

TOWN OF MADISON ASSETS AND LIABILITIES APPORTIONMENT AGREEMENT
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.

RECITALS

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 Madison and Fitchburg, and the Town itself will cease to exist, on October 31, 2022 (the “Final Attachment”); and,

WHEREAS, under Section 15 of the Cooperative Plan, the parties to the Cooperative Plan agreed to the following regarding the ultimate division of the Town’s assets and liabilities:

Town assets and liabilities shall be divided between [Madison and Fitchburg] at the end of the Protected Period as they mutually agree. If they do not agree, the assets and liabilities shall be divided consistent with the provisions of Wis. Stat. § 66.0235, as may be equitably adjusted to take account of Early Attachments and revenue sharing. Notwithstanding the foregoing, [Madison and Fitchburg] agree that the division of assets and liabilities shall, upon Fitchburg’s election, assign to Fitchburg ownership of the current Town Hall property and all assets integral to fire protection and EMS operations.

WHEREAS, as Final Attachment approaches, it is necessary for Madison and Fitchburg to come to an agreement regarding the treatment of the Town’s assets and liabilities at Final Attachment; and,

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

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 Town of Madison Assets and Liabilities Apportionment Agreement (the “Agreement”) is to set forth the agreements between Madison and Fitchburg (the “Cities” or the “Parties”) regarding the final apportionment of the Town’s assets and liabilities upon final attachment of the Town on October 31, 2022. This includes

how to handle and dispose of the Town's assets and liabilities, including the Town's real estate. This Agreement will also establish the framework to be used by the Parties as they wind-down the Town's business.

2. Term. This Agreement shall generally be in effect until such time as the Town's final audit is complete and all payments and obligations of the Parties hereunder have been made and accounted for. Where specifically noted below, the obligations of the Parties may continue after expiration of the agreement.
3. General Principles of Apportionment. Madison and Fitchburg shall work cooperatively to dissolve the Town and wind-down its operations in the most cost-effective and timely manner. Based upon a mixture of population and assessed value of those portions of the Town attaching to the Parties, it is agreed and understood that excepting the liabilities and assets from Town TID 2, which shall be assigned solely to Fitchburg, the final apportionment of all Town assets and liabilities shall be 75% to Madison and 25% to Fitchburg, following the assignment of real property and infrastructure under Subsections 4.b and c below. Except for the Town Hall property, or where specific disagreement exists, the valuation of the Town's assets and liabilities shall be based upon its final audited book value (anticipated audit as of October 30, 2022), as maintained by the Town. All efforts will be made to track the assignment or transfer of assets or liabilities to either City. A final accounting will be prepared and agreed to by the Cities' Finance Directors and a final payment to balance the total may be required of one party. The Parties recognize that some flexibility will be necessary in the apportionment of the Town's assets and liabilities, and that time sensitive matters may arise which cannot be timely addressed by their respective governing bodies. As such, this Agreement further authorizes the Cities' Finance Directors, in consultation with their respective City Attorneys and/or City Administrator, to make determinations about issues not covered by this agreement consistent with these general principles of apportionment.
4. Obligations. As an alternative to the procedures set forth in Wis. Stat. § 66.0235 and pursuant to the authority provided by Sec. 15 of the Cooperative Plan, the Parties agree as follows:
 - a. Movable Property. The movable property of the Town, including personal property, vehicles, and equipment, but excluding fixtures associated with real estate, shall be inventoried and either assigned to one of the Cities at Final Attachment or disposed of as set forth in this subsection, unless otherwise agreed to by the Parties.
 - (1) Valuation. The Town's movable property shall be valued based upon its final audited book value, as maintained by the Town unless either Party disagrees at the valuation afforded the item of property. If any such disagreement exists, the Party objecting to the Town's valuation shall supply its own valuation. If the other Party does not agree to this valuation, the other Party shall supply its own valuation. If the Parties cannot agree on a valuation, the valuation shall be the mid-point of the Party's two valuations.

- (2) Property Claims. Prior to Final Attachment, either party may make a claim for an item of movable property. Unless the other party also makes a claim for the item, the item shall become the property of the claiming party upon Final Attachment, or earlier if agreed to by the Town. If the other party also requests the item, the Parties shall attempt to resolve the matter between themselves. If no agreement can be reached, the Party willing to assign the highest valuation to the item will be assigned the item at Final Attachment, at that value. The cost of transferring the title and moving the equipment shall be the sole responsibility of the party taking ownership. The foregoing does not apply to Town assets integral to fire protection and EMS operations. Under Section 15 of the Cooperative Plan, Fitchburg may elect to claim said items. If Fitchburg so elects, Madison may not make a competing claim for the item and it will be assigned to Fitchburg as if uncontested.
- (3) Property Sale. The Parties may take any reasonable measures following Final Attachment to sell any remaining, unclaimed Town movable property. This could include a surplus property sale, a public auction, third party sales, etc. The net proceeds of any such sales shall be treated as a cash asset. The procedures taken to sell any such property shall be agreeable to the Finance Directors.
- (4) Disposal. Movable property of the Town may be disposed of by the Cities under the following circumstances:
 - (a) If, in the determination of the Finance Directors, an item of movable property is deemed of no value due to obsolescence, damage or disrepair, and it has a net value of less than or equal to \$200; or,
 - (b) If the item is not claimed under para. (2) or sold under para. (3).

If these circumstances are met, the items may be disposed of by the Parties. The costs of disposal shall be considered a liability of the Town. Disposal may include third party donations, recycling, or reuse of the item(s).

- b. Real Property. The real property of the Town, including real estate and buildings (including fixtures, such as building improvements and playground equipment), other than the Town Hall property, shall be assigned to the City where such real property will lie following Final Attachment, unless otherwise agreed to by the Parties. If necessary, a City will execute deeds disclaiming its interest in the real property that will be assigned to the other City. The value of the Town's real property, excluding the Town Hall property, will not be factored into the final accounting under Section 3.
- c. Infrastructure. The Town's public infrastructure, including the roadways, bridges, sidewalks, traffic signals and signs, storm water conveyance and detention systems, sanitary sewer systems, sanitary lift stations and retaining walls, shall be assigned

to the City where such infrastructure will lie following Final Attachment. The value of the infrastructure under this section will not be factored into the final accounting under Section 3.

- d. Town Hall Property. Under Section 15 of the Cooperative Plan, upon Fitchburg's election, ownership of the "Town Hall property" shall be assigned to Fitchburg upon Final Attachment. The Cities agree that:
- (1) The "Town Hall property", as that term is used in the Cooperative Plan, consists of the entire Town owned parcel located at 2120 Fish Hatchery Road, including the portion currently used by the Town as Fraust Park.
 - (2) The Town Hall property has an appraised value, as of July 18, 2022, of \$2,430,000 (roughly \$13.97/SF), which amount the Parties shall consider to be the value of the Town Hall property as of Final Attachment.
 - (3) In exchange for payment in the amount of \$607,500 from Madison to Fitchburg prior to Final Attachment, which amount represents Fitchburg's 25% share of the value of the parcel, Fitchburg will agree not to elect ownership of the Town Hall property in the distribution of the Town's assets and liabilities as provided for under Section 15 of the Cooperative Plan.
 - (4) Fitchburg shall cooperate with Madison and execute any necessary deeds or documentation to release all interests it may have in the Town Hall property, with the intent of the Parties to have the entire Town Hall property, including Fraust Park, be held by Madison, effective October 31, 2022.
 - (5) Madison further agrees that, through October 30, 2027, if Madison conveys any portion of the Town Hall property to a third party, it shall pay Fitchburg 25% of the increase in the value of the land conveyed. The increase in the value of the land conveyed shall be determined by comparing the value agreed to above in para. (2) with the value determined by an updated appraised value of the site, and applying that value to the land actually conveyed. It shall be Madison's responsibility to obtain an updated appraisal of the property if necessary to determine this payment. Madison shall inform Fitchburg of this sale, and provide Fitchburg with a copy of the updated appraisal within thirty (30) days of the sale. Madison shall make payment to Fitchburg no later than forty-five (45) days from the sale, unless Fitchburg informs Madison that it desires an additional appraisal. If that occurs, Fitchburg may obtain an additional updated appraisal at its own cost. If the Parties cannot agree on an updated price of the property, the average of the two appraisals shall apply. Madison shall then pay Fitchburg within ten (10) days of final determination of value.
- e. Town Bank Account. Following Final Attachment, efforts shall be undertaken to make the Madison Finance Director, or designee, the signatory on the Town's bank account, which account, unless otherwise agreed to the Cities' Finance Directors,

shall be used only for direct Town related revenues and expenditures that arise following Final Attachment. Any transactions into or out of this account shall be accounted for, and Madison shall provide Fitchburg with a monthly statement of account activity. Madison shall inform the Fitchburg Finance Director of any payments in excess of \$5,000 from this account before making said payment.

- f. Unpaid Municipal Service Bills and Ambulance Billing. Following Final Attachment, any unpaid Town municipal service bills or ambulance billing will be assigned to the City where the parcel is located or the call for service was generated. The amount of the bill, including any interest or late fees accrued through October 30, 2022, shall be accounted for as provided for under Sec. 3. However, following Final Attachment, each City shall be responsible for the further collection of these amounts.
- g. Debt.
 - (1) General Debt. Except as provided below, Town debt, such as general obligation borrowing debt, shall be apportioned between the Cities as needed to reach the 75/25 apportionment ratio.
 - (2) Infrastructure Related Debt. If possible, debt associated with a public improvement project shall be assigned to the City where the project's improvements will be located following Final Attachment. This debt will be factored into the final accounting under Section 3.
 - (3) TID No. 2. Any Town debt or obligations associated with TID No. 2 will be assigned to Fitchburg and the value will not be factored into the final accounting under Section 3.
- h. Other Liabilities. Unless specifically tied to infrastructure or real estate that will be owned by one City, the Cities shall apportion any other Town liabilities between themselves as they deem appropriate in order to achieve the objectives of Section 3. Should any Town legal liability arise after Final Attachment, the Cities will be jointly responsible for the matter at the aforementioned 75/25 ratio. It may be necessary for the Parties to enter into a joint defense agreement should any such issue arise.
- i. Cash and Other Assets. The Town's cash, including funds held in bank accounts, and other miscellaneous Town assets will primarily be used to resolve the final accounting to achieve the objectives of Section 3. Efforts shall be made to collect on any account receivables prior to the completion of the audit.
- j. Housing Loans. The Town holds several mortgages under its low income mortgage program. These mortgages will be assigned to the City where the mortgaged premises will be located, however the value of mortgages will not be factored into the final accounting under Section 3.
- k. Severance Liability. Under Section 14 of the Cooperative Plan, in the absence of

some other mutual agreement between the Cities and the Town, Town employees at the time of the Final Attachment, and who are not offered suitable employment by either of the Cities on terms at least equivalent to those provided by the Town job, are entitled to a lump sum severance payment according to a set schedule. This severance benefit is the joint obligation of the Cities, and the Cities may share the cost between them as they mutually agree, with said cost sharing to be taken into account during the apportionment of the Town's assets and liabilities. Regardless of whether the Cities end up making the severance payments or the Town ends up making the severance payments on the Cities' behalf, the Cities agree that the aforementioned 75/25 ratio shall apply to these payments and that these payments shall be factored into the final accounting.

- l. Final Town Audit Expenses. To aid and assist in the preparation of the Town's final audit, Madison will be hiring the Town's business manager, Renee Schwass, as a limited term employee, starting on November 1, 2022, under the direction of the Madison Finance Director, to work up to 600 hours at a rate of \$55/hour to finalize Town activities and assist in the preparation of the Town's final audit. This work will benefit the Cities and the costs of this work will ultimately be split 75% to Madison and 25% to Fitchburg. The full amount of the Town's final audit work will be considered in the final accounting under Section 3.
- m. Public Records. The Parties anticipate that following Final Attachment, the Cities will inherit the Town's physical and digital public records, many of which must be retained pursuant to State law. To the extent possible, each City will take possession of those records relating specifically to property, infrastructure or real estate within its jurisdiction. Any general records of the Town that are required to be maintained will be stored by one of the Cities. The Parties will attempt to determine the present and future costs of maintaining these records and account for this expense during final accounting.
- n. Police Records and Evidence. At Final Attachment, it is expected that the Town of Madison Police Department will have records and evidence that needs to be transferred and maintained by one of the Cities, and additional records that must be retained for public records purposes. All efforts will be made, consistent with best practices, to transfer possession of these records and evidence to the appropriate law enforcement agency, and to determine the present and future cost of maintaining the general records of the police department and account for this expense during final accounting.
- o. Municipal Court. It is not expected that the Town of Madison Municipal Court will have any pending cases at the time of Final Attachment. Court records are expected to be transferred to Dane County Circuit Court. Any remaining municipal court records in the Town's possession at the time of Final Attachment, and which do not belong with Circuit Court, will be placed in storage, pursuant to any necessary retention period consistent with the procedure set forth in Sub. m.
- p. Oakridge Sanitary District. There remains a Town sanitary district within the

Town's jurisdiction, the Oakridge Sanitary District. The District owns some lift stations and storm water improvements within the Town. Following final attachment, by operation of Wis. Stat. Sec. 60.79(1)(b), the District will dissolve and its assets, if they exist, shall belong to Madison and Fitchburg, depending on which jurisdiction the facilities may exist. If any assets or liabilities for the District exist, they shall be apportioned based upon the principles set forth in this Agreement and the Parties shall exercise all reasonable efforts to wind down the District's operations in the same manner as the Town.

- q. MMSD Sewer Charges. It is anticipated that the Madison Metropolitan Sewerage District (MMSD) will bill the Town for October, 2022 sanitary sewer charges with its Q3 bill. This billing will be prepared using flowage estimates and statistical analysis based upon the Town's historical sewerage flow measurements. To the extent that these estimates over or under-represent actual Town sewage discharge in October, 2022, the Cities and MMSD shall attempt to determine the portion of the Town's sewage flow attributable to each City. If that sort of calculation is not reasonably possible, the default apportionment of the Town's sewage flow shall be 75% to Madison and 25% to Fitchburg.
 - r. Future Revenue Streams. Efforts shall be undertaken to have the cable franchise fee, the ATC environmental impact fee, and the payment of municipal services payments, and any other similar Town revenue streams, updated by the necessary parties to reflect the altered boundaries of the Cities and the dissolution of the Town. Nonetheless, if a payment is made to the Town of Madison following Final Attachment, the Parties will attempt to determine how the payment should be split between themselves (e.g., if the State building for which the payment of municipal services payment is made will be in Madison, Madison would be entitled to the payment). If that is not reasonably possible, the 75/25 ratio shall apply to this payment, unless final accounting has yet to occur, in which case these funds shall be treated like Town cash.
 - s. Uncategorized Issues. To the extent that an issue arises when apportioning the Town's assets and liabilities following Final Attachment that has not been specifically addressed in this Agreement, the Finance Directors will attempt to reach a resolution of the issue in a manner that best follows the principles set forth in Section 3. Additional agreements on such issues may be made, in writing, between the Finance Directors, which agreements shall be considered supplements to this Agreement.
 - t. Post-Final Attachment Actions. Following Final Attachment, and the division or assignment of any assets or liabilities as noted herein, and in the absence of any clear transfer of title/ownership from the Town to one of the Cities, the Parties agree to cooperate with one another by preparing and executing any paperwork that may be necessary to perfect one City's ownership interests in property or responsibility for a Town liability.
5. Liability. Each party shall be responsible 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.

6. 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.

7. 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:

Name

Address

City of Madison

Finance Director
210 MLK Jr. Blvd., Room 406
Madison, WI 53703

City of Fitchburg

Finance Director
5520 Lacy Road
Fitchburg, WI 53711

8. 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.

9. 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.

10. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of Madison or Fitchburg 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 Madison or Fitchburg therein. A waiver of any covenant, term of condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
11. Change in Law/Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable by a change in state or federal law, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term or provision was never part of the Agreement.
12. No Third Party Beneficiary. This Agreement is intended to be solely between Madison and Fitchburg. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
13. Conflict Resolution. The Parties pledge their good faith to resolve any concerns or disputes that arise regarding their respective obligations under this Agreement. Either party may at any time request a meeting with the other party to discuss a concern relating to this Agreement. Nothing in this section is intended to prevent either party from seeking any remedy available to it under this Agreement from a court of competent jurisdiction in Dane County, Wisconsin as described in Section 14. The Parties agree that specific performance is an appropriate remedy for any breach of this Agreement and that a party need not show that damages are not a sufficient remedy to obtain specific performance by the other party.
14. Enforcement. Any act by either party in violation of this Agreement shall be remedied by the courts of the State of Wisconsin. This Agreement is intended to provide both parties with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement.
15. Binding Effect. The parties have entered into this Agreement under the authority of Wis. Stat. § 66.0301(2). The parties agree that this Agreement shall be binding upon both parties.
16. Authority. Each party warrants for itself that it has complied with all applicable statutes, rules, orders, ordinances, requirements and regulations to execute this Agreement, and that the person or persons executing this Agreement on its behalf is authorized to do so.
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

Misty Dodge, Finance Director

Date

Approved as to Form:

Valerie Zisman, City Attorney

Date

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.

