

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE POST ROAD SANITARY
SEWER EXTENTION**

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, Fitchburg has expressed plans to construct an extension of Post Road connecting the current eastern terminus at Fish Hatchery Road with the current western terminus just west of Latham Drive at the municipal border between Madison and Fitchburg (collectively the “Parties”) in the Maple Lawn Heights development (the “Development Area”); and,

WHEREAS, during this construction, Fitchburg plans to install other new infrastructure to serve the Development Area, including connecting Index Rd. south to the new Post Rd.; and,

WHEREAS, the extensions of Post Rd. and Index Rd. will be beneficial to Madison by opening up other routes into and out of Madison’s industrial park roughly bounded by Greenway Cross/Stewart St. on the north, Syene Rd. on east, Post Rd. on the south, and Latham Drive on the west; and,

WHEREAS, as part of this construction, new sanitary sewer service will need to be provided to serve the Fitchburg properties in the Development Area, as shown on Exhibit A; and,

WHEREAS, it is more efficient and less costly if sanitary sewer service for the Development Area is provided by Madison by extending sewer service to this area from Madison’s sanitary sewer that terminates at the Post Rd. and Latham Dr. intersection; and,

WHEREAS, Fitchburg has agreed to install, at its own expense, new sanitary sewer mains for Madison to serve the Maple Lawn Heights development, and Madison has agreed to serve this development, pursuant to the terms set forth in this Agreement.

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” (the “Agreement”) is to set forth the conditions upon which Madison will provide sanitary sewer service to Fitchburg properties in the Development Area.

2. Construction. Fitchburg agrees to construct or cause to be constructed new sanitary sewer service mains within the new and existing Post Rd. and Index Rd. right-of-ways, pursuant to design and construction standards acceptable to Madison, connecting this new service to Madison's existing sanitary sewer stub at the intersection of Post Rd. and Latham Rd. Fitchburg shall pay all costs associated with the design and construction of the sanitary sewer, including any restoration costs, service lateral connections, or other associated costs. All service laterals shall have an electronic marker ball placed at the point of crossing the Right of Way line and at the point of connection to the sewer main. Fitchburg shall abide, or cause its contractors to abide, by Madison's street excavation permit process with regards to the portion of new sanitary sewer that will be installed in the Post Rd. western terminus located within Madison. It is the intent of the parties that Fitchburg shall bear all the costs of the construction of the new sanitary sewer and, to the extent that Madison is charged any costs thereof, Fitchburg agrees to reimburse Madison any costs arising from the construction.
3. Ownership and Maintenance. Once construction of the new sanitary sewer mains is complete, 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 to inspect the sanitary sewer mains 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 mains from Fitchburg and this sewer shall be added to Madison's capital plant. Madison shall then assume all maintenance responsibility over the sanitary sewer main, including all locating required in accordance with Digger's hotline requests. If repairs are needed during the lifetime of the sewer, Fitchburg agrees to work with Madison in scheduling the repairs. Madison shall be responsible for the costs of repairing the sewer, and Fitchburg shall be responsible for any associated costs to repair or reconstruct the street improvements, except for minor patching or restoration. Fitchburg acknowledges that Madison sewer maintenance equipment may occupy the Fitchburg right of way from time to time for routine maintenance and that no permit or permission is required to perform this routine maintenance. Madison shall obtain a permit from Fitchburg anytime it is necessary to excavate within the Fitchburg right of way.
4. Service Connections and Billing. Madison agrees to provide sanitary sewer service to all Fitchburg properties in the Development Area, provided lateral service connections to the new sanitary sewer main meet Madison's standards and are approved by Madison. The property owners seeking to connect to the sewer are responsible for all connection fees. Once connected to the sanitary sewer, Fitchburg properties 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 data in its possession from the previous year for Fitchburg properties in the Development Area. 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 attorneys fees.

5. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special costs on the Fitchburg properties serviced by the sanitary sewer covered by this Agreement, then, pursuant to Wis. Stat. Sec. 66.0707, Fitchburg agrees to timely consider a resolution approving the special assessments or costs, which approval shall not be unreasonably withheld.
6. Termination. This Agreement shall last for the lifetime of the sanitary sewers to be constructed hereunder, unless otherwise mutually terminated, amended or extended upon the written agreement of the Parties. Notwithstanding the above, in the event Fitchburg redirects some or all of the sewage in the Development Area to lines constructed in Fitchburg, this agreement shall terminate as to the redirected lines.
7. Liability. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions, including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.
8. 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, sexual orientation, 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 or national origin.
9. 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	Director of Public Works 5520 Lacy Rd. Fitchburg, WI 53711

10. 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.

11. Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.

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:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

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

EXHIBIT A Area to be Serviced by Madison Sewer Utility

