

TRANSIT SERVICE AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
THE CITY OF FITCHBURG

THIS AGREEMENT, executed by the City of Madison, Wisconsin, a municipal corporation, hereinafter referred to as "Madison", and the City of Fitchburg, hereinafter referred to as the "Municipality", acting by and through its authorized agents:

W I T N E S S E T H :

WHEREAS, Sec. 66.30, Wis. Stats., authorizes towns, villages, cities and other governmental units and regional planning commissions as municipalities to contract for the joint exercise of any power or duty required or authorized by a statute; and

WHEREAS, the governmental units which are parties hereto are authorized by statute to exercise the powers implicit herein; and

WHEREAS, Madison and the Municipality agree it would be to the mutual benefit of the parties for Madison to provide transit service to the Municipality.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Madison and the Municipality do, pursuant to the provisions of Wisconsin Statutes, agree as follows:

I. TERM

It is agreed and understood by and between the parties hereto that transit service to the Municipality as hereinafter described will be provided by Madison during the period effective as of January 1, 1988 through December 31, 1988. If neither party gives written notice of non-renewal to the other party on or before September 1, 1988, or September 1 of each succeeding year, this Agreement shall be renewed for an additional one year period, under the same terms and conditions, modified only as to the hourly cost of service. If notice of non-renewal is given according to this paragraph, the Municipality will incur no costs under Sec. VII below.

II. TRANSIT OPERATIONS

A. Routes and schedules for the transit service provided pursuant to this Contract shall be jointly planned by Madison and the Municipality with the understanding that any changes in routes, schedules, or fares must be first approved by the Municipality and Madison, or its duly appointed representative.

B. Municipality shall make requests for route, schedule and fare changes for the subsequent calendar year or school year not less than ninety (90) days prior to the beginning of each such year. Calendar year changes shall be implemented by March of the next calendar year, and school year changes shall be implemented at the beginning of the next such school

year. Cumulative modifications in any contract year at Municipality's request shall be limited to those which either increase or decrease the total annual bus hours by no more than twenty-five percent (25%).

C. Upon Madison's request, the Municipality shall provide, by August 1st of each year, intended hours of operation and all other information necessary for the preparation of Madison's transit operating budget for the following calendar year. The intended hours of operation shall be set forth in writing.

III. THE MUNICIPALITY'S PAYMENT FOR SERVICE

A. Madison shall collect authorized fares from passengers using the aforesaid transit service. Fares collected shall be credited against the Municipality's gross operating expenses.

B. In consideration for providing the aforesaid service, the Municipality shall pay Madison the local share of the cost of providing service to the Municipality as calculated by Madison in accordance with Attachment A.

C. The methodology for calculating the local share of the cost of providing transit service to the Municipality is set forth in Attachment A which is herein incorporated by this reference and made a part of this Agreement.

D. Madison shall bill the Municipality quarterly for the cost of providing transit service to the Municipality at the beginning of each calendar quarter according to the methodology specified in Attachment A. The Municipality shall pay the

amounts specified in such bills within forty-five (45) days after submission thereof. Following an annual independent audit of transit system revenues and expenses, retroactive adjustments will be made to quarterly payments stated above to assure that Municipality pays Madison the actual annual cost of providing transit service to the Municipality. Madison shall furnish a copy of the independent audit report within thirty (30) days of the City's receipt of the report.

IV. SERVICE PROVIDED

A. Madison will at all times provide and use buses which are clean and in good safe mechanical condition.

B. Municipality shall have no control over Madison's operations in connection with providing said transit service, and the Municipality shall have no control or supervision whatever over the drivers of the buses used in said service by Madison. Said drivers shall not constitute agents or employees of the Municipality and shall be subject solely to Madison's supervision and control.

V. PERFORMANCE

It is further understood and agreed that Madison may assign the performance of this Agreement to an independent operating company or other entity of Madison's choosing. However, Madison shall remain primarily responsible for performance of the service provided for herein.

In no event shall Madison be deemed to be in default of any provision of this Agreement for failure to perform where such failure is due to strikes, walkouts, riots, civil insurrections or disorders, acts of God, adverse weather conditions, lawful budgeting restrictions, or for any other cause or causes beyond the control of Madison.

Notwithstanding any other provision of this Agreement to the contrary, Madison's obligations to perform hereunder shall be first conditioned upon its ability to do so in compliance with all applicable laws governing the conduct of Madison's business, operations, its budgetary process, and its appropriations.

VI. AFFIRMATIVE ACTION/MINORITY BUSINESS ENTERPRISE

A. Policy. It is the policy of the U.S. Department of Transportation that minority business enterprises (including women, business enterprises) as defined in 49 CFR, Part 23. Sections 23.5 and 23.63 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the MBE/WBE requirements of 49 CFR, Part 23, and the City MBE/WBE program apply to this Agreement.

B. MBE/WBE Obligation. City of Madison subrecipients agree to ensure that minority business enterprises (including women business enterprises) as defined in 49 CFR, Part 23. Sections 23.5 and 23.63 have the maximum opportunity to participate in the performance of contracts and subcontracts

financed in whole or in part with federal funds provided under this Agreement. In this regard, the Municipality, as a subrecipient, and all of its contractors, on contracts financed in whole or in part with federal funds provided under this agreement, shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, and the City MBE/WBE program to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts funded in whole or in part by Federal DOT funds. The Municipality and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

C. In connection with the performance of work under this Agreement, Municipality agrees 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, political beliefs or student status.

VII. TERMINATION

Either party may terminate this Agreement upon one hundred twenty (120) days written notice. In the event of default by the Municipality in its payments for more than sixty (60) days from the date of the initial quarterly billing, service may be suspended or terminated at Madison's option. In the event of

suspension or termination under this Article of the contract either initiated by the Municipality or caused by default in its payments, the Municipality will pay any expenses required by the termination, including, but not limited to, unemployment compensation expenses incurred by layoffs due to the termination, insurance premiums, and other similar expenses required by the termination, for six (6) months from the time the termination takes effect, or until the expiration of this Agreement, whichever is later.

VIII. NOTICES

All notices hereunder and communications with respect to this Agreement shall be directed by United States Mail, postage prepaid and addressed as follows:

If to City of Madison:

City Clerk
City-County Building
210 Monona Avenue, Room 103
Madison, WI 53710

and to

Transit Manager
1101 East Washington Avenue
Madison, WI 53703

and to

City Attorney
City-County Building
210 Monona Avenue, Room 401
Madison, WI 53710

If to Municipality:

Mayor
2377 S. Fish Hatchery Road
Fitchburg, WI 53711

and to

City Clerk
2377 S. Fish Hatchery Road
Fitchburg, WI 53711

or to such other address that either party shall designate by written notice.

IX. BINDING ON PARTIES

This Agreement shall be binding on the parties hereto, their respective heirs, devisees and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unto unless the same be in writing signed by the duly authorized agent or agents who executed this Agreement.

X. NO WAIVER

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Municipality shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Municipality therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

XI. SEVERABILITY

It is mutually agreed that, in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers.

WITNESS:

CITY OF MADISON, WISCONSIN
A municipal corporation

Manda Lullmore

F. Joseph Sensenbrenner, Jr.
F. JOSEPH SENSENBRENNER, JR., Mayor

Diane Koley

Andre Blum
ANDRE ~~BLUM~~ BLUM, City Clerk

WITNESS:

CITY OF FITCHBURG, WISCONSIN
A municipal corporation

Alan Culkin

Tom Capp
Mayor

Gary A. Schneider

Nedra L. Cull
Clerk

COUNTERSIGNED:

Paul R. Beller
PAUL R. BELLER, City Comptroller - Madison

APPROVED AS TO FORM:

Henry A. Gempele
HENRY A. GEMPELER, City Attorney - Madison

TRANSIT SERVICE AGREEMENT BETWEEN
THE CITY OF MADISON AND THE CITY OF FITCHBURG

COUNTERSIGNED:

Tom Capp City Comptroller - Fitchburg

City Attorney - Fitchburg

APPROVED AS TO FORM:

John H. Suterholm
City Attorney - Fitchburg

ATTACHMENT A

METHODOLOGY FOR ESTIMATING MUNICIPALITY DEFICIT

TERMS

MUNICIPALITY HOURS OF SERVICE:

Includes revenue, deadhead, travel, guarantee and report hours attributed to the Municipality on the applicable routes as shown in Attachment B.

SYSTEM COST PER HOUR:

Developed by dividing the total system expense (including interest and local share of depreciation*) by the total system revenue, deadhead, travel, guarantee and report hours.

APPLICABLE PASSENGER REVENUE:

The percentage of all the revenue collected in the farebox and through the sale of passes and tickets attributed to the Municipality for the applicable routes.

MUNICIPALITY SHARE OF FEDERAL AND STATE OPERATING ASSISTANCE:

Defined by formula and distributed to each Municipality on the same basis as these funds are allocated to the system as a whole.

METHOD

1. MUNICIPALITY EXPENSE = (Applicable Hours of Service) x (System Cost Per Hour)
2. MUNICIPALITY GROSS DEFICIT = (Municipality Expense) - (Applicable Passenger Revenue)
3. MUNICIPALITY SHARE OF FEDERAL ASSISTANCE =
$$\frac{(\text{Municipality Gross Deficit})}{(\text{System Gross Deficit})} \times \text{Total Federal Assistance}$$

* The local share of depreciation will be calculated as follows:

Local Share of Depreciation =

$$\frac{(\text{Total Madison Contributed Capital} + \text{Outstanding Long Term Debt})}{(\text{Total Contributed Capital} + \text{Outstanding Long Term Debt})}$$

4. MUNICIPALITY SHARE OF STATE ASSISTANCE =

$$\frac{(\text{Municipality Expense})}{(\text{System Expense})} \times \text{Total State Assistance}$$

5. MUNICIPALITY NET DEFICIT = (Municipality Gross Deficit) -
Municipality Share of Federal Assistance) - (Municipality Share of
State Assistance)

ATTACHMENT B

City of Fitchburg

The following route(s) and allocated hours of service and revenues shall be used to compute the municipality's deficit:

<u>Route</u>	<u>Allocated Hours of Service</u>	<u>Percentage of Revenues</u>
D	100%	100%
H	19%	19%
E	2.3%	2.3%