

**INTERGOVERNMENTAL AGREEMENT FOR THE OWNERSHIP, OPERATION AND
MAINTENANCE OF THE BADGER LANE LIFT STATION**
Between the City of Madison and the City of Fitchburg

THIS AGREEMENT, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “Madison”), and the City of Fitchburg, a Wisconsin municipal corporation (hereinafter referred to as “Fitchburg”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, pursuant to Wis. Stat. § 66.0307, Madison, Fitchburg and the Town of Madison (the “Town”) entered into a Cooperative Plan related to boundary lines and other municipal issues among themselves, which Plan was approved on October 10, 2003, by the State of Wisconsin Department of Administration; and,

WHEREAS, under the terms of the Cooperative Plan, the Town will be absorbed by the Madison and Fitchburg, and the Town itself will cease to exist, on October 31, 2022 (the “Final Attachment”); and,

WHEREAS, as part of the Final Attachment of the Town, and pursuant to the terms of the Town of Madison Assets and Liabilities Apportionment Agreement (the “Apportionment Agreement”), Madison and Fitchburg will take over those portions of the Town’s infrastructure, including the existing sanitary sewer system and sanitary lift stations, that lie in each municipality; and,

WHEREAS, the Town’s Badger Lane Lift Station currently serves Madison and Town sanitary sewer customers, and is the subject of an existing intergovernmental operation and maintenance agreement that will expire upon Final Attachment; and,

WHEREAS, after Final Attachment, and pursuant to the Apportionment Agreement, the Badger Lane Lift Station will be owned by Madison, but will continue to serve former Town parcels that will be located in Fitchburg. As such, it is necessary for Madison and Fitchburg to enter into an operation and maintenance agreement regarding the lift station; and,

WHEREAS, Wisconsin Statutes, Section 66.0301, authorizes cities, villages, towns, counties, and other public agencies to contract for the joint exercise of any power or duty required or authorized by statute.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The sole purpose of this Agreement is to provide for the ownership of, and the sharing and apportionment of the costs and obligations to operate and maintain, the Badger Lane Lift Station, and certain appurtenances thereto, as described in Section 2 (the “Lift Station”). The Lift Station will be owned by Madison while Fitchburg will be billed

proportionately for usage, maintenance and replacement costs.

2. Description of Lift Station Facilities. The facilities which are the subject of this Agreement are the sanitary sewer lift station located within the western Badger Lane right-of-way, just south of its intersection with Nob Hill Road, at approximately 2200 Badger Lane, and all force mains connecting to that lift station.
3. Description of Properties Served by the Lift Station. The service area of the existing Lift Station is shown on Exhibit A, which is attached hereto and incorporated herein. In addition, Exhibit A shows the future Fitchburg and Madison parcels within the Lift Station service area.
4. Ownership of Lift Station. Pursuant to the terms of the Apportionment Agreement, because the Lift Station will be located in Madison following Final Attachment, Madison will take ownership of the facility, effective October 31, 2022.
5. Responsibility for Operation and Maintenance. Madison shall be responsible for operating and maintaining the Lift Station, for the purpose of pumping sewage collected from the portions of Madison and Fitchburg served by said sewage facilities to the Madison Metropolitan Sewerage District mains for treatment.
6. Basis of Prorating Cost. For the duration of this Agreement, the cost of operating and maintaining said Lift Station will be prorated annually between the parties based upon the following measurement methods, as appropriate, for each parcel in either municipality from which sewage flows through said lift station and force main in order to reach the sewer mains of the Madison Metropolitan Sewerage District:
 - a. For those parcels that are using the public water supply, it shall be based upon the volumetric amount of water passing through the water meter or meters serving the parcel, or the actual volume of sewage as determined by a sewerage metering installation, as recorded in the Madison and Fitchburg Water Utility billing systems, during the applicable twelve (12) months. Fitchburg will provide a list of new customers in Fitchburg to Madison by December 31st of each year for annual billing of maintenance work to Fitchburg.
 - b. For those parcels that are not using the public water supply but that are metered, it shall be based upon the amount of water passing through the meter or meters used to measure the private supply of water serving the parcel, or the actual volume of sewage as determined by a sewerage metering installation, during the applicable twelve (12) months.
 - c. For those parcels that are not using the public water supply and that are not metered, it shall be based upon the average customer computation included in the current Rate Structure of the Madison Sewer Utility, for the same customer class.
7. Cost of Maintaining and Operating said Lift Stations. In determining the total cost of maintaining and operating the Lift Station that will be prorated between the Parties pursuant to this Agreement, the following items of expense shall be included:
 - a. Maintenance and Repairs. The cost of grease, fittings, supplies, repairs, replacements

- and incidental expenses of every nature, whatsoever necessary, incurred by either Party in order to keep said Lift Station in good operating condition;
- b. Energy Costs. The cost of all electricity used to operate the pumps in said Lift Station, as well as any electricity or other sources of heat or energy which may be used to heat and light the Lift Stations;
 - c. Labor. The proportionate share of salary or wages, benefits, and labor related overhead attributable to any person or persons engaged or employed by either Party and required to service, maintain or repair said Lift Station;
 - d. Madison Metropolitan Sewerage District Lift Station Maintenance Charges. All costs billed by the Madison Metropolitan Sewerage District to either Party for maintaining said Lift Stations;
 - e. Non-routine Maintenance. Significant repairs, meant to mean anything other than routine maintenance, included but not limited to Lift Station replacement which is planned for 2024, shall be discussed and agreed to between both Parties beforehand. If advanced notice is not practical given an emergency situation, prompt notification shall occur by the Party undertaking the non-routine maintenance activity within two working days following the repairs. Madison and Fitchburg agree to their proportionate share of the repair costs based upon lot area draining to the Badger Lift Station; and,
 - f. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special costs on Fitchburg properties serviced by the Lift Station covered by this Agreement, then Fitchburg agrees, pursuant to Wis. Stat. Sec. 66.0707, to consider a resolution approving the levy of special assessments against Fitchburg properties benefited by the improvements, or pay its share of the lift station repair outright.
8. Billing. Madison shall, as soon as practical after January 1st of each year, furnish Fitchburg with the total expenses incurred by Madison relating to the Lift Station in the previous year. Madison shall allocate said costs between the Parties by the total volume of sewage attributable to each Party pursuant to Section 6. Madison shall supply Fitchburg with an itemized statement of the cost of operating and maintaining said Lift Station during the preceding period, and the volume computations under Section 6. The balance shall be due by Fitchburg to Madison by April 1 following the end of the year in question. Fitchburg will provide a list of new customers in Fitchburg to Madison by December 31st of each year.
 9. Billing- Treatment: Madison Metropolitan Sewerage District will bill each municipality directly for wastewater treatment based upon land use and water meter data from both Madison and Fitchburg Water Utilities. Each municipality will include these treatment costs with billing of customers located within each municipality.
 10. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by United States mail at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the date of postmark, if sent by certified mail, postage prepaid, addressed to:

<u>Name</u>	<u>Address</u>
City of Madison	City Engineer 210 MLK Jr. Blvd., Room 115 Madison, WI 53703
City of Fitchburg	City Engineer 5520 Lacy Road Fitchburg, WI 53711

11. Duration of Agreement. This agreement shall not expire as long as Fitchburg properties are connected to and benefitting from the Lift Station improvements located at 2200 Badger Lane.
12. Liability. Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.
13. Nondiscrimination. In the performance of the services under this Agreement, the Parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The Parties further agree not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
14. Final Agreement. This Agreement entered into by the Parties on this date constitute the entire agreement of the Parties with respect to the subject matter hereof, and may only be modified or supplemented by an additional writing between the Parties. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
15. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.

16. Miscellaneous.

- a. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
- b. All addenda and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addenda and exhibits shall be binding upon all parties.
- c. This Agreement is intended to benefit the parties hereto and their respective officials and shall not be construed to create any right or benefit on behalf of any person, firm, corporation or other entity not a party hereto.

17. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their proper officers on the day and year written below.

FOR THE CITY OF FITCHBURG

Aaron Richardson, Mayor

Date

Tracy Oldenburg, City Clerk

Date

Chad Brecklin, City Administrator

Date

Approved as to Form:

Valerie Zisman, City Attorney

Date

DRAFT

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Hass, City Attorney

Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES-22-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2022.

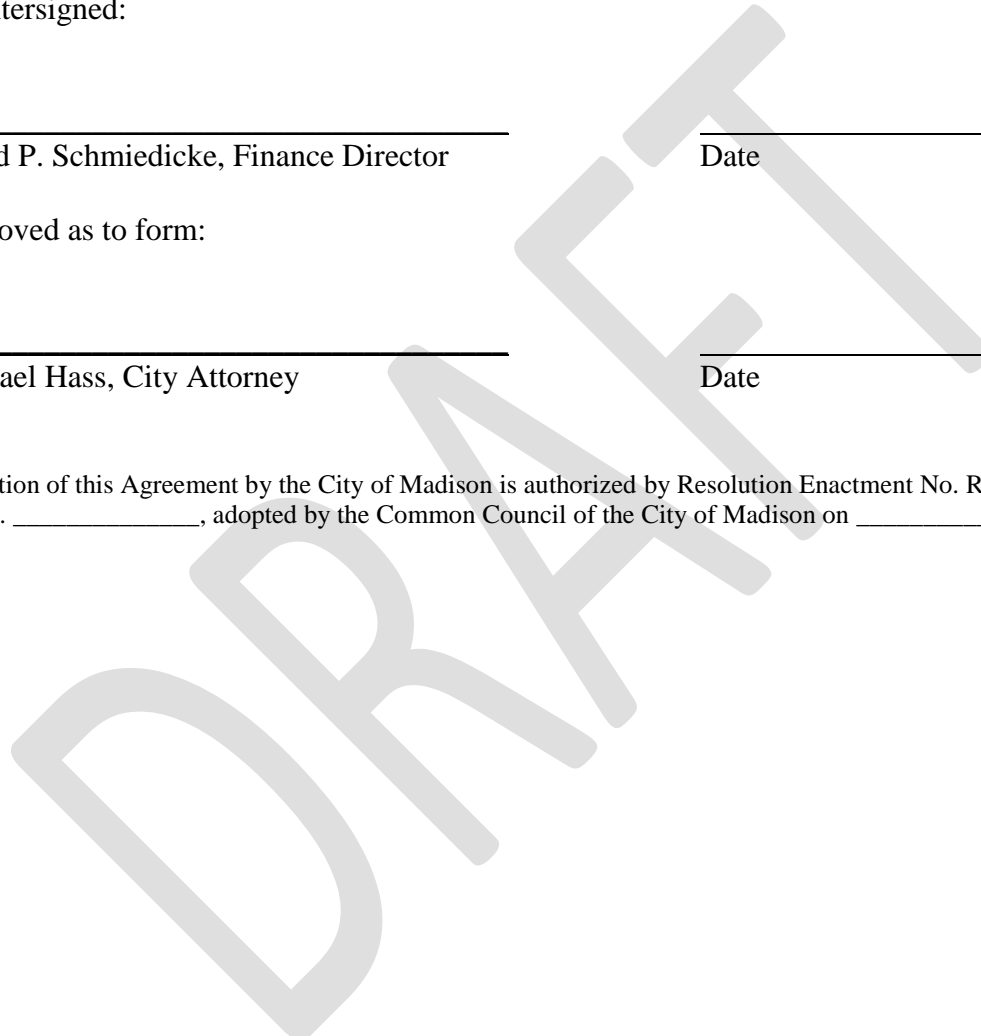


EXHIBIT A
Badger Lane Lift Station Service Area