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

RESOLUTION OF THE COMMON COUNCIL			
Authorizing and directing the proper City official(s) to enter into an agreement with Ralph and Mary Jo Sundling regarding Tree Removal and Replacement			
Committee Action:	?		
Fiscal Impact:	$		
File Number:	R-128-2022	**Date Introduced:**	June 14, 2022

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

RECITALS

WHEREAS, Ralph and Mary Jo Sundling (the "Sundlings"), own real property at 200 Rowe Street, Stoughton, Wisconsin 53589; and

WHEREAS, the City plans to install curb, gutter, and sidewalks on the west side of Rowe Street. There is a large Siberian Elm in the front of the Sundlings' residence at 200 Rowe Street. The root structure of the elm tree extends into the right-of-way where the City plans to install a sidewalk. The City cannot work around the elm tree's root structure and must remove the vast majority of the root structure in the right-of-way to install the sidewalk; and

WHEREAS, the Director of Public Works and the City Forester have determined that removal of the root structure could lead to the elm tree's structural failure, which could cause the tree to fall onto Rowe Street or the Sundlings' house. Once the root structure is removed, the elm tree will pose a dangerous condition to the general public, if left standing. The elm tree must be removed to avoid creating this potentially dangerous condition; and

WHEREAS, it is the Director of Public Works' opinion that the elm tree is a dangerous tree as defined in Section 58-12 of the City of Stoughton Ordinances; and

WHEREAS, pursuant to the above recitals, the City has ordered the Sundlings to remove the Elm tree and the Sundlings intend to contest the order (the "Dispute"); and

WHEREAS, the Parties desire to enter into an Agreement (Exhibit A) to resolve the Dispute; now therefore,

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into an agreement (Exhibit A) with Ralph and Mary Jo Sundling.

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

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

_____

Tim Swadley, Mayor Date

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

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Exhibit A

AGREEMENT

This Agreement (the "Agreement") is between Ralph and Mary Jo Sundling (the "Sundlings"), and the City of Stoughton (the "City"), a municipal corporation organized and existing under the laws of the State of Wisconsin (individually, the Party; collectively, the Parties).

WHEREAS, the Sundlings own real property at 200 Rowe Street, Stoughton, Wisconsin 53589;

WHEREAS, the City plans to install curb, gutter, and sidewalks on the west side of Rowe Street. There is a large Siberian Elm in the front of the Sundlings' residence at 200 Rowe Street. The root structure of the elm tree extends into the right-of-way where the City plans to install a sidewalk. The City cannot work around the elm tree's root structure and must remove the vast majority of the root structure in the right-of-way to install the sidewalk;

WHEREAS, the Director of Public Works and the City Forester have determined that removal of the root structure could lead to the elm tree's structural failure, which could cause the tree to fall onto Rowe Street or the Sundlings' house. Once the root structure is removed, the elm tree will pose a dangerous condition to the general public, if left standing. The elm tree must be removed to avoid creating this potentially dangerous condition;

WHEREAS, it is the Director of Public Works' opinion that the elm tree is a dangerous tree as defined in Section 58-12 of the City of Stoughton Ordinances;

WHEREAS, pursuant to the above recitals, the City has ordered the Sundlings to remove the Elm tree and the Sundlings intend to contest the order (the "Dispute");

WHEREAS, the Parties desire to enter into this Agreement to resolve the Dispute.

NOW, THEREFORE, for and in consideration of the various covenants and agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by each of the Parties, and intending to be legally bound hereby, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into the body of this Agreement as though fully set forth herein.

2. **Removal of Siberian Elm.** The City will remove the Siberian Elm tree, including the stump a minimum of 3" below the surface, outside of the Sundling residence at 200 Rowe Street at the City's own cost. The Sundlings consent to the City and its contractors entering their property to remove the elm tree. The City will not charge the cost of removal to the Sundling property, and in exchange, the Sundlings agree to not contest, and waive any right to contest, the removal of the elm tree.

3. Protection of Norway Maple. The City will use its best efforts to preserve a large Norway Maple outside of the Sundling residence at 200 Rowe Street. The City agrees to remove the maple tree at its own cost in the event the Norway Maple dies or is in a dangerous condition within one year of the completion of the sidewalk installation outside of 200 Rowe Street. Whether the maple tree is dead or in a dangerous condition will be determined by the City Forester. Prior to the beginning of the work at 200 Rowe Street, the City Forester will examine the tree and document its condition. Then, one year after the completion of the work, the City Forester will examine the tree again and document its condition. At that point, the City Forester will determine whether the tree is dead or in a dangerous condition.

If the maple tree is dead or in a dangerous condition, the Director of Public Works will communicate the condition of the tree to the Sundlings. After being apprised of the Director of Public Works' position, within fourteen days, the Sundlings will make the decision whether they desire the City to remove the tree at the City's own cost and plant a tree at the City's own cost, with the species to be determined by mutual agreement at a later date. If the Sundlings decline the City's offer to remove the tree and plant a replacement at its own cost, the Sundlings forever waive that opportunity. The Sundlings affirmatively acknowledge that if the maple tree is dead or in a dangerous condition, the City may remove the tree pursuant to Section 58-12 and consent to the City removing the tree in such a circumstance. The Sundlings further acknowledge that pursuant to Section 58-12, the City may charge the cost of removal on the Sundling property.

4. Mutual Release of Claims. Upon the execution of this Agreement, the Parties will release and forever discharge each other of and from all claims, demands, damages, actions and causes of action, torts, obligations, and any and all other liabilities of any kind or description whatsoever, either in law or equity, whether known or unknown, foreseen or unforeseen, which the Parties may now have, claim to have, or may have had up to the execution of this Agreement, arising out of or related to the Dispute described herein. In particular, the Sundlings affirmatively release and waive any claims that they may have with respect to compensation for the removal of the Siberian Elm or Norway Maple.

5. Entire Agreement. This Agreement contains the full and complete agreement between the Parties on the subject of the Dispute, and there are no oral or implied agreements or understandings not specifically set forth herein. No other Party, or agent or attorney of any other Party, or any person, firm, corporation, or any other entity has made any promise, representation, or warranty, whatsoever, express, implied, or statutory, not contained herein, concerning the subject matter hereof, to induce the execution of this Agreement. No signatory has executed this Agreement in reliance on any promise, representation, or warranty not contained herein. No modifications of this Agreement may be made except by means of a written agreement signed by each of the Parties. The waiver of any breach of this Agreement by any Party shall not be a waiver of any other subsequent or prior breach.

6. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin applicable to contracts executed in and to be performed in that state and without regard to any applicable conflicts of law. The Parties acknowledge and agree that any controversy, claim, or dispute arising out of or relating in any way to this Agreement, its performance, or any asserted breach of this Agreement

which cannot promptly be resolved amicably by the Parties shall exclusively be heard in the Circuit Court of Dane County. As to any and all disputes arising out of or related to this Agreement, the Parties hereby: (a) waive all objections to that court exercising jurisdiction over any of them; and (b) waive all objections to venue in that court.

7. **Authority.** Each person signing this Agreement on behalf of a Party represents and warrants that he or she has full power and authority to enter into this Agreement and to fully, completely, and finally settle the Dispute, including but not limited to any and all claims and counterclaims which were or could have been asserted in the Dispute, and the authority to effectuate the terms set forth in this Agreement.

City of Stoughton

Signature: _____

Name: _____
Title: _____
Date: _____

Ralph Sundling

Signature: _____

Name: _____
Title: _____
Date: _____

Mary Jo Sundling

Signature: _____

Name: _____
Title: _____
Date: _____

NO
PARKING
THIS
SIDE