

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE ACQUISITION OF
THE TOWN OF MIDDLETON SANITARY DISTRICT #5**

Between the City of Madison, the Town of Middleton and the
Town of Middleton Sanitary District #5

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “Madison”), the Town of Middleton, a municipal corporation (hereinafter referred to as “Middleton”) and the Town of Middleton Sanitary District #5, a town sanitary district (hereinafter referred to as the “District”), is effective as of the date by which all parties have signed hereunder.

WITNESSETH:

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes Madison, Middleton and the District (the “Parties”) to contract for the joint exercise of their powers and duties; and,

WHEREAS, the District was established in 1974 to provide Middleton properties lying in the Gammon Road, Seybold Road and Watts Road area of Middleton with sanitary sewer service; and,

WHEREAS, under the Final City of Madison and Town of Middleton Cooperative Plan (“the Plan”), approved on December 11, 2003 pursuant to Wis. Stat. §66.0307, those Middleton lands constituting the District remaining in Middleton will be attached to Madison no later than February 3, 2042, at which point Madison will assume all the property of the District, along with its assets and liabilities, and the District will be dissolved pursuant to Wis. Stat. §60.79(1); and,

WHEREAS, over time, properties within the District have been annexed or attached to Madison and it has recently been recognized and acknowledged by the Parties that some Madison sewers and properties discharge to and through portions of the District’s sewers, such that some Madison properties are reliant upon portions of the District sewer system; and,

WHEREAS, under the terms of the Plan, as properties within the District develop, they may be required to attach to Madison if City sewer and water are available, which, over time, will reduce the District’s customer base; and,

WHEREAS, under section 60.79(2)(c) and (d), because territory constituting less than the entire District has been annexed or attached to Madison and the territory remains served by District’s sewerage system, Madison and the District are authorized to enter into an intergovernmental agreement under Sec. 66.0301 to divide the assets and liabilities of the District and determine the ownership and operation of the sewerage system; and,

WHEREAS, the District has found that it is in the best interests of its customers to transfer its sewer plant and operations to Madison so that Madison can begin handling the immediate, intermediate and long-term maintenance, repairs and improvements to the sewer system, along with ensuring regulatory compliance, needed to adequately and efficiently serve the District’s customers; and,

WHEREAS, Madison is well equipped to maintain and / or repair the entire sewer system as needed on an emergency basis, day-to-day basis, and year-to-year basis and is better positioned to handle any major repairs or emergencies along with regulatory compliance; and,

WHEREAS, the Madison Sewer Utility has found that the District's sanitary sewer improvements are in adequate condition, with any exceptions noted herein, and that assumption of the related assets and liabilities of the District, including all sanitary sewer plant, and providing sanitary sewer service to the properties in the District is in the best interests of Madison, which finding the Madison Common Council has confirmed, as required under Madison General Ordinances Sec. 35.02(4)(b); and,

WHEREAS, Middleton concurs that it is in the best interests of the Middleton property owners in the District to transfer the District's sanitary sewer system from the District to Madison at this time.

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 Acquisition of the Town of Middleton Sanitary District #5" (the "Agreement") is to set forth the terms and conditions upon which Madison will agree to assume all assets, liabilities, and obligations of the District and add the District's territory to Madison's sanitary sewer service areas. The following exhibits are attached hereto, and incorporated herein:
 - Exhibit 1: A map of the District's sanitary sewer system.
 - Exhibit 2: A list of the District's sanitary sewer property and plant being transferred to Madison by this Agreement.
 - Exhibit 3: A list of the District's customers and current billing schedule.
 - Exhibit 4: A map showing Madison's existing water supply in the District area.
2. Representations. As a precondition to entering into this Agreement, the District and Middleton represent that they have each disclosed all material information in their possession necessary for Madison to assess the condition of the District's facilities and that, to the best of their knowledge, all the facilities owned or leased by the District are in good repair and in working order, except for ordinary wear and tear and the maintenance work noted in Section 7.a. below. Madison acknowledges and agrees that it has had a sufficient opportunity to review and assess the condition of the District's sanitary sewer facilities. Middleton and/or the District will provide Madison with all mapping, real estate and facility records in its possession, as required by Madison for incorporation of the District's operations into Madison's sanitary sewer service area, and Madison represents that, by entering into this Agreement, it has accepted such records and any defects noted therein. The District represents that it has good title to all of such assets and real property interests and that none of the assets or real property

interests of the District are subject to any mortgage, lien, security interest, or other encumbrance. Middleton further represents that it has disclosed all District assets and liabilities known to Middleton, including any potential assets or liabilities that may be known to Middleton.

3. Transfer of Assets, Liabilities and Service. On July 1, 2017, or as soon thereafter as this Agreement becomes effective and the parties mutually agree on a new date, all assets and known liabilities associated with the District shall be conveyed by the District and accepted by Madison, and Madison shall assume ownership and operation of the District's sanitary sewer system (the "Transfer"). To the extent necessary, the District and/or Middleton, will agree to timely execute any deeds or bills of sale to transfer any such assets or property rights to Madison. If any District assets or liabilities become known to the Parties after the execution of this Agreement, the Parties shall agree to enter into discussions regarding these assets or liabilities and seek to reach a mutually agreeable resolution to the disposition of said currently unknown assets or liabilities. The District's existing sanitary sewer system is shown on Exhibit 1 and the District's sanitary sewer property and plant being transferred to Madison by this Agreement are detailed on Exhibit 2.
4. Dissolution of the District. Following the Transfer and the assumption of ownership and operation of the District's sanitary sewer system, Madison will adopt a resolution to discontinue the operation of the sanitary sewer system by the commission under Sec. 60.79(4)(a). It is the intent and understanding of the Parties that this action will dissolve the District. However, if that is found not to be the case, the Parties agree that, if sufficient District property owners petition the Town, the Town itself could dissolve the District under Sec. 60.785(3). Alternatively, the Parties agree that the District could continue in existence until such time as all of the District territory has been fully attached to Madison, at which point it is automatically dissolved under Sec. 60.79(1)(a), which will occur no later than February 3, 2042 under the Plan.
5. Final Accounting; Customer Rebate. Prior to making a final accounting of the District's cash account, the District shall pay the second quarter Madison Metropolitan Sewerage District ("MMSD") service charges and all other District obligations that have been incurred prior to the Transfer. The District shall also calculate its customers billing for the period 1/1/2017 thru 6/30/2017. After final accounting thru the end of the second quarter and payment of the MMSD service charges, the District's remaining cash balance shall be handled as follows:
 - a. The District shall transfer the first \$40,000 (\$0-\$40,000) to the City to perform the necessary repair work identified in Section 7.a.
 - b. For the next \$20,000 (\$40,001-\$60,000), the District shall calculate a rebate for its customers based upon the District's billing schedule.
 - c. For any amount over \$60,000, the funds in excess of this amount shall be divided equally between a transfer to the City and additional customer rebates.

Once the customer rebate amounts are determined under this section, they shall be applied against the interim billing amount and any other amounts due on a customer account. If the rebate exceeds the amounts due, the District may either issue rebate payments to its customers, or transfer the cash balance attributable to the refunds to Madison, who shall credit each customer's Madison sewer utility accounts accordingly. If the rebate is insufficient to cover the amounts due on an account, the District shall report this amount to Madison, who shall enter a corresponding charge on these customer's Madison sewer utility account.

A list of the District's customers and billing schedule at the time of this Agreement is attached hereto as Exhibit 3.

6. Consideration. In recognition that, upon the Transfer, Madison will be taking on all assets and liabilities of the District and will be assuming responsibility over providing District properties with sanitary sewer services, the District will be dedicating its property to Madison without any monetary or financial consideration by Madison.
7. Maintenance and Operations, Required Work.
 - a. Necessary Repair Work. Madison has determined that, as a condition of taking over the District, certain interim improvements and repairs to the sewer mains are required, specifically that portions of sewer main shall be repaired by either a "point repair" (open cut) method or a "lining" method (short liner). The estimated cost to perform these repairs is approximately \$60,000. Madison shall assume that portion of these costs not covered by the District's remaining cash balance.
 - b. Future Maintenance and Operations. Upon the Transfer, Madison shall assume ownership and all responsibility for maintenance and operation of the District's sanitary sewer system, including all locating required in accordance with Digger's hotline requests. Madison's responsibility for maintenance and operation shall also include compliance with any and all applicable State requirements including but not limited to, the requirements of the Capacity, Management, Operation and Maintenance Program and the Compliance Maintenance Annual Report.
 - c. Main Repair. Madison may periodically and systematically schedule replacement of sewer mains within Middleton in the same manner it schedules main replacement within Madison.
 - d. Street Occupancy and Permits. Middleton acknowledges that Madison's sewer maintenance equipment may occupy the Middleton right-of-way within the former District service territory from time-to-time for routine maintenance and that no permit or permission is required to perform this routine maintenance as long as such occupancy does not exceed 30 days. Madison shall provide Middleton with written notice at least 30 days prior to any extended right-of-way occupancy. Madison shall obtain a permit from Middleton anytime it needs to excavate within the Middleton right-of-way. Middleton's approval of the permit shall not be unreasonably withheld and any permit conditions shall be consistent with permit

conditions typically issued in Middleton. Middleton agrees to work with Madison in scheduling the repairs.

8. Future Coordination Between Madison and Middleton. Madison and Middleton shall discuss future utility projects and operations within the former District territory in Middleton. In the event that any of Middleton's right-of-ways within the District territory are to be reconstructed, Madison and Middleton will discuss the project and coordinate efforts or jointly participate in the project if mutually agreeable.
9. Future Attachments to Madison on Seybold Road. Madison agrees that it will not extend any City water mains on Seybold Road with the primary intention of using the existence of the water main to force District properties that have developed since 2002, or that may develop subsequent to this Agreement, to attach to Madison without the consent of the property owner under Section 13.2(d) of the Plan. While no such main extensions are currently planned, Madison agrees to discuss any such water main extensions on Seybold Road with Middleton. Madison's existing water mains within the District's territory at the time of this Agreement are shown on Exhibit 4.
10. Service Connections and Billing. Following the Transfer, Madison agrees to provide sanitary sewer service to Middleton properties within the District's territory. All of the Middleton parcels within the District's territory shall become customers of the Madison Sewer Utility, and shall be billed for utility service by Madison beginning on July 1, 2017. Middleton customers shall pay the same rates and receive the same level of service as other Madison customers. Middleton customers will be initially charged the flat rate for unmetered customers using the connection data supplied by the District. Following Transfer, customers may elect to have a meter installed to measure flow. To the extent authorized by applicable laws, Middleton shall levy as a tax upon any parcels within Middleton any delinquent Madison utility bills and penalties for collection pursuant to Sec. 66.0809, Wis. Stats., and shall pay all such revenues collected directly to the Madison Sewer Utility.
11. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special charges on Middleton parcels within the former District's service territory, then, pursuant to Wis. Stat. Secs. 66.0707, Middleton agrees to timely consider a resolution approving the special assessments or charges, which approval shall not be unreasonably withheld. Special assessments and charges under this provision shall be apportioned to and collected from Middleton properties in the same manner as properties in Madison, and shall not in any respect discriminate against Middleton properties. Madison acknowledges there are no assessments contemplated at this time.
12. Termination. This Agreement shall last until all Middleton properties making up the District are attached to Madison and the District is dissolved, unless otherwise mutually terminated or amended upon the written agreement of the Parties.
13. 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.

14. Nondiscrimination. 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.
15. 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
Town of Middleton	Administrator / Clerk-Treasurer 7555 W. Old Sauk Rd. Verona, WI 53593
Town of Middleton Sanitary District #5	Administrator / Clerk-Treasurer 7555 W. Old Sauk Rd. Verona, WI 53593

16. 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.
17. Severability. In the event that any portion of this Agreement is invalidated or held unenforceable by a court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held

invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

18. Amendment. This Agreement may only be amended upon the written agreement of the Parties, except that after the dissolution of the District, this Agreement may be amended by the agreement of only Madison and Middleton.
19. Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. This Agreement is intended to provide the 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.
20. Final Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior negotiations, representations or agreements, either written or oral dealing with this subject matter. The recitals in this Agreement are incorporated herein as part of the final agreement.
21. Miscellaneous.
 - a. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
 - b. All addenda and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addenda and exhibits shall be binding upon all parties.
 - c. This Agreement is intended to benefit the parties hereto and their respective officials and shall not be construed to create any right or benefit on behalf of any person, firm, corporation or other entity not a party hereto.

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 TOWN OF MIDDLETON

Cynthia Richson, Town Chair

Date

David Shaw, Town Administrator / Clerk

Date

FOR THE TOWN OF MIDDLETON SANITARY DISTRICT #5

Cynthia Richson, Town Chair

Date

David Shaw, Town Administrator / Clerk

Date

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

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES-17-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____.

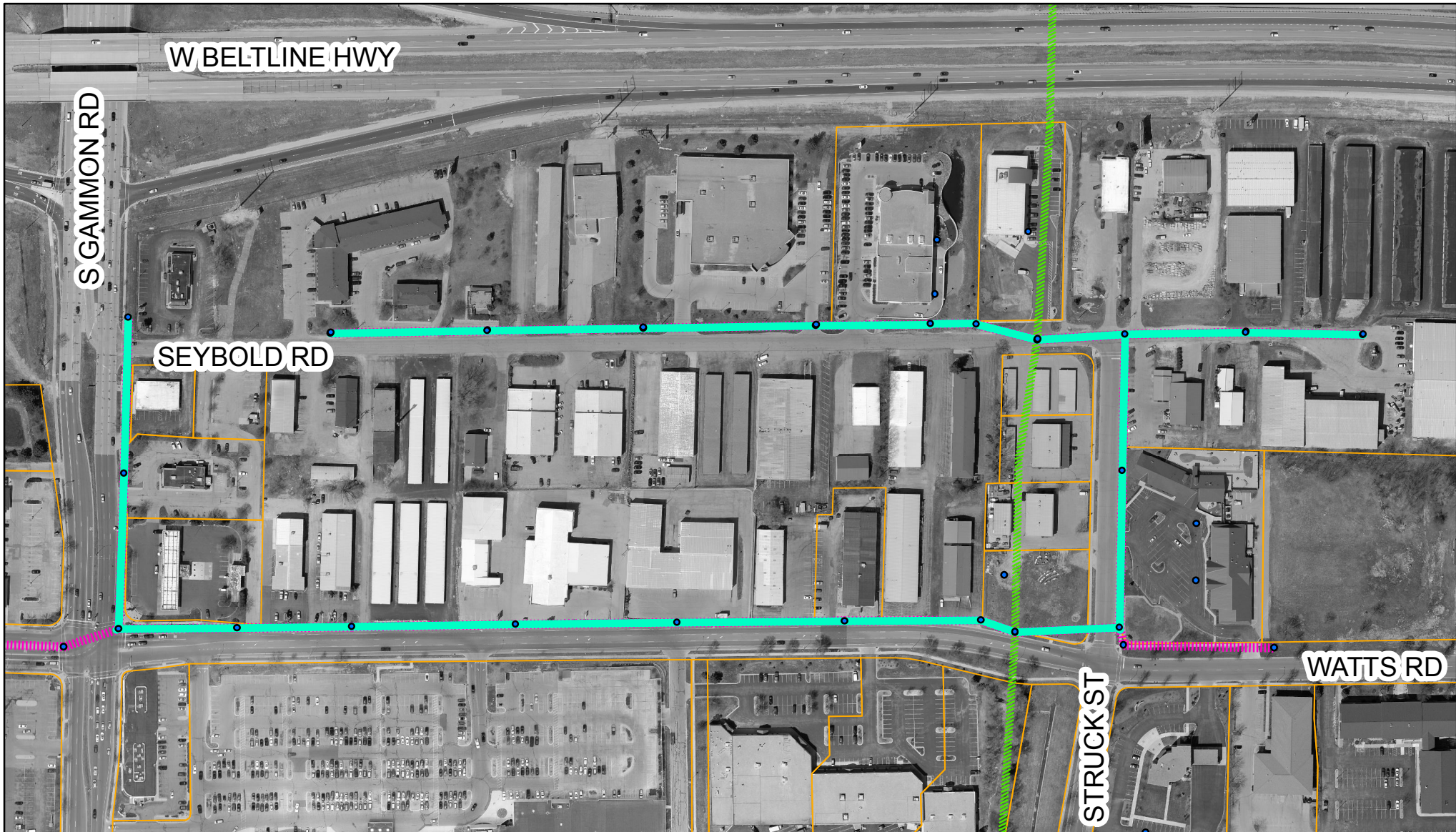


Exhibit 1:

Map of Sanitary Sewer in Town of Middleton Sanitary District #5

- Sanitary Structures
- Sanitary Sewers In Agreement
- Other Sanitary Mains
- MMSD Mains
- City of Madison Parcels

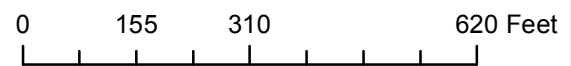
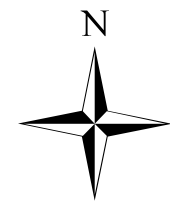


EXHIBIT 2

Town of Middleton Sanitary District #5 Sanitary Sewer Property and Plant Being Transferred to Madison by this Agreement

- 1) A Public Sanitary Sewer Easement as identified on Certified Survey Map Number 6628 (As recorded in Volume 17491, Page 29, Dane County Register of Deeds).
- 2) Twenty (20) – Sanitary Sewer Access Structures (aka “manholes”).
- 3) 5,059 lineal feet of 8 inch diameter, Gravity Sanitary Sewer Main, consisting of clay pipe material

**Town of Middleton
Sanitary District No. 5**

Customer List

November, 2001

Owner	Parcel Number	MMSD Permit #	Street Address	Tenants	Number of Employees	Meter Size	Residential Equivalents
Royal Partners	070825385951	46	601 South Gammon	Arby's	60	1"	5
Residential equivalents based on water consumption for the Arby's Restaurant at 1609 S. Park St. in Madison.							
Royal Partners	070825385853	40	6900 Seybold	West Town Motor Inn	300	3"	25
Royal Partners	070825385657	14	6816 Seybold	(Vacant)		3/4"	1
David A. Schutz	070825385559	24	6806 Seybold	Schutz Design and Construction	4	3/4"	1
Alan R. Freitag	070825385451	47	6802 Seybold 6804 Seybold 6800 Seybold	Creative Wood Design, Elysee Scientific Cosmetics (Vacant)	4 8	3/4"	1
MAR-LEV, LLC	070825385353	25	6722 Seybold	Budget Car Sales	2	3/4"	1
Fredrick W. Seybold Fredrick W. Seybold Fredrick W. Seybold	070825385255 070825389500 070825381508	None	6702 Seybold	Slumberland Furniture	17	1"	2
West Park Professional Offices, Inc. John H. Brockman	070825380652 070825380554	15-18 31	6606 Seybold 6530 Seybold	Herman Landscaping Jancor, Inc.	5 1	1" 3/4"	1 1
	070825380130	38	6522 Seybold	Farley's House of Pianos	10	3/4"	1
	070825380130		6525 Seybold	Window Design Center	12	3/4"	1
Seybold Investment Group	070825384505		6476 Seybold	Self Storage	0		0
J & J Padgham Rentals	070825387959	48	6909 Seybold	ICI Dulux Paint Center	3	3/4"	1
J & J Padgham Rentals	070825387851	52	6901 Seybold	Therapeutic Resources	7	3/4"	1
David A. Schutz	070825388109	34	6817 Seybold	Farmers Insurance Technical Equipment Sales	5 3	3/4"	1
Daniel H. and Debbi J. Manchester	070825388252	51	6805 Seybold	Direct Source Automotive	2	3/4"	1
Robert F. Jones Estate Robert F. Jones Estate	070825388350 070825388458	28	6729 Seybold	Big 10 Athletic Supply Madison Church of Religious Science	6	3/4"	1
Robert F. Jones Estate	070825388556	29	6719 Seybold 6723 Seybold	Kitchens of Distinction American Homepatient	3 1	3/4"	1
Dorothy Kolb	070825388654	20-22	6713 Seybold	Kolb Building	40	1"	4
West Towne Self Storage	070825389108		6707 Seybold	West Towne Self Storage	0		0
Office Centre Partnership	070825381900	6-13	6701 Seybold	West Town Office Center	71	1-1/2"	6
Richard L. Gmeinder	070825382052	23	6621 Seybold	All Channel Electronics	12	3/4"	1
Seybold/Watts Limited Partnership	070825382356	19	6617 Seybold	Impala Homes	7	3/4"	1
Edwin Gehl, Jr. & D. Kolb	070825382454	1-5	6613 Seybold	West Town Offices	28	1"	3
Marsha L. & Paul W. McDermott	070825383659	39	6525 Seybold	McDermott Auto Repair	8	3/4"	1
Diane M. & Joseph G. Paskus	070825384407	45	6515 Seybold	Paskus Studio	2	3/4"	1
Reynolds Properties, Inc.	070825384201	41	6505 Seybold	Reynold's Transfer & Storage	1	3/4"	1
Reynolds Properties, Inc.	070825384201	44	6501 Seybold	Rainbow Play Systems, Inc. Unique Arts Gifts	12 6	1"	2
Shirley A. Archer & Richard A. & Walter W. Pearson	070825387806	32	6904 Watts	Rusk Gun & Sport Shop	6	3/4"	1
Dennis J. Anderson & Daniel J. Leavitt	070825387904	None	6902 Watts	Happy Sleeper Furniture	6	3/4"	1
David A. Schutz	070825388001		6806 Watts	Seybold Self Storage	0		0
Mary S. Schiltz	070825388207	36	6810 Watts	Barclay Travel	5	3/4"	1
Mary S. Schiltz	070825388207	30	6802 Watts 6790 Watts 6788 Watts	Capitol Car Cleaners Right Touch Dry Cleaners Women & Kidstore Resale	4 5 20	1"	3
Mary S. Schiltz	070825388207	None	6710 Watts 6708 Watts	Premier Dance Studio Kitchen Mart The Stool Store	4 8 1	1"	2
Juliette & Mark A. Richards	070825382203	26	6702 Watts	Brunke Glass & Window	5	3/4"	1
Evelyn G. Goodwin	070825382605	27	6634 Watts	United Brick & Block	2	3/4"	1
Seybold/Watts Limited Partnership	070825382712	33	6630 Watts	(Metal Garage/Storage Building)	5	3/4"	1
Gary L. & Mary K. Nelson	070825382801	50	6626 Watts	Finish Master	5	3/4"	1
Gary L. & Mary K. Nelson	070825382801	None	6626 Watts	Lee's Automotive, Ltd.	1	3/4"	1
Dynatron Research Foundation	070825383104		6510 Watts	Dynatron Research			0
Total					717	36	79

Notes:

1. Owner and parcel number taken from Dane County Land Information Office database compiled in 1999.
2. Street address, tenant, and employee count based on MMSD field survey conducted in November, 2001.
3. Number of residential equivalents is based on 12 employees per residential equivalent, except Arby's Restaurant. Fractional equivalents are rounded to the next higher whole number.

EXHIBIT #3






W BELTLINE HWY/USH 12-18 (WB)

W BELTLINE HWY/USH 12-14 (EB)



Exhibit 4:

Map of City of Madison's Existing Water Supply in Town of Middleton Sanitary District #5

-  Hydrant
-  System Valve
-  Service Lateral
-  Water Main
-  City of Madison Parcels

