

8 Nov '02

## INTERGOVERNMENTAL AGREEMENT

### AMONG

### TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG

The parties to this Agreement are the Town of Madison, the City of Fitchburg, and the City of Madison, all located in Dane County, Wisconsin.

### RECITALS

- A. The Town of Madison and the City of Madison have a long history of boundary disputes, including a dispute over whether the Town should continue to exist as a separate governmental entity.
- B. Recent developments in this history of disputes include a State budget bill proposal for the City of Madison to annex the Town in its entirety and a petition by the City of Fitchburg (presented at the Town's request) to annex those portions of the Town contiguous to Fitchburg. Fitchburg's petition is pending in Dane County circuit court. These developments and others render the Town's long-term future uncertain.
- C. While facing the prospect of further disputes and protracted litigation, the parties have explored a boundary agreement that would determine the Town's future with certainty, put an end to disputes and litigation over Town territory, and establish a basis for future intergovernmental cooperation.
- D. The Town and the Cities desire to provide for an orderly transition of Town territory from town to city government, preserve the Town's financial integrity while it remains a town, and establish long-term rational boundaries between the City of Fitchburg and the City of Madison that reasonably satisfy each city's goals.
- E. To attain the objectives of the Town and the Cities, and to provide for their mutual peace and cooperation that will be beneficial to citizens in all three communities, the Town of Madison, the City of Fitchburg, and the City of Madison desire to enter into this intergovernmental Agreement.

### AGREEMENT

Therefore, in accordance with the authority granted them under Wisconsin statutes and for their mutual benefit and in the public interest, the Parties agree as follows:

1. Town Protected for a Period of 20 Years

A "Protected Period" is established for the Town:

The Town remains a town for 20 years. Town territory remains intact, except as provided below. There will be no annexations or other jurisdictional boundary changes of the Town during the Protected Period unless: (1) approved by all property owners affected; and (2) approved by the Town board and by the common council of the annexing City. The Town and the Cities may shorten the Protected Period by mutual agreement.

2. Future Boundary

- A. A future boundary is established (the "Line"). The Line is depicted and described on Exhibit A, attached.
- B. At the end of the Protected Period, Town territory north of the Line becomes part of the City of Madison, and Town territory south of the Line becomes part of the City of Fitchburg. Except as provided in paragraph 3(d)(3) below, if there are any mutually agreed annexations before the end of the Protected Period ("Early Annexations"), lands north of the Line may be annexed only by the City of Madison. Lands south of the Line may be annexed only by the City of Fitchburg. Territory in an Early Annexation need not be contiguous to the annexing City. (It will become contiguous at the end of the Protected Period.)

3. Early Annexations

- A. The general rule is no Early Annexations except upon approval of: (1) all property owners affected; and (2) the Town Board.
- B. A limited exception to this general rule is created for the potential creation of a tax incremental financing or redevelopment district, or both (Early TID-RD Annexation).
- C. Either the City of Madison or the City of Fitchburg shall be entitled to an Early TID-RD Annexation if the following conditions are met:
  - (1) The City has conducted the necessary blight studies and prepared a complete TID or redevelopment plan that includes some territory in the Town. The Early TID or RD attachment may consist of multiple parcels, which need not be contiguous, and shall include no more Town territory than is included in the prepared plan which is

consistent with applicable law. The City shall proceed expeditiously with the statutory plan approval process and implementation of the TID or RD upon annexation of the Town territory.

- (2) The City agrees to provide revenue sharing payments to the Town to compensate the Town for lost local tax revenues. The Town shall keep 100% of the local government share of tax revenues for the year of the Early TID or RD annexation. The City shall pay the Town that same amount annually for nine subsequent years, but not beyond the Protected Period. Payments are due in two equal installments: the first due on February 15, and the second due on August 15. The amount and schedule of revenue sharing payments may be modified by mutual agreement.
- (3) If the Cities and the Town do not agree on whether these conditions have been met, the affected City or the Town may submit the matter to binding arbitration. In that case, the annexation shall not occur unless and until the arbitrator determines that the conditions have been met. The arbitrator shall be directed to decide the matter expeditiously.
- (4) The City of Madison may employ an Early TID or RD Annexation no more than twice, and the City of Fitchburg no more than once, during the Protected Period.

D. Four Additional Early Transfers of Jurisdiction

- (1) Property that is owned by Genesis and the Fountain of Life Church, which is within a pending annexation petition, shall be annexed to the City of Madison, effective upon adoption of the annexation ordinance, and shall include only those parcels, pursuant to agreement of the parties, provided the Town and City of Fitchburg agree not to challenge the validity of the annexation on the basis that the annexed property is not contiguous to the City of Madison or that it includes less property than described in the annexation petition, but the Town and Cities preserve their rights otherwise. Regarding the Genesis property, at the end of the Protected Period, Genesis is detached from the City of Madison and attached to the City of Fitchburg, and beginning August 15 after the end of the Protected Period, and for twenty years thereafter, the City of Fitchburg shall pay the City of Madison a Property Tax Payment in the amount as follows:

The outstanding and remaining portion of the \$575,000 CDBG Loan, divided by 1,000 and then multiplied by 8.78.

- (2) Arboretum lands currently in the Town and owned by the University of Wisconsin Board of Regents shall be annexed to the City of Madison effective upon State approval of the Agreement. This annexation shall not include the Beltline right-of-way.
- (3) Property within a pending annexation petition by Mortenson Investment Group shall be annexed to the City of Madison effective upon adoption of the annexation ordinance, subject to a tolling agreement to be signed by the Parties, and a reservation of rights of all parties otherwise, enabling the Town and City of Fitchburg to challenge the validity of the annexation judicially, in the event that State approval of the Agreement is not obtained. The City of Madison shall make a revenue-sharing payment to the Town annually, beginning in the year when local taxes are first paid to the City, continuing through and including 2017, but not beyond the Protected Period. The annual amount shall be equal to the local taxes on the property in 2002. Payments are due in two equal installments: the first due on February 15, and the second due on August 15.
- (4) Upon State approval of the Agreement, the E-Way conservancy land in the Nine Springs Area, adjacent and along Highway 14, north to Highway 14 and south to Clayton Road (as depicted in Exhibit A) shall become a part of the City of Fitchburg by detachment from the City of Madison; the 31-acre parcel in the E-Way owned by the City of Madison between McCoy Road and Clayton Road shall be conveyed by warranty deed to the City of Fitchburg. Separate from State approval, the City of Madison agrees to adopt, concurrent with its approval of this Agreement, such ordinances and resolutions to accomplish the following:
  - a. Extend interim, temporary public water service to Fitchburg to the Rimrock Property until December 1, 2005, and extend Fitchburg's obligation to complete construction of its own water supply to the Rimrock Property until November 30, 2005, or such later dates as shall provide Fitchburg two full years' notice to meet its construction obligation;
  - b. Void Ordinance No. 11,291, upon State approval of this Agreement; and

- c. Amend Madison General Ordinance Section 13.16 to include the Rimrock Property in the Madison service area effective upon State approval of this Agreement.

#### 4. Town Retains Governmental Authority

Except as otherwise mutually agreed, the Town retains full and independent governmental authority throughout the Protected Period. The Town shall exercise that authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period.

#### 5. Joint Land Use Decisions

During the Protected Period, the following land use decisions will be made jointly by the Town and the City designated to take over the area in question:

- (1) Extraterritorial zoning (ETZ) shall be established. During the Protected Period, decisions shall be made by a joint committee that has three Town members and three City members. (There shall be two such committees: one for the area north of the Line and another for the area south of the Line.) Initially, ETZ shall be established conditionally, to take effect upon State approval of this Agreement.
- (2) Land division authority shall be exercised jointly by the Town and the Cities through their use of extraterritorial jurisdiction (Madison for the area north of the Line; Fitchburg for the area south of the Line.)

#### 6. Public Transportation and Public Improvements

During the Protected Period, the Town and the Cities agree to maintain support for the Madison Metropolitan Transit System in equitable proportions.

The Town and the Cities agree that in levying special assessments for public improvements caused by a new development or redevelopment, they may credit benefitted properties for special assessments previously levied against such properties for improvement components of the same type.

The Town and the Cities agree that for any street lying partly in two or three of their jurisdictions, or for any street that under the Agreement shall eventually be within another jurisdiction, they shall not rename such street

if the renaming is opposed in writing by three-fourths or more of the owners of property abutting on the street segment proposed for renaming.

7. Job Continuity for Town Employees

The Town and the Cities shall cooperate to provide job security and job continuity for Town employees. In the absence of some other mutual Agreement, Town employees shall have job security in the form of a severance benefit. Any person who is a Town employee at the end of the Protected Period, and who is not offered suitable employment by either of the Cities on terms at least equivalent to those provided by the Town job, shall be entitled to a lump sum severance payment according to the following schedule:

<u>Duration of Town Employment</u>	<u>Amount of Severance Payment</u>
Less than 6 months	none
More than 6 months, less than 5 years	3 months' pay
More than 5 years, less than 10 years	6 months' pay
More than 10 years, less than 15 years	9 months' pay
15 years or more	1 year's pay

The amount of pay for the above purpose shall not exceed the level of pay for comparable positions in either City.

If a Town employee is employed by a City on a probationary basis and dismissed during the probationary period, but not for cause, the severance payment is due, less a credit for payments from the City to the employee during the period of City employment.

This severance benefit is the joint obligation of both Cities, and shall be paid by one or both Cities, not the Town. The Cities may share the cost between them as they mutually agree. Such cost sharing shall be taken into account in the division of assets and liabilities under paragraph 9 below.

8. Good Faith Cooperation; Conversion to State-Approved Boundary Plan

- A. The Town and the Cities shall cooperate in good faith to implement the Agreement, and may enter further agreements to facilitate a smooth transition at the end of the Protected Period. The Town and the Cities agree that they shall not hinder the performance and implementation of the

Agreement in any way and that they will not oppose the Agreement in any way privately or publicly, either when communicating with any government agency which is charged with review and evaluation of any part of the Agreement or otherwise.

- B. The Town and Cities agree to pursue further cooperative agreements that will qualify each of them for additional shared revenues.
- C. The Town and the Cities shall use their best efforts to secure timely State approval of the Agreement under the provisions of Wis. Stat. § 66.0307. Reference in this Agreement to “annexation” includes summary attachment procedures as part of a State-approved cooperative boundary plan.
- D. Provisions of the Agreement that take effect upon State approval, shall take effect after State approval and appeals, if any.
- E. The Town and the Cities agree that a party’s failure to comply with paragraphs A or C in this section 8 will do substantial harm to the other parties, that the amount of actual damages may be difficult or impossible to establish, and that \$250,000 is a reasonable estimate of what such damages may be. Accordingly, if any party breaches paragraphs A or C of this section 8, that party shall be liable to each of the other parties in the amount of \$250,000 liquidated damages or its actual damages, whichever is greater. The breaching party shall also be liable to the other parties for their actual attorney fees and costs to enforce this provision.

9. Ultimate Division of Town Assets and Liabilities

Town assets and liabilities shall be divided between the Cities at the end of the Protected Period as they mutually agree. If they do not agree, the assets and liabilities shall be divided consistent with the provisions of Wis. Stat. § 66.0235, as may be equitably adjusted to take account of early annexations and revenue sharing. Notwithstanding the foregoing, the Cities agree that the division of assets and liabilities shall, upon Fitchburg’s election, assign to Fitchburg ownership of the current Town Hall property and all assets integral to fire protection and EMS operations.

10. Disputes Settled by Arbitration

Except as to liquidated damages under paragraph E of section 8, disputes over compliance with the Agreement shall be resolved by binding arbitration. Mediation may be used prior to arbitration if all parties agree.

## 11. Binding Effect

The Agreement shall bind, and accrue to the benefit of, all successors of the parties, whether one or more. Except as to the rights of owners of land currently in the Town as expressly set forth herein, the Agreement is for the exclusive benefit of the parties and their successors and assigns and shall not be deemed to give any legal or equitable right, remedy, or claim to any other person or entity.

## 12. Recording

The parties shall cause a notice of the Agreement to be recorded in the office of the Register of Deeds.

## 13. Challenge to Agreement

- A. All parties waive all rights to challenge the validity or enforceability of the Agreement or any of its provisions or to challenge any actions taken pursuant to or in accordance with the Agreement.
- B. In the event of a court action by a third party challenging the validity or enforceability of the Agreement or any of its provisions, all parties shall fully cooperate to vigorously defend the Agreement.
  - (1) If only one party is named as a party to the action, the others shall seek to intervene and the named party shall support such intervention.
  - (2) No settlement of such an action shall be permitted without the approval of the governing bodies of all parties.
  - (3) The workload to defend the Agreement shall be shared equally.
- C. A challenge to the Agreement by one of the parties or a failure to vigorously defend the Agreement constitutes a breach of the Agreement.

## 14. Remedies

In addition to other remedies provided in the Agreement,

- A. Any party may seek specific performance of the Agreement in addition to any other remedies available at law or in equity.

- B. The breaching party shall pay the other's attorney fees reasonably incurred in seeking remedies for the breach.

15. Term

The term of the Agreement shall commence when approved by the governing bodies of the parties and executed by the authorized representatives of the parties and shall terminate at 11:59 p.m. on October 30, 2022.

16. Entire Agreement

The Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior discussions, drafts, agreements, and writings are specifically superseded by the Agreement. The Agreement represents the mutual intent of the parties and the fact that one or more of its provisions was drafted by one party or another shall not be construed to the benefit or detriment of any party.

17. Authority

Each party represents that it has the authority to enter into the Agreement and that all necessary procedures have been followed to authorize the Agreement. Attached are copies of the resolutions of the governing bodies of all parties, authorizing the Agreement. Each person signing the Agreement represents and warrants that he or she has been duly authorized to do so.

18. Counterparts

The Agreement may be signed in counterparts which, when taken together, shall be effective as if all signatures appeared on the same original.

19. Non-Discrimination

In the performance of the services under the Agreement, the parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The parties further agree not to discriminate against any subcontractor or person who offers to subcontract on the

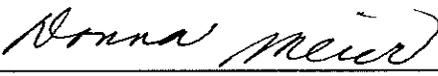
Agreement because of race, religion, color, age, disability, sex, or national origin.

Dated this 8<sup>th</sup> day of November, 2002.

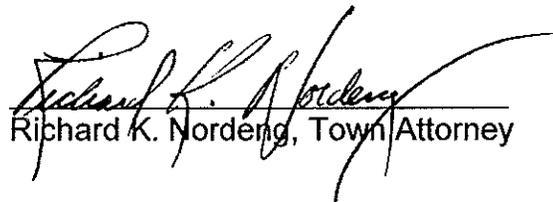
TOWN OF MADISON  
Dane County, Wisconsin

By:   
James A. Campbell, Chair

Attest:

  
Donna Meier, Town Clerk

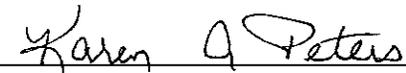
Approved as to Form:

  
Richard K. Nordeng, Town Attorney

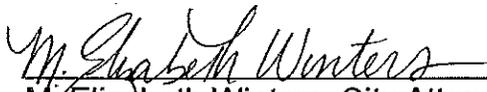
Dated this 8<sup>th</sup> day of November, 2002.

CITY OF FITCHBURG  
A Wisconsin municipal corporation

By:   
Mark Vivian, Mayor

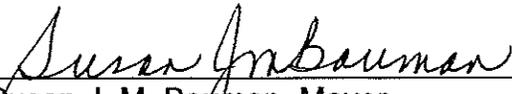
By:   
Karen A. Peters, Clerk

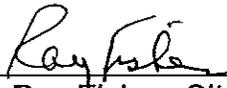
Approved as to Form:

  
M. Elizabeth Winters, City Attorney

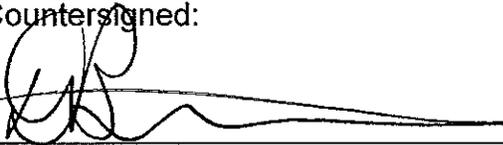
Dated this 8<sup>th</sup> day of November, 2002.

CITY OF MADISON  
A Wisconsin municipal corporation

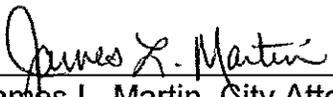
By:   
Susan J. M. Bauman, Mayor

By:   
Ray Fisher, City Clerk

Countersigned:

  
Dean Brasser, City Comptroller

Approved as to Form:

  
James L. Martin, City Attorney

Attachment:

Exhibit A - Future Boundary Line  
Authorizing Resolutions of All Governing Bodies

# Town of Madison, City of Fitchburg, City of Madison Map of Boundary Changes

**Legend**

**JURISDICTIONS**

- City of Fitchburg
- City of Madison
- Town of Madison

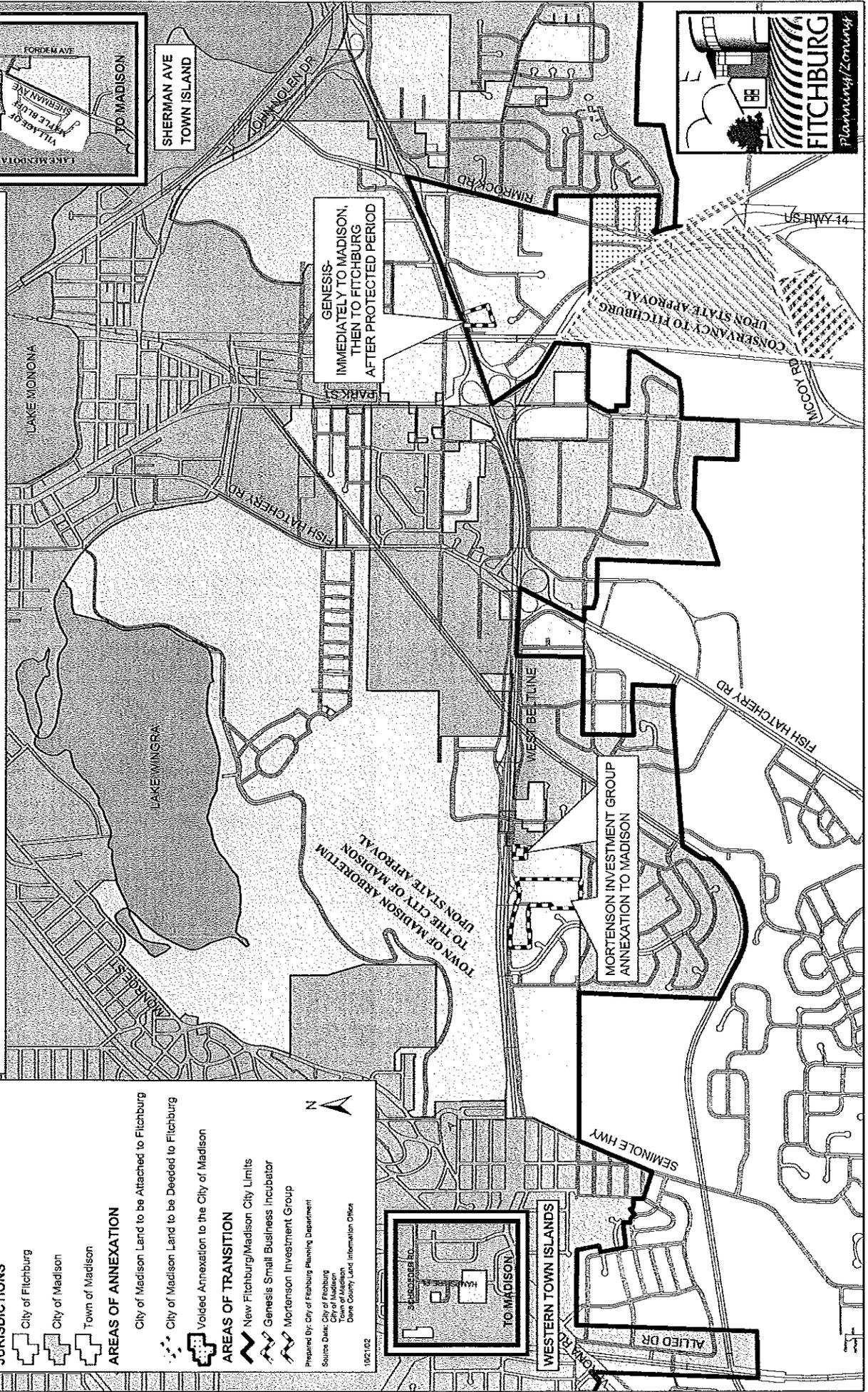
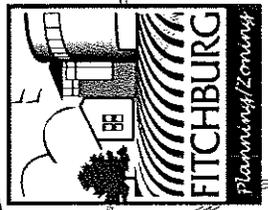
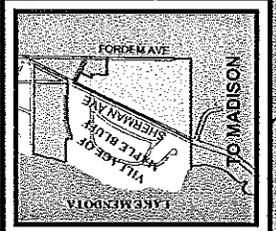
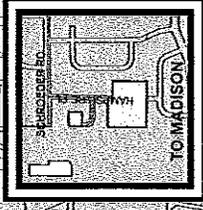
**AREAS OF ANNEXATION**

- City of Madison Land to be Attached to Fitchburg
- City of Madison Land to be Deeded to Fitchburg
- Voided Annexation to the City of Madison

**AREAS OF TRANSITION**

- New Fitchburg/Madison City Limits
- Genesis Small Business Incubator
- Mortenson Investment Group

Prepared By: City of Fitchburg Planning Department  
 Source Date: City of Fitchburg, City of Madison, Dane County Land Information Office  
 1/22/02



RESOLUTION \_\_\_\_\_

**RESOLUTION AUTHORIZING INTERGOVERNMENTAL AGREEMENT  
AMONG THE  
TOWN OF MADISON, CITY OF MADISON, AND CITY OF FITCHBURG  
AND INITIATION OF A COOPERATIVE BOUNDARY AGREEMENT**

WHEREAS, the Town of Madison, City of Madison, and City of Fitchburg have negotiated an intergovernmental agreement, which is attached hereto as Exhibit 1, regarding boundary changes and other urban growth and delivery of municipal service issues, pursuant to an approved cooperative plan under Sec. 66.0307, Wis. Stats., which is to be submitted to the Wisconsin Department of Administration for approval;

NOW, THEREFORE, BE IT RESOLVED, that the Town Chairperson and Town Clerk be and are hereby authorized to execute the intergovernmental agreement among the Town of Madison, City of Madison, and City of Fitchburg, which is attached hereto as Exhibit 1, as well as any other documents related thereto or required thereby, and in a form approved by the Town Attorney.

BE IT FURTHER RESOLVED that the Town Board of the Town of Madison hereby authorizes the Town and directs all necessary staff to participate in the preparation of a cooperative plan which contains all of the applicable provisions set forth in the said intergovernmental agreement, and any further provisions deemed necessary by Town and City attorneys, under Sec. 66.0307, Wis. Stats.

BE IT STILL FURTHER RESOLVED that the Town Clerk shall provide notice of this resolution as required under Sec. 66.0307(4)(a), Wis. Stats., and shall work with the Town Attorney, City of Madison Attorney, and City of Fitchburg Attorney to schedule and notice a joint public hearing on the proposed plan under sub. (4)(b) thereof.

Adopted this 4<sup>th</sup> day of ~~October~~<sup>November</sup>, 2002.

By: \_\_\_\_\_

James A. Campbell, Chairperson

Attest:

\_\_\_\_\_  
Donna Meier, Town Clerk

Attachment: Exhibit 1

Mayor Mark Vivian  
Introduced by

City Attorney  
Prepared by

DIRECT REFERRED  
Referred to

October 22, 2002  
Date

**RESOLUTION R-80-02**

**RESOLUTION AUTHORIZING INTERGOVERNMENTAL AGREEMENT AMONG  
THE TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG AND  
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NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk be and are hereby authorized to execute the intergovernmental agreement among the Town of Madison, City of Madison and City of Fitchburg, which is attached hereto as Exhibit 1, as well as any other documents related thereto or required thereby, and in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the Common Council of the City of Fitchburg hereby authorizes the City and directs all necessary staff to participate in the preparation of a cooperative plan which contains all of the applicable provisions set forth in the said intergovernmental agreement, and any further provisions deemed necessary by Town and City attorneys, under Sec. 66.0307, Wis. Stats.

BE IT STILL FURTHER RESOLVED that the City Clerk shall provide notice of this resolution as required under Sec. 66.0307(4)(a), Wis. Stats., and shall work with the City Attorney, Town Clerk and City of Madison Attorney to schedule and notice a joint public hearing on the proposed plan under sub. (4)(b), thereof.

Adopted this 22<sup>nd</sup> day of October, 2002.

BY:   
Mark Vivian, Mayor

ATTEST:   
Karen A. Peters, City Clerk

Approved: Nov 8, 2002

City of Madison, Wisconsin

A RESOLUTION \_\_\_\_\_

authorizing the Mayor and City Clerk to execute an intergovernmental agreement among the City of Madison, the Town of Madison and the City of Fitchburg regarding boundary changes and other urban growth and delivery of municipal service issues, pursuant to an approved cooperative plan under Sec. 66.0307, Wis. Stats., and authorizing participation of the City of Madison in the preparation of the cooperative plan for public hearing and submittal to the Wisconsin Department of Administration for approval.

Presented October 15, 2002 "TITLE"  
Referred Plan Commission, Board of Estimates

Rereferred Plan Comm., Board of Estimates, CC mtg 11/5 (10-25)  
Reported Back ~~October 29, 2002~~ OCT 25 2002  
Adopted X POF NOV 05 2002  
Rules Susp. \_\_\_\_\_ Tabled \_\_\_\_\_  
Public Hrg. \_\_\_\_\_

\* \* \* \*

APPROVAL OF FISCAL NOTE BY THE  
COMPTROLLER'S OFFICE IS NEEDED  
Approved by:

Drafted by: James M. Voss  
Assistant City Attorney

Date: October 14, 2002

Fiscal Note: See Report of Comptroller

SPONSOR(S): Mayor Bauman, Alds. Tim Bruer  
Gary Poulson, and Matt Sloan

Comptroller's Office  
**59879**  
RESOLUTION NO. \_\_\_\_\_  
ID NO. 32734

WHEREAS, the Town of Madison, City of Madison and City of Fitchburg have negotiated an intergovernmental agreement as follows:

INTERGOVERNMENTAL AGREEMENT AMONG  
TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG

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RECITALS

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- B. Recent developments in this history of disputes include a State budget bill proposal for the City

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7. Job Continuity for Town Employees

The Town and the Cities shall cooperate to provide job security and job continuity for Town employees. In the absence of some other mutual Agreement, Town employees shall have job security in the form of a severance benefit. Any person who is a Town employee at the end of the Protected Period, and who is not offered suitable employment by either of the Cities on terms at least equivalent to those provided by the Town job,

- E. The Town and the Cities agree that a party's failure to comply with paragraphs A or C in this section 8 will do substantial harm to the other parties, that the amount of actual damages may be difficult or impossible to establish, and that \$250,000 is a reasonable estimate of what such damages may be. Accordingly, if any party breaches paragraphs A or C of this section 8, that party shall be liable to each of the other parties in the amount of \$250,000 liquidated damages or its actual damages, whichever is greater. The breaching party shall also be liable to the other parties for their actual attorney fees and costs to enforce this provision.

9. Ultimate Division of Town Assets and Liabilities

Town assets and liabilities shall be divided between the Cities at the end of the Protected Period as they mutually agree. If they do not agree, the assets and liabilities shall be divided consistent with the provisions of Wis. Stat. § 66.0235, as may be equitably adjusted to take account of early annexations and revenue sharing. Notwithstanding the foregoing, the Cities agree that the division of assets and liabilities shall, upon Fitchburg's election, assign to Fitchburg ownership of the current Town Hall property and all assets integral to fire protection and EMS operations.

10. Disputes Settled by Arbitration

Except as to liquidated damages under paragraph E of section 8, disputes over compliance with the Agreement shall be resolved by binding arbitration. Mediation may be used prior to arbitration if all parties agree.

11. Binding Effect

The Agreement shall bind, and accrue to the benefit of, all successors of the parties, whether one or more. Except as to the rights of owners of land currently in the Town as expressly set forth herein, the Agreement is for the exclusive benefit of the parties and their successors and assigns and shall not be deemed to give any legal or equitable right, remedy, or claim to any other person or entity.

12. Recording

The parties shall cause a notice of the Agreement to be recorded in the office of the Register of Deeds.

13. Challenge to Agreement

- A. All parties waive all rights to challenge the validity or enforceability of the Agreement or any of its provisions or to challenge any actions taken pursuant to or in accordance with the Agreement.
- B. In the event of a court action by a third party challenging the validity or enforceability of the Agreement or any of its provisions, all parties shall fully cooperate to vigorously defend the Agreement.

effective as if all signatures appeared on the same original.

19. Non-Discrimination

In the performance of the services under the Agreement, the parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The parties further agree not to discriminate against any subcontractor or person who offers to subcontract on the Agreement because of race, religion, color, age, disability, sex, or national origin.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk be and are hereby authorized to execute an intergovernmental agreement among the Town of Madison, City of Madison and City of Fitchburg containing the terms and conditions stated above, as well as any other documents related thereto or required thereby, and in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the Common Council of the City of Madison hereby authorizes the City and directs all necessary staff to participate in the preparation of a cooperative plan which contains all of the applicable provisions set forth in the said intergovernmental agreement, and any further provisions deemed necessary by Town and City attorneys, under Sec. 66.0307, Wis. Stats.

BE IT STILL FURTHER RESOLVED that the City Clerk shall provide notice of this resolution as required under Sec. 66.0307(4)(a), Wis. Stats., and shall work with the City Attorney, Town Clerk and City of Fitchburg Administrator to schedule and notice a joint public hearing on the proposed plan under sub. (4)(b), thereof.

**CITY OF MADISON, WISCONSIN**

<p>REPORT OF: <b>City Comptroller</b></p> <p>TITLE: <b>Fiscal Note for Resolution ID# 32734 Regarding an Intergovernmental Agreement Between The City of Madison, Town of Madison and City of Fitchburg</b></p> <p>AUTHOR: <b>Dean Brassler, City Comptroller</b></p> <p>DATED: <b>October 21, 2002</b></p>	<table border="0"> <tr> <td>PRESENTED _____</td> <td>_____</td> </tr> <tr> <td>REFERRED _____</td> <td>_____</td> </tr> <tr> <td>REREFERRED _____</td> <td>_____</td> </tr> <tr> <td>REPORTED BACK _____</td> <td>_____</td> </tr> <tr> <td>ADOPTED _____</td> <td>POF _____</td> </tr> <tr> <td>RULES SUSPENDED _____</td> <td>_____</td> </tr> <tr> <td>ID NUMBER</td> <td align="center"><u><b>32734</b></u></td> </tr> </table>	PRESENTED _____	_____	REFERRED _____	_____	REREFERRED _____	_____	REPORTED BACK _____	_____	ADOPTED _____	POF _____	RULES SUSPENDED _____	_____	ID NUMBER	<u><b>32734</b></u>
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ID NUMBER	<u><b>32734</b></u>														

**TO THE MAYOR AND COMMON COUNCIL:**

The proposed intergovernmental agreement between the City of Madison, Town of Madison and City of Fitchburg contains provisions that would have potentially significant fiscal and budgetary implications for all three governmental units. The agreement establishes a boundary line between Madison and Fitchburg and restricts all future annexations to each city's respective side of that line. The agreement also establishes a "protected period" of up to 20 years during which only limited annexation of Town property could occur. At the end of this period, Town property would be divided between the Cities of Madison and Fitchburg, and the Town of Madison government would cease operations.

Specific annexations and property transfers would occur within the next year, and the likely budgetary impact of these changes can be quantified at this time. Two additional annexations of Town territory to the City of Madison, linked to redevelopment opportunities, would be allowed within the next several years. Other early annexations would be allowed only with Town Board approval, but the most dramatic jurisdictional transfers contained in the agreement would not occur for perhaps 20 years. While it is impossible to predict the financial consequences of those future events with certainty, we can identify several provisions in the agreement that help define how the Town government's financial responsibilities would be distributed.

**Immediate Annexations**

Several parcels of property currently located in the Town would be annexed to the City of Madison immediately, or upon approval of the agreement by the State of Wisconsin as provided for in statutes. The agreement commits the City of Fitchburg and the Town of Madison to not object to these annexations. All of the affected properties are commercial or institutional in nature and do not include private residential development. These parcels can be divided into three groups: the Genesis property, the Mortenson properties and the Arboretum property. Each group brings with it a different set of fiscal considerations.

**Genesis** - Located south of the Bellline Highway between Highway 14 and Rimrock Road, this 3.13 acre site had an assessed value of \$1,913,000 in the Town of Madison on January 1, 2001. This parcel would be subject to immediate annexation to the City of Madison under a pending annexation petition. Based on the projected 2002 City tax rate of 8.25 mills, this property would generate City taxes of approximately \$16,000 per year. Additional development is currently progressing on the site. All surrounding properties would remain in the Town of Madison until 2022, including two parcels of private property that are

assessed value of these properties is roughly \$15,000,000. By agreement, the City of Madison would be limited to two such early TID-RD annexations during the 20-year protected period.

The City would be likely to utilize this provision of the agreement only if a suitable, specific redevelopment opportunity is identified in the future. While any taxes associated with the initial or base property value would be returned to the Town, the City could potentially realize additional taxes and other revenues as a result of redevelopment projects in the annexed area. An evaluation of the fiscal consequences of any such annexation could be accomplished in the future, prior to making the decision to proceed.

### **Lands Transferred to Fitchburg**

Another immediate land transfer affecting the City of Madison would be the attachment of 158 acres of property currently within the City of Madison to the City of Fitchburg. Located west of Highway 14 and east of the former Chicago and Northwestern rail line, this area was originally purchased by the City of Madison during the 1960's for public use. It was subsequently divided into two parcels. The 127-acre portion north of McCoy Road was deeded to Dane County during the 1980's and constitutes part of the Nine Springs E-Way. This low land is generally considered unsuitable for development and would be expected to remain as publicly owned open space in perpetuity, regardless of the local jurisdiction. All of this land is located inside the mapped environmental corridor.

A second 31-acre parcel is located South of McCoy Road and owned by the City of Madison. Under the terms of the intergovernmental agreement, ownership of this property would be transferred to the City of Fitchburg at no cost. A portion of this partially wooded site is higher in elevation and is potentially suitable for development. The parcel is inside the Urban Service Area Boundary, but not currently served by municipal sewer and water. Approximately half of the parcel is in the mapped environmental corridor

Because both of these parcels are in public ownership, no current tax revenue would be lost to the City of Madison as a result of these transfers. However, the potential future development value of the property would be forgone.

### **Permanent Madison Water Service to Fitchburg**

Today, the Madison Water Utility provides water service to a 40 acre developed area along Rimrock Road within the City of Fitchburg. Under the terms of a conditional annexation agreement dating to 1995, if Fitchburg fails to extend its own water service to this area by the end of 2004, the development will be automatically annexed to the City of Madison. Fitchburg has begun the planning to complete its own water system extension to serve the area, and it is expected that the work would be completed in a timely fashion, thus voiding the potential annexation of this property to Madison.

The intergovernmental agreement contains provisions that would allow for the existing service structure to continue in perpetuity. The property in question would remain within the City of Fitchburg and the Madison Water Utility service area. This arrangement is similar to other existing service exchange agreements with bordering municipalities. It removes the incentive for Fitchburg to complete an immediate water service extension through other undeveloped areas to serve this location, but has no budgetary impact on the City of Madison or the Madison Water Utility.

### **Annexation Potential During Protected Period**

Generally, existing annexation laws allow cities to annex contiguous unincorporated areas upon the approval of a majority of the property owners within the area to be annexed. This environment has, of course, contributed to the piecemeal progress of municipal boundary extensions throughout the state, particularly in places where the unincorporated land has already been developed, as in the Town of Madison. The pace of that progress is often more dependent upon the financial interests of individual

# Town of Madison, City of Fitchburg, City of Madison Map of Boundary Changes

**Legend**

**JURISDICTIONS**

- City of Fitchburg
- City of Madison
- Town of Madison

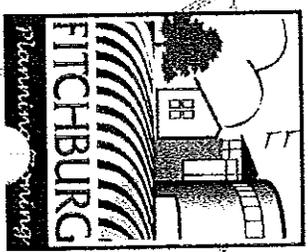
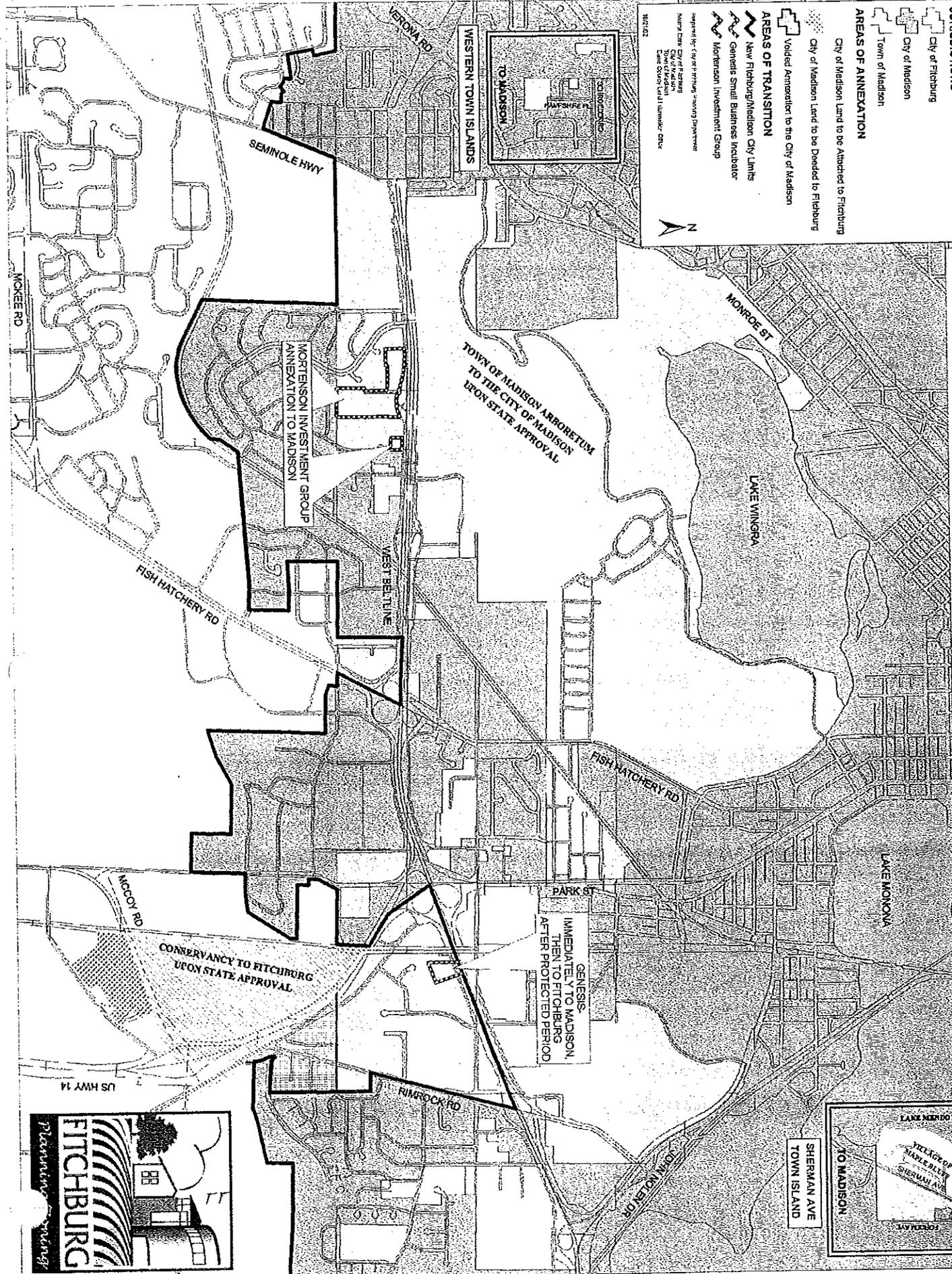
**AREAS OF ANNEXATION**

- City of Madison Land to be Annexed to Fitchburg
- City of Madison Land to be Decided to Fitchburg

**AREAS OF TRANSITION**

- Voided Annexation to the City of Madison
- New Fitchburg/Madison City Limits
- Genesis Small Business Incubator
- Madison Investment Group

Prepared by: City of Fitchburg, Planning Department  
 Author: Chris, City of Fitchburg  
 Date: 04/11/2011  
 Date Drawn: 04/11/2011  
 Date Checked: 04/11/2011  
 Date Approved: 04/11/2011



**MEMORANDUM OF UNDERSTANDING AMONG  
THE TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG**

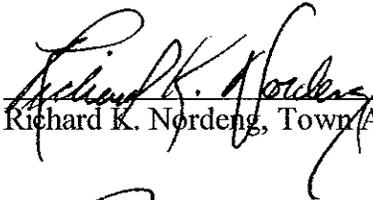
The purpose of this Memorandum of Understanding is to provide evidence of the parties' drafting intent as to what is meant by Section 3.D. of the Intergovernmental Agreement Among Town of Madison, City of Madison and City of Fitchburg (the "Parties"), executed on November 8, 2002, and as that provision is to be incorporated in a corresponding provision of a § 66.0307, Wis. Stats. Cooperative Plan between the Parties, notwithstanding Section 16 of the Intergovernmental Agreement.

Section 3.D. of the Intergovernmental Agreement pertains to "Four Additional Early Transfers of Jurisdiction". Upon execution of the Intergovernmental Agreement, no additional Town approval is required to authorize the transfers as set forth in Section 3.D.

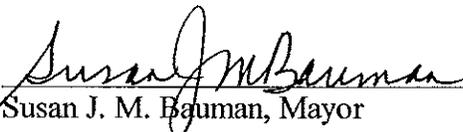
Dated: November 8, 2002.

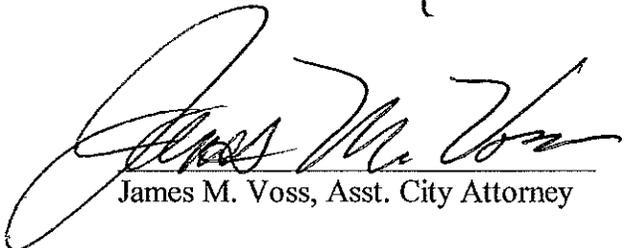
FOR THE TOWN OF MADISON:

  
\_\_\_\_\_  
James A. Campbell, Chair

  
\_\_\_\_\_  
Richard K. Nordeng, Town Attorney

FOR THE CITY OF MADISON:

  
\_\_\_\_\_  
Susan J. M. Bauman, Mayor

  
\_\_\_\_\_  
James M. Voss, Asst. City Attorney

FOR THE CITY OF FITCHBURG:

  
\_\_\_\_\_  
Mark Vivian, Mayor

  
\_\_\_\_\_  
M. Elizabeth Winters, City Attorney

**MEMORANDUM OF UNDERSTANDING AMONG  
THE TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG**

The purpose of this Memorandum of Understanding is to provide evidence of the parties' drafting intent as to what is meant by Section 4 of the Intergovernmental Agreement Among Town of Madison, City of Madison and City of Fitchburg (the "Parties"), executed on November 8, 2002, and as that provision is to be incorporated in a corresponding provision of a § 66.0307, Wis. Stats. Cooperative Plan between the Parties, notwithstanding Section 16 of the Intergovernmental Agreement.

The said Section 4 reads as follows:

Except as otherwise mutually agreed, the Town retains full and independent governmental authority throughout the Protected Period. The Town shall exercise that authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period.

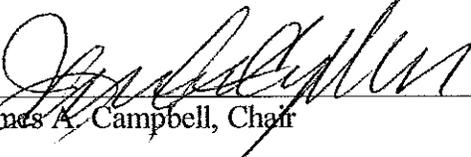
Examples where the Town would not be exercising its governmental authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period include, but are not limited to, the following, if the dollar amount is material and the Town's action is not otherwise justifiable as reasonably prudent financial management:

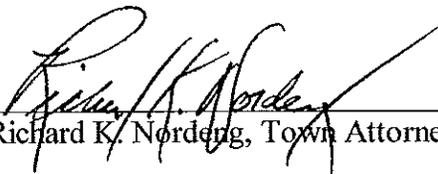
1. Borrowing funds for current operational expenses that are repaid beyond the fiscal year in which the borrowed proceeds were used.
2. Borrowing funds whose unamortized principal at any time during the payback period is greater than the depreciated value of the facilities acquired with borrowed funds, or having an exceptionally long payback period that extends beyond the end of the Protected Period.
3. Borrowing funds at terms and rates that are less favorable than market rates.
4. Substantial deferral of or substantial failure to perform routine or necessary maintenance to current standards on public infrastructure and facilities.
5. Entering into agreements for goods, or services for which payment has been deferred beyond the period where the goods and services have been consumed or obtained.

6. Except as agreed by the Town and the City in which the facility will be located after the Protected Period, undertaking the development of a capital facility, or joint participation in such a project that is not essential to the efficient operation of the Town, and would unreasonably commit a City to future operating, maintenance and debt retirement costs, or contingent liability for non-essential purposes.
7. Hiring to significantly increase the total number of Town employees in later years of the Protected Period.
8. Entering into contractual obligations (including collective bargaining agreements) extending unreasonably beyond the Protected Period.
9. Consistent refusal or failure to provide reasonably sufficient necessary municipal services (including but not limited to protective services), consistent with the Town's size and characteristics, to protect the health, safety, and general welfare of Town residents and visitors, and to preserve and protect private property in all areas of the Town.

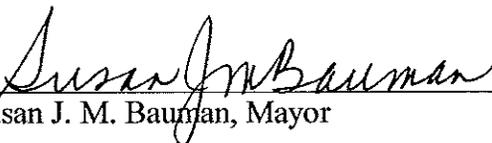
Dated: November 8, 2002.

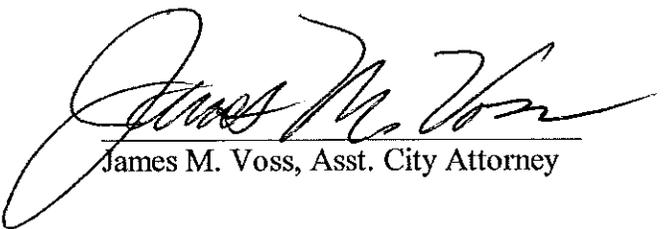
FOR THE TOWN OF MADISON:

  
James A. Campbell, Chair

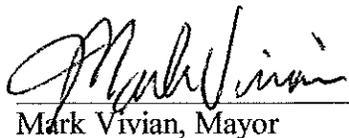
  
Richard K. Nordberg, Town Attorney

FOR THE CITY OF MADISON:

  
Susan J. M. Bauman, Mayor

  
James M. Voss, Asst. City Attorney

FOR THE CITY OF FITCHBURG:

  
Mark Vivian, Mayor

  
M. Elizabeth Winters, City Attorney

**AMENDMENT TO "AN AGREEMENT BETWEEN THE CITY OF MADISON AND CITY OF FITCHBURG TO PROVIDE TEMPORARY PUBLIC WATER SERVICE TO THE RIMROCK ROAD NEIGHBORHOOD"**

This Amendment is made on the \_\_\_\_\_ day of November, 2002, by and between the City of Madison (hereinafter "Madison") and the City of Fitchburg ("hereinafter Fitchburg"), both municipal corporations, located in Dane County.

WHEREAS that certain agreement between the City of Madison and City of Fitchburg to provide temporary public water service to the Rimrock Road Neighborhood ("Rimrock Agreement") dated June 29, 1995 has been fully executed, and

WHEREAS, the City of Madison, Town of Madison and City of Fitchburg have negotiated that certain Intergovernmental Agreement Among Town of Madison, City of Madison and City of Fitchburg, as evidenced in a companion Resolution, whereby the parties have agreed to amend the Rimrock Agreement as described herein:

NOW, THEREFORE, in consideration of the promises and mutual obligations of the City of Madison and the City of Fitchburg, each of them does hereby covenant and agree with the other, that the Rimrock Agreement shall be amended as follows:

Paragraph B of Section 3 of the Rimrock Agreement is amended to read as follows:

Thirty-five (35) days following any referendum regarding the detachment or annexation ordinance, held under sec. 66.022(4), Wis. Stats., provided that a majority of electors voting in said referendum or referenda approve the detachment-annexation of the Neighborhood from Fitchburg to Madison, resulting in the said ordinances taking effect or becoming in force, so as to assure that the subject detachment-annexation will become effective on December 1, 2005, or such later date following State rejection of the Town of Madison, City of Fitchburg and City of Madison Cooperative Plan under Section 66.0307, Wisconsin Statutes, or a final court decision after appeal, if any, overturning or otherwise prohibiting a State approval of said Cooperative Plan which will provide the City of Fitchburg with two full years' time to complete said construction, unless the City of Fitchburg has, prior to such date, completed construction of its own municipal water supply service to the Neighborhood, as hereinafter specified, so as to completely replace Madison's temporary public water supply which is provided hereunder only to enable the Neighborhood to have a safe public water supply in the interim.

Section 4 of the Rimrock Agreement is amended to read as follows:

**Fitchburg Installs Its Own Municipal Water Service to the Neighborhood.**

Fitchburg agrees to construct and install, on or before November 30, 2005, or such later date following State rejection of the Town of Madison, City of Fitchburg and City of Madison Cooperative Plan under Section 66.0307, Wisconsin Statutes, or a final court decision after appeal, if any, overturning or otherwise prohibiting a State approval of said Cooperative Plan which will provide Fitchburg with two full years' time to complete said construction, a public water supply and water distribution trunk system to serve the Neighborhood, thereby completely replacing the temporary public water supply provided hereunder by Madison and the Madison Water Utility.

The introductory paragraph of Section 5 of the Rimrock Agreement is amended to read as follows:

**Result of the Failure on the Part of Fitchburg to Install Municipal Water Service to the Neighborhood.**

In the event Fitchburg fails to timely construct, install and complete its own public water supply and distribution trunk system to serve the Neighborhood on or before November 30, 2005, or such later date following State rejection of the Town of Madison, City of Fitchburg and City of Madison Cooperative Plan under Section 66.0307, Wisconsin Statutes, or a final court decision after appeal, if any, overturning or otherwise prohibiting a State approval of said Cooperative Plan which will provide Fitchburg with two full years' time to complete said construction, so that Fitchburg has failed by that date to fully and completely replace the temporary public water supply provided by Madison and the Madison Water Utility hereunder, as specified in the forgoing paragraph, the annexation-detachment of the Neighborhood from Fitchburg to Madison shall become immediately effective, at 12:01 a.m., on December 1, 2005, or such later date consistent with the foregoing provision, without further action by either party. In this regard, both Fitchburg and Madison further agree:

Paragraph B of Section 5 of the Rimrock Agreement is amended to read as follows:

From December 1, 2005, or such later date following State rejection of the Town of Madison, City of Fitchburg and City of Madison Cooperative Plan Under Section 66.0307, Wisconsin Statutes, or a final court decision after appeal, if any, overturning or otherwise prohibiting a State approval of said Cooperative Plan which will provide Fitchburg with two full years' time to complete said construction, forward, Madison will assume the complete responsibility for providing all local municipal services to the Neighborhood and its residents at the same level which it provides to all other similar property and residents of Madison, and Fitchburg will discontinue to provide any local municipal services to the Neighborhood and its residents.

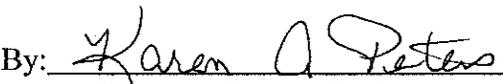
Paragraph C of Section 5 of the Rimrock Agreement is amended to read as follows:

Fitchburg will collect the real and personal property tax revenues for the Neighborhood properties for the year 2005, or such later date following State rejection of the Town of Madison, City of Fitchburg and City of Madison Cooperative Plan under Section 66.0307, Wisconsin Statutes, or a final court decision after appeal, if any, overturning or otherwise prohibiting a State approval of said Cooperative Plan which will provide Fitchburg with two full years' time to complete said construction, and shall remit 100% of the Fitchburg local share of said 2005, or such later date consistent with the foregoing provision, tax revenues to the Treasurer of Madison in two (2) installments as tax revenues are received. The first installment shall be remitted to Madison by February 15, of the year following annexation; the second installment shall be remitted by August 15, of the year following annexation. The intent of this provision is so that Madison will have sufficient revenues in its fiscal and calendar year following annexation treasury to provide municipal services to the Neighborhood.

Dated this \_\_\_\_ day of November, 2002.

CITY OF FITCHBURG  
A Wisconsin municipal corporation

By:   
Mark Vivian, Mayor

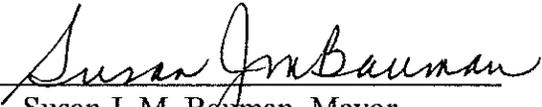
By:   
Karen A. Peters, Clerk

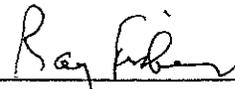
Approved as to Form:

  
M. Elizabeth Winters, City Attorney

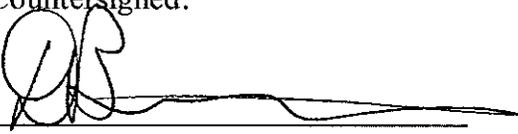
Dated this \_\_\_\_ day of November, 2002.

CITY OF MADISON  
A Wisconsin municipal corporation

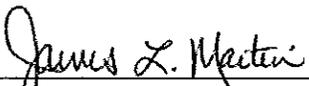
By:   
Susan J. M. Bauman, Mayor

By:   
Ray Fisher, City Clerk

Countersigned:

  
Dean Brassler, City Comptroller

Approved as to Form:

  
James L. Martin, City Attorney