, AND REMOVAL OF IMPROVEMENTS.

A. ALTERATIONS. The City may without the Utility's prior written consent, make any alterations, additions or utility installations upon the Leaseback Premises portion of the Utility Building. The term "utility installations," as used herein, shall include, without limitation, power sources and panels, space heaters, fluorescent fixtures, conduits and wiring.

B. FIXTURES, FURNISHINGS AND PERSONAL PROPERTY. It is the City's responsibility, at its expense, to equip the Utility Building with all trade fixtures, furniture, furnishings, special equipment, movable partitions, shelving and other items of personal property necessary for the use of the Leaseback Premises by the City and the proper and efficient operation of the City's businesses.

C. REMOVAL OF IMPROVEMENTS. The City shall own the Leaseback Improvements. The Leaseback Improvements, or any part thereof, may be removed from the Leaseback Premises by the City. All trade fixtures, furniture, furnishings and signs installed in the Leaseback Premises by the City and paid for by the City shall remain the property of the City and may be removed upon the expiration or termination of this Leaseback.

10. MAINTENANCE.

A. THE UTILITY'S OBLIGATIONS. It shall be the Utility's responsibility to keep and maintain the parking lot and driveways in good, sightly and reasonably attractive condition; properly illuminated, in accordance with sound safety principles; and reasonably free of snow and ice, debris and other obstructions, and the Utility shall further be responsible for maintaining all landscaping. Further, it shall remain the Utility's obligation and responsibility to, as the parties agreed in the Lease, to maintain the Utility Building and the Pre-Leaseback Improvements in good repair (see, Real Estate Lease, attached as Exhibit C, "MAINTENANCE" Section, pages 1-2).

B. OBLIGATIONS REGARDING LEASEBACK PREMISES. The City shall keep in good condition and repair, these Leaseback Improvements constructed by the City in the Leaseback Premises, including, but not limited to, the heating, air conditioning, ventilating, electrical, lighting, plumbing and sewer systems, interior doors, window frames, interior and any nonstructural wall, partitions, and carpeting, and shall make any replacements thereof and of all broken and cracked glass which may become necessary during the initial term of this Leaseback or any Renewal Period.

11. OBLIGATIONS OF THE CITY.

A. PAYMENT OF RENTS. The City shall pay to the Utility at the time and in the manner heretofore specified the Base Rent and Operating Expenses herein required.

B. THE UTILITY'S ACCESS. The management and control of the Leaseback Premises shall be the responsibility of the City. The Utility shall only have access to the Leaseback Premises under the limited conditions established in this subsection. Upon 24 hours notice or in the event of an emergency, the Utility may access the Leaseback Premises

for the purpose of examining those Premises or to make any necessary repairs or alterations to the Utility Building or the Pre-Leaseback Improvements. In the event of such access, the Utility may make repairs or alternations to the Leaseback Improvements only in the case of an emergency,

12. INSURANCE AND INDEMNITIES. The City shall obtain, at the City's expense, beginning on January 1, 1998, and shall maintain through the expiration or termination of this Lease, the following insurance coverages regarding the Leaseback Improvements and Premises:

A. PROPERTY. A policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the Utility insuring the entire Utility Building, including the Leaseback Premises and all appurtenances thereto.

B. PUBLIC LIABILITY. A policy of commercial general liability insurance insuring against injury to property, person or loss of life arising out of the use, occupancy or maintenance of the Leaseback Premises with limits of general liability not less than $5,000,000 in the aggregate.

C. OTHER. It shall be the City's responsibility to insure any and all of its personal property, fixtures, furnishings, equipment and any other such items kept on or about the Leaseback Premises.

13. **GENERAL PROVISIONS.**

A. SEVERABILITY. The invalidity of any provision of this Leaseback Agreement, or of its application to any person or circumstances as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof and each term, covenant, condition and provision of this Leaseback shall be valid and be enforced to the fullest extent permitted by Law.

B. TIME OF ESSENCE. Time is of the essence as to all matters set forth in this Lease.

C. CAPTIONS. Section captions are not a part of this Leaseback Agreement and are only for the convenience of the parties.

D. INCORPORATION OF PRIOR AGREEMENTS. This Leaseback Agreement and the attached exhibits set forth all the agreements, terms, covenants and conditions between the Utility and the City concerning the Leaseback Premises and there are no agreements, terms, or covenants, oral or written, between them other than those herein contained. No amendment, change or addition to this Lease shall be binding upon the Utility and the City unless it is in writing and signed by each party.

E. BINDING EFFECT; CHOICE OF LAW. This Leaseback Agreement shall bind the parties, as well as their respective successors and assigns. This Leaseback shall be governed by and be construed and interpreted in accordance with the laws of the State of Wisconsin.

CITY OF STOUGHTON:

Dated: _____ _____

By: Robert E. Barnett, Mayor

Dated: _____ _____

By: Judy A. Kinning, City Clerk

STOUGHTON ELECTRIC UTILITY:

Dated: _____ _____

By: Robert P. Kardasz, Utilities Director

CITY OF STOUGHTON, 381 E. MAIN STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Authorizing and Directing the proper City Official(s) to enter into the First Renewal Period for the Agreement for a Leaseback Addendum to Amendment and Extension of Real Estate Lease

Committee Action:	Finance Committee meets February 13, 2018
Fiscal Impact:	Annual lease of $127,751 (2018); $130,945 (2019); $134,873 (2020); TBD (2021-2023)

File Number:	R-20-2018	**Date Introduced:**	February 13, 2018

WHEREAS, an agreement was made by and between the City of Stoughton (City) and Stoughton Electric Utility (Utility), as a further amendment to the parties' Real Estate Lease, which was effective January 1, 1995; and

WHEREAS, the Leaseback Addendum to Amendment and Extension of Real Estate Lease Agreement between the City of Stoughton and Stoughton Electric Utility commenced March 1, 1998 and expires on February 28, 2018; and

WHEREAS, the City of Stoughton has the right to renew the term of the Lease for two (2) consecutive periods of five (5) years each; and

WHEREAS, at least three (3) months prior to the expiration of the Initial Term of the Leaseback, or the first Renewal Period, the City shall notify the Utility as provided in the Leaseback Agreement of its election to exercise its option to renew the term of the Leaseback for the first or second Renewal period; and

WHEREAS, the Renewal Period shall be broken down into one three-year subterm effective March 1, 2018 through February 28, 2021 and one two-year subterm effective March 1, 2021 through February 28, 2023; and

WHEREAS, the Base Rent shall be adjusted for each subterm using the same methodology as is used in the City of Stoughton – Stoughton Electric Utility Real Estate Lease (using the CPI-U for the Madison area for the prior three years or three percent per year, whichever method results in a larger rate increase), so the Base Rent adjustment under the Leaseback Agreement and the Utility's rent adjustment under the Lease shall be the same at all times and subterms; and

WHEREAS, the CPI-U for 2015 - 0.12%, for 2016 – 1.26%, and for 2017 – 2.13% whereby the three (3%) percent per year increase will be utilized for the Base Rent adjustment under the Leaseback Agreement and the Utility's rent adjustment under the Lease for the subterm effective March 1, 2018 through February 28, 2021. The Base Rent shall be recalculated in a similar

manner for the subterm effective March 1, 2021 through February 28, 2023 and communicated to the Utility prior to March 1, 2021.

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Stoughton authorizes and directs the proper city official(s) to enter into the First Renewal Period for the Agreement for a Leaseback Addendum to Amendment and Extension of Real Estate Lease for a period of five (5) years effective March 1, 2018.

Council Action: ☑ **Adopted** ☐ **Failed** **Vote** 11-0

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

Donna Olson 2-13-18

Donna Olson, Mayor Date

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

First Renewal Period as outlined in R-20-2018 Accepted by Stoughton Electric Utility.

Robert P. Kardasz — MARCH 2, 2018

Robert Kardasz — Date