

**TRANSIT SERVICE AGREEMENT BETWEEN
THE CITY OF MADISON
AND
THE CITY OF VERONA**

This Agreement, executed by the City of Madison, Wisconsin, a municipal corporation, hereinafter referred to as "Madison" or "Metro Transit", and the City of Verona, hereinafter referred to as "Verona", acting by and through its authorized agents:

WITNESSETH:

WHEREAS, Sec. 66.0301, 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 operates Madison Metro Transit System, a division of the City of Madison; and

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

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Madison and Verona 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 commuter bus service, as hereinafter defined and described, will be provided by Madison during the term of this Agreement, from **September 19, 2005** through **September 16, 2007**. On or before July 1, 2006, Madison and Verona agree to commence discussion for the preparation of an extension or amendment of this Contract, if mutually desired, beyond the Term of this Agreement in order to provide adequate time to prepare operating budgets for continuation of service in the following calendar year upon conclusion of this Agreement.

It is anticipated by the parties that following the initial term of this Agreement, Verona will be responsible for full (100%) funding for any continued service, after applicable passenger revenues have been credited, as it is expected that Reverse Commute grant funding will no longer be available. It is also anticipated by the parties, that Verona will become eligible for direct State Operating Assistance pursuant to § 85.20 of the Wisconsin Statutes at about the same time that Reverse Commute grant funding will no longer be available; and, further, that such direct State Operating Assistance would enable Verona to continue to obtain transit service from Madison through a contract extension or amendment. Verona shall be fully responsible for applying for direct State Operating Assistance and complying with related State grant responsibilities. It is understood by the parties that no part of this initial Agreement is contingent or dependent upon receipt of such funds by Verona.

II. COMMUTER BUS SERVICE

- A. "Commuter bus service" has the meaning given that term in 49 CFR 37.3 currently in effect and as may be renumbered or amended from time to time. A description of the commuter bus service to be provided

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pursuant to this Agreement is shown in Attachment B. It is understood that schedule and route changes may be made during the term of the Agreement by mutual consent of the parties. This provision is not intended and shall not limit or restrict Metro Transit's ability to make temporary route or schedule changes due to construction, road repairing, special events and other like circumstances in the normal course of its transit operations.

- B. Americans with Disabilities (ADA) Complementary Paratransit Requirements: Under 49 CFR Part 37 "commuter bus service" as defined under the Act does not carry any ADA complementary paratransit service obligations. Accordingly, ADA paratransit services shall not be provided by Madison and are not included in the cost of transit service to Verona under this Agreement.

III. VERONA'S PAYMENT FOR SERVICE

A. Madison shall collect authorized fares from passengers using the aforesaid commuter bus service. Fares shall be established and paid according to the Fare Tariff in effect for Metro Transit service, as approved and from time-to-time amended by the Madison Transit and Parking Commission. Verona will be notified of any proposed Fare Tariff changes during the term of the Contract and may provide its input either informally or through Madison's Public Hearing Process. It is understood, however, that the final determination regarding fares remains Madison's.

B. Verona's expense for this service will be calculated by Madison according to the methodology in Attachment A and reduced by applicable passenger revenues and applicable Federal Reverse Commute Grant Funds to the extent they are available for this service in order to establish the "Net Deficit" payable by Verona. See Attachment A for terms and methods used in determining billing costs.

C. Service changes, made by mutual consent of the parties during the term of the agreement may alter the initial estimate of service cost, in which case quarterly billings or the final billing may be adjusted to reflect those changes as mutually agreed by the parties. Alternatively, by mutual agreement, an additional "fifth quarter" billing may be issued to reflect such additional costs.

D. Madison shall bill Verona quarterly for the estimated cost of providing transit service to Verona. Verona shall pay the amounts specified in such invoices within forty-five (45) days after submission thereof. Following an annual independent audit of transit system revenues and expenses as required by federal law, any adjustments shall be credited or billed to Verona in a fifth billing. Madison shall furnish a copy of the independent audit report within thirty (30) days of the City's receipt of the report. Verona has the right at its sole cost to select a firm to conduct a separate, additional independent audit. **Checks for invoices for this service shall be made payable to the City of Madison and sent to Metro Transit, 1101 East Washington Avenue, Madison WI 53703, Attn: John Etzler, Finance Manager.**

E. In the first two years of service (the term of this Agreement), the estimated cost ("Net Deficit") of service to Verona, after application of applicable passenger revenues and Reverse Commute grant funding is \$111, 839 for the two year period.

IV. SCOPE OF SERVICE PROVIDED/RESPONSIBILITIES

A. During the term of this Agreement, Madison shall provide "commuter bus service" as described in Article II and Attachment B of the Agreement.

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B. Madison will at all times provide and use buses which are clean and in good safe mechanical condition. Madison shall be solely responsible for ensuring the safety of all passengers of the commuter bus service in the course of transit.

C. Verona shall have no control over Madison's operations in connection with providing said commuter bus service, and Verona 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 City of Verona and shall be subject solely to Madison's supervision and control.

D. Madison shall provide Verona with standard Metro Transit bus stop signs which Verona shall install at all established stops in Verona. Verona shall maintain its bus stops used under this Agreement in a safe condition. Madison reserves the right to decline to stop at any bus stop not properly maintained. Verona shall provide notice to Madison of any road construction, road repair, special events or other like circumstances which occurs along or may impact the commuter bus route as soon as necessary possible together with a good faith estimate as to the duration of such change.

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. Verona shall be notified prior to any such assignment. It is understood that the service performed and equipment used under any such assignment shall be equal to or better than that provided hereunder. 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 State 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 and operations and its budgetary process.

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 26 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 parties agree to comply with the DBE requirements of 49 CFR Part 26 to the extent they are obligated to do so.

B. DBE Obligation. Madison sub-recipients agree to ensure that disadvantaged business enterprises (including women and minority business enterprises) as defined in 49 CFR, Part 26 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 Contract to the extent they are lawfully required to do so. In this regard, Verona, as a sub-recipient, and all of its contractors, on contracts financed in whole or in part with federal funds provided under this agreement, shall comply with 49 CFR Part 26 to the extent it is obligated to do so to ensure that disadvantaged business enterprises have the maximum opportunity to compete and perform contracts funded in whole or in part by Federal DOT funds. Verona and its contractors shall not unlawfully discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT- assisted contracts.

C. In the performance of services under this Contract, both 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, political beliefs or student status. Both 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.

VII. INDEMNIFICATION AND HOLD HARMLESS

It is mutually agreed Verona and Madison will be prepared to answer and defend only that responsibility and resultant legal liability, involving personal injury or property damage, which is based upon or arises from their respective, or their employees' or agents' respective, acts, errors or omissions which may occur in connection with this Agreement while acting within the scope of employment.

VIII. TERMINATION

A. Provision of service under this Agreement is contingent upon receipt by Madison of Federal Reverse Commute grant funds provided by the State of Wisconsin to fund 50% of the "Gross Deficit" (as defined under Method in Attachment A). In the event this grant funding is or becomes no longer available for this service during the term of this Agreement, Madison will notify Verona in writing within ten (10) working days of the loss of said funds. Within sixty (60) working days of such notification, Verona may exercise an option to pay 100% of the cost of service less applicable passenger revenue ("Gross Deficit"), as calculated by Madison, or decline to exercise that option. Verona's decision to exercise or decline to exercise this option shall be in writing in accordance with Section IX, Notices, below. In the event that Verona declines to fully fund the "Gross Deficit" for the service, this Agreement and the related service will be terminated upon adequate public notice, as determined by Madison. Verona shall be responsible to pay Madison for the prorated Verona Expenses, as calculated using the methodology in Attachment A, incurred by Madison through the termination date of the service, as a result of loss of Reverse Commute Grant funding and the early termination of this Agreement.

B. In the event of default by Verona 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 of this Agreement either initiated by Verona or caused by default in its payments, Verona will pay the prorated "Verona Expenses" incurred by Madison through the early termination date of this Agreement. The obligation to pay "Verona Expenses" under this Section shall not apply if this Agreement is suspended or terminated for cause arising out of the unlawful acts of Madison.

C. In the event that Verona experiences the loss of substantial funding for this service, which could materially affect its ability to provide required funding for this service as described in Section V and Attachment A of this Agreement, it will notify Madison within ten (10) working days of notification of the loss of said funds. In the event of suspension or termination of this Agreement either initiated by Verona or caused by default in its payments due to the loss of said funds, Verona will pay the prorated Verona expenses incurred by Madison through the early termination date of this Agreement. The obligation to pay expenses under this Section shall not apply if this Agreement is suspended or terminated for cause arising out of the unlawful acts of Madison.

D. Notwithstanding the above paragraphs A, B and C, Madison may in its sole discretion and without any reason terminate this agreement at any time by furnishing Verona with ninety (90) days' written notice of

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termination. In the event of termination under this subsection, Madison will reimburse Verona for any prepayment of transit costs for services not provided by Madison due to termination under this paragraph D.

IX. NOTICES

All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand-delivered to the addresses of the parties listed below:

If to City of Madison:

City-Clerk
Room 103, City-County Building
210 Martin Luther King, Jr. Blvd
Madison, WI 53710

and to

Metro Transit General Manager
1101 East Washington Ave.
Madison, WI 53703

and to

City Attorney
Room 401, City-County Building
210 Martin Luther King, Jr. Blvd
Madison, WI 53710

If to Verona:

Verona City Clerk
111 Lincoln
Verona, WI 53593

and to

City of Verona Administrator
111 Lincoln
Verona, WI 53593

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

X. ASSURANCES AND CERTIFICATIONS

Verona makes the following assurances and certifications as part of this Agreement:

- (a) It possesses the legal authority to enter into this Agreement; a resolution, motion or similar action has been duly adopted or passed as an official act of the municipality's governing body,

authorizing the execution of this Agreement, including each and every part thereof, and directing and authorizing the persons identified in Section VIII Notices, to act in connection with this Agreement and to provide all required reports and such additional information as may be required.

- (b) In the event that Verona experiences the loss of substantial funding for this service, which could materially affect its ability to provide required funding for this service as described in Section V and Attachment A of this Agreement, it will notify Madison within ten (10) working days of notification of the loss of said funds.
- (c) Verona agrees to work with Metro Transit staff to promote use of the reverse-commute commuter bus service by Epic System employees by prior arrangement with Epic Systems officials, and to promote use of the transit service by Verona residents using the service to commute to Madison. Madison shall promote use by the general public of service to and from Verona through its normal transit publications and shall work with the City of Verona and the Verona Chamber of Commerce to promote the service.

XI. BINDING ON PARTIES

This Agreement shall be binding on the parties hereto, their respective successors and assigns 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 and the duly authorized agent or agents who executed this Agreement.

XII. 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.

XIII. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of Madison or Verona 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 or default specified in such waiver. 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 Madison or Verona 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.

XIV. ENTIRE AGREEMENT

The entire agreement of the parties is contained herein and this Agreement supercedes any and all oral contracts and negotiations between the parties.

XV. THIRD PARTY RIGHTS

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This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin,

Signed this 31 day of August, 2005.

THE CITY OF VERONA, a municipal corporation

John Wainwright (Witness) John B. Volker John B. Volker, Mayor DATE: 8/11/05

CITY OF MADISON, a municipal corporation

David J. Cieslewicz (Witness) David J. Cieslewicz David J. Cieslewicz, Mayor DATE: 8-31-05

Ray Fisher (Witness) Ray Fisher Ray Fisher, City Clerk DATE: 8.16.05

APPROVED:

Dean Brassler
Dean Brassler, City Comptroller

APPROVED AS TO FORM:

Michael P. May
Michael P. May, City Attorney

Kevin Houlihan
Kevin Houlihan, City Risk Manager

METHODOLOGY FOR ESTIMATING VERONA DEFICIT

TERMS:

Hours of Service: Includes all revenue hours associated with the provision of the Commuter Bus Service shown in Attachment B. Changes in scope of service provided, as mutually agreed to, may entail changes in billing amounts.

System cost per hour: Determined by Metro by dividing the total system expense (including interest and local share of depreciation) by the total system revenue hours. A credit for capital aids shall be applied in the development of this figure.

Applicable Passenger Revenue: Fares as recorded by fare collection equipment at the time of passenger boarding, applicable to this route.

Federal 5307 and Madison State operating assistance: No part of Madison's federal or state transit funding for operating assistance shall be applied against the cost of this service.

Reverse Commute Grant Funding: Federal funding made available through the Wisconsin Department of Transportation as may be applicable to this service.

Verona State Funding: Should Verona become eligible and receive direct State transit funding during the term of this Agreement, it may utilize its State funds in paying Madison for this service, subject to State regulations that may apply.

METHOD

1. Verona Expense = (Applicable hours of revenue service) x (System Cost per Revenue Hour).
2. Verona Gross Deficit = (Verona Expense) - (Applicable Passenger Revenue).
3. Verona Net Deficit = (Verona Gross Deficit) - (Applicable Reverse Commute Grant Funding).

PAYMENT SCHEDULE

Verona agrees to pay Madison on or before the last day of each quarter as designated below. Checks shall be made payable to the City of Madison and sent to Metro Transit, 1101 East Washington Avenue, Madison WI 53703, Attn: John Etzler, Finance Manager.

The payment schedule below for the first two years of service is based on estimated elements of billing (see terms and methods above) previously provided to Verona. In accordance with Sections III.D., following an annual independent audit of transit system revenues and expenses, any adjustments shall be credited or billed to Verona in a fifth billing for each year of the Agreement.

Year One of Agreement - Estimated net cost

1. September 19, 2005 - October 31, 2005:	\$13,727
2. November 1, 2005 - January 31, 2006:	\$13,727
3. February 1, 2006 - April, 30, 2006:	\$13,727
4. May 1, 2006 - September 17, 2006.	<u>\$13,727</u>
	Est. Total: \$54,908

Year Two of Agreement - Estimated net cost

1. September 18, 2006 - October 31, 2006:	\$14,233
2. November 1, 2006 - January 31, 2007:	\$14,233
3. February 1, 2007 - April 30, 2007:	\$14,233
4. May 1, 2007 - September 16, 2007.	<u>\$14,232</u>
	Est. Total: \$56,931

Route 55

55 Weekday AM's – Verona Express Loop

Comes From Route	West Transfer Point		Epic Campus		W. Verona Ave. and Legion St.		West Transfer Point		Becomes Route
	1	2	3	1	1	2	3		
G	6:30	6:50	7:00	7:25	7:25	7:50	8:00	8:25	55
55	7:30	7:50	8:00	8:25	8:25	8:50	9:00	9:25	55
55	8:30	8:50	9:00	9:25	9:25				G

55 Weekday PM's – Verona Express Loop

Comes From Route	West Transfer Point		Epic Campus		W. Verona Ave. and 16th Ave.		West Transfer Point		Becomes Route
	1	3	2	1	1	3	2		
G	4:30	4:55	5:05	5:25	5:25	5:55	6:05	6:25	55
55	5:10	5:35	6:05	6:25	6:25	6:55	7:05	7:22	55
55	6:30	6:55	7:05	7:22	7:22				G

