

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE POST ROAD SANITARY
SEWER EXTENTION—FIRST AMENDMENT**
Between the City of Madison and the City of Fitchburg

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

WITNESSETH:

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes Madison and Fitchburg to contract for the joint exercise of their powers and duties, and sharing of expenses arising therefrom; and,

WHEREAS, on February 7, 2012, Madison and Fitchburg (collectively the “Parties”) entered into an Intergovernmental Agreement Relating to the Post Road Sanitary Sewer Extension (the “Agreement”), which agreement set forth certain conditions upon which Madison would agree to provide sanitary sewer service to designated Fitchburg properties in the Maple Lawn Heights development area; and,

WHEREAS, pursuant to the terms of the Agreement, Fitchburg had new sanitary sewer mains constructed as part of the expansion of Post Road and Index Road, which mains were to connect to Madison’s sanitary sewer stub at the intersection of Post Road and Latham Road to serve the properties designated in the Agreement; and,

WHEREAS, following the installation of these new mains, Madison has been serving properties with the Development Area; and,

WHEREAS, it has been determined by the Parties that Fitchburg is able to serve most of the properties within the original Development Area following the installation of a Madison Metropolitan Sewer District (MMSD) flow meter in Index Road; and,

WHEREAS, the Parties would now like to amend the area covered by the Agreement and reconfigure the relationship between Madison and Fitchburg for this area.

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 purpose of this “Intergovernmental Agreement Relating to the Post Road Sanitary Sewer Extension—First Amendment” (the “First Amendment”) is to amend portions of the Agreement to alter the “Development Area” defined in the Agreement to include properties currently connected to the Madison sanitary sewer, or properties that may become connected to Madison’s sanitary sewer, in the Maple Lawn Heights development area. In addition, this First Amendment will withdraw language that had the new sewers that were installed by Fitchburg being dedicated to Madison. Finally, this First

Amendment will recognize that Fitchburg's payment of sanitary sewer fees for 2012 and 2013 to Madison in 2014, will make Madison whole for the sanitary sewer services provided to Fitchburg properties in the Development Area prior to the installation of the MMSD flow meter.

2. Development Area. The Development Area defined in the Agreement and depicted on Exhibit A to the Agreement is hereby amended to constitute the lands located in Fitchburg making up the Englehart Center properties located at 1585-1589 Greenway Cross and those properties located in Fitchburg lying both north and south of Post Rd. that currently consist of Outlots 1 and 2 of Certified Survey Map # 13418 to the South and a proposed 3 lot Certified Survey Map to the North (Exhibit B) Exhibit A to the Agreement is further replaced by "Exhibit A – Revised" to this First Amendment, which Exhibit depicts the amended Development Area.
3. Ownership and Maintenance. Section 3 of the Agreement is replaced with the following:

Once construction of the new sanitary sewer main between the municipal boundary and the Madison sanitary sewer stub located at the intersection of Post Rd. and Latham Rd. is complete, or within sixty days (60) of the execution of this First Amendment, Fitchburg shall notify Madison and provide Madison with all relevant data regarding the sanitary sewer, including its 'as-built' location. Madison shall have thirty days (30) to inspect the sanitary sewer main to ensure that all applicable standards have been met in the construction thereof. If Madison is satisfied with the construction, Madison shall accept the sanitary sewer main from Fitchburg and this portion of the sanitary sewer shall be added to Madison's capital plant. Madison shall then assume all maintenance responsibility over this portion of the sanitary sewer main, including all locating required in accordance with Digger's hotline requests. Fitchburg shall retain all ownership and maintenance responsibilities over the sanitary sewer mains lying within Index Rd. and Post Rd. lying within its municipal boundaries.
4. Index Road Flow Meter and Prior Service. Upon the execution of this First Amendment, the Parties acknowledge that MMSD has installed a flow meter in the sanitary sewer at the municipal boundary in the Index Road right-of-way. This meter is able to measure sewerage flow received from Fitchburg properties to the south. Fitchburg shall be responsible for all MMSD treatment charges for flow measured by this meter. As a condition of entering into this First Amendment, the Parties agree that Fitchburg shall pay Madison in full for the MMSD treatment charges incurred by Madison prior to the installation of this meter for sewerage flow received from Fitchburg properties. Payment shall be based upon customary rates of the Madison Sewer Utility for the respective timeframe. Any costs incurred by MMSD for modification of the manhole to install the flow meter, shall be the responsibility of Fitchburg.
5. Post Road Flow Meter. In the future, Fitchburg may find that the installation of a flow meter at the municipal boundary in the Post Road right-of-way is appropriate. If MMSD agrees to install such a meter, Fitchburg shall be responsible for all MMSD treatment charges for flow measured by this meter.

6. Service Connections and Billing. Section 4 of the Agreement is replaced with the following:

Madison agrees to provide sanitary sewer service to all Fitchburg properties in the Development Area. Madison already serves the Englehart Center properties and will continue to do so as long as the property is connected to the Madison sanitary sewer. If any of the remaining property in the Development Area is developed in the future, Madison will agree to serve these properties through its Post Road sanitary sewer. Fitchburg shall provide Madison with notice of any such connections within thirty (30) days of the property's connection to the Fitchburg sewer. The property owners seeking to connect to the sewer are responsible for all connection fees.

All Fitchburg properties in the Maple Lawn Heights development area, except for the Englehart Center properties, that are served by Madison under this Agreement and First Amendment thereto shall remain customers of Fitchburg and Fitchburg shall bill the customers accordingly. By January 15 of each year, Fitchburg shall provide Madison with all available sewer usage and MMSD flow data in its possession from the previous year for these properties served by Madison. Madison shall then charge Fitchburg the corresponding sewer rates for providing this service, as determined by Madison General Ordinance Section 35.02, as amended from time to time, or the Common Council. Once billed, Fitchburg shall have thirty (30) days to make payment to Madison. If payment is not made, Madison may proceed to collect this amount from Fitchburg, and Fitchburg agrees to pay Madison all costs associated with this collection, including reasonable attorney's fees.

7. Non-Discrimination. Section 8 of the Agreement is hereby amended by replacing the existing provision with the following:

In the performance of the services under this Agreement, the Parties agree not to discriminate against any employee or applicant for employment 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 agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

8. All other terms and conditions of the Agreement not affected by this First Amendment shall remain in effect during the term of the Agreement.

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

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael P. May, City Attorney

Date

FOR THE CITY OF FITCHBURG

Shawn Pfaff, Mayor

Date

Linda Cory, City Clerk

Date

Tony Roach, City Administrator

Date

Mark Sewell, City Attorney

Date