

## SEVERANCE AGREEMENT

Among the Town of Madison, the City of Fitchburg, the City of Madison, and [EMPLOYEE]

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**THIS AGREEMENT**, made and entered into by and among the **CITY OF MADISON** (“Madison”), a Wisconsin municipal corporation with offices at 210 Martin Luther King, Jr. Blvd., Madison Wisconsin 53703, the **CITY OF FITCHBURG** (“Fitchburg”), a Wisconsin municipal corporation with offices at 5520 Lacy Road, Fitchburg, Wisconsin 53711, and the **TOWN OF MADISON** (the “Town”), a Wisconsin body corporate and politic with offices at 2120 Fish Hatchery Road, Madison, Wisconsin 53713, and [EMPLOYEE] (“Employee”), an individual, is effective as of the date by which all of the parties have signed hereunder.

### RECITALS

**WHEREAS**, on October 10, 2003, the City of Madison, the City of Fitchburg (collectively, the “Cities”), and the Town entered into a Cooperative Plan (the “Cooperative Plan”) pursuant to Wis. Stat. § 66.0307; and,

**WHEREAS**, under the terms of the Cooperative Plan, the Town will be absorbed by the City of Madison and the City of Fitchburg, and the Town itself will cease to exist, at 12:00 a.m. on October 31, 2022 (the “Final Attachment”); and,

**WHEREAS**, under Section 14 of the Cooperative Plan and pursuant to the Intergovernmental Agreement Regarding Town Employee Severance Payments approved by the Town and the Cities on [DATE] (“Intergovernmental Agreement”), at the end of the Protected Period as defined in the Cooperative Plan, any Town employee who is not offered suitable employment by either City on terms at least equivalent to those provided by the Town job or who do not accept such employment is entitled to a lump sum severance payment, payable by the Cities, based upon a specified schedule; and,

**WHEREAS**, Employee accepts the severance payment from the Cities which is paid on behalf of the Cities by the Town, as set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and agreements of the parties, including but not limited to the severance payment made pursuant to this Agreement, the receipt and sufficiency of which is mutually acknowledged, the parties do hereby covenant and agree as follows:

**1. Separation.** It is the intention of the Parties that Employee will remain employed by the Town until October 30, 2022 at 11:59 p.m. (the “Separation Date”).

**2. Severance Benefit.** The Cities, the Town and Employee recognize that Employee will not be offered suitable employment by the Cities on terms at least equivalent to those provided by the Town job, and as such Employee is entitled to a severance benefit under Section 14 of the Cooperative Plan, provided Employee will remain employed through the Separation Date. Based upon Employee’s duration of Town employment, the severance schedule set forth under Sec. 14 of the Cooperative Plan, and the [Employee’s annual salary with the Town/level of comparable

pay for comparable positions in Madison/Fitchburg], the Employee's severance benefit is \_\_\_\_\_ Dollar \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_) ("Severance Benefit"). Payment of the Severance Benefit shall be as set forth in Sections 3 and 4.

**3. Consideration for Effective Date I.** Based upon Employee's acceptance and execution of this Agreement before the Separation Date, Employee's agreement to remain employed by the Town through the Separation Date, and the expiration without subsequent revocation of any right of rescission provided herein or at law (the "Effective Date I"), the Town will pay the Employee the sum of \$100, within ten (10) business days of Effective Date I as long as all conditions stated herein have been met. Effective Date I is defined as the eighth day after this Agreement is signed the first time and not revoked.

Employee understands and agrees that the Town is providing the foregoing in full and final settlement of all of Employee's claims or potential claims against the Town and the Cities, whether known or unknown, from the beginning of time to the date Employee first signs this Agreement, inclusive of attorney's fees and costs. Employee acknowledges and agrees that the foregoing is something to which Employee is not otherwise entitled and constitutes good and sufficient consideration for Employee's release and waiver of all potential claims identified in Paragraph 5 below, including without limitation a potential claim for age discrimination under the Age Discrimination in Employment Act.

**4. Consideration for Effective Date II.** In addition, based upon Employee remaining employed with the Town through the Separation Date, Employee's acceptance and second execution of this Agreement on or after the Separation Date, and the subsequent expiration without revocation of any right of rescission provided herein or at law ("Effective Date II"), the Town will provide Employee with a payment of the Severance Benefit in the amount of \_\_\_\_\_ Dollar \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_). Effective Date II is defined as the eighth day after this Agreement is signed the second time and not revoked.

Employee understands and agrees that the Town is providing Employee with the foregoing payment in full and final settlement of all of Employee's claims or potential claims against the Town and the Cities, whether known or unknown, from the beginning of time through the second date Employee executes this Agreement on or after Employee's Separation Date. Employee acknowledges and agrees that the foregoing is something to which Employee is not otherwise entitled and constitutes good and sufficient consideration for Employee's release and waiver of all potential claims identified in Paragraph 5 below, including without limitation a potential claim for age discrimination under the Age Discrimination in Employment Act. The Town will take the aforementioned actions within three (3) days after Effective Date II as long as all conditions stated herein have been met. The Town's obligation to pay Employee as provided under this Section is contingent upon the Town having sufficient funds to make the severance payment. If the Town lacks sufficient funds to make the severance payment, the Cities remain responsible for making the severance payment as provided in Section 14 of the Cooperative Plan and the Intergovernmental Agreement.

**4. Mandated Withholding.** The Town shall take all standard deductions from the severance payment as required by state and federal law.

**5. Release of Claims.** In consideration of the benefits provided under this Agreement, upon each execution of this Agreement, Employee hereby irrevocably and unconditionally releases, acquits and forever discharges the Town and the Cities, and their affiliated entities, predecessors, successors, assigns, owners, agents, administrators, directors, officers, employees, representatives, attorneys, affiliates, insurers, and all other persons acting by, through, or in concert with any of them (collectively, "Releasees") from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses, including attorney fees and costs actually incurred, of any nature whatsoever, known or unknown, suspected or unsuspected, including but not limited to rights arising out of alleged violations of any contracts, express or implied; any rights of Employee under the Cooperative Plan, including the right to contest the amount of the Severance Benefit; any covenant of good faith and fair dealing, express or implied; any tort claim; any claim for wages or benefits; any legal restrictions on the Town's right to not employ Employee; any other constitutional, statutory, or regulatory provision; any federal, state, local or other governmental statute, regulation or ordinance, including without limitation, the United States and State of Wisconsin Constitutions, the Federal Family and Medical Leave Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the State of Wisconsin Family and Medical Leave Act, the State of Wisconsin Fair Employment Act, the National Labor Relations Act, or any comparable federal, state or local statute or ordinance governing discrimination in employment; and any claimed due process entitlement or liability or property interests that Employee now has, owns or holds, or claims to have, own or hold, or which Employee at any time heretofore had, owned or held, or claims to own or hold against each or any of the Releasees, that are based upon events that have occurred or circumstances that have existed at any time prior to each respective execution of this Agreement.

Employee agrees that this Agreement bears the intent to fully and finally compromise and settle all claims and matters of any nature against the Town and the Cities, and that this release should be construed as broadly as possible. For purposes of this Agreement in general and this Paragraph 5 in particular, the term "the Town" includes its past, present and future officers, directors, agents, employees, administrators, trustees, representatives and attorneys.

This waiver and release does not affect those rights or claims that arise after the second execution of this Agreement. Nor does this waiver and release affect those rights or claims that cannot be waived by law.

While the Parties recognize that Employee is unable to waive the right to compensation under worker's compensation statutes, Employee acknowledges that Employee has not suffered or been subjected to any work-related injury or illness or lost time on or before the date Employee executed this Agreement. The Town, or the Cities as successors to the Town, reserves the right to dispute any worker's compensation claims Employee might file.

The Parties understand and agree that Employee waives all right to, and shall not accept or recover any monetary damages or any other damages or anything of value from the Releasees as a result of filing a lawsuit, charge, claim, or action or for participating in any investigation or proceeding, or for any related claim, action or judgment against the Releasees. Employee agrees that in the event Employee, or another person on Employee's behalf, files for or receives any

money or benefit as a result of such lawsuit, charge, claim, action, investigation, charge or proceeding or related claim, action or judgment, that is paid by the Releasees, then Employee shall indemnify and fully reimburse the Releasee for its costs and attorneys' fees in defending the action, regardless of the outcome of any case, and Employee shall indemnify and fully reimburse the Releasee for any amounts paid to Employee, to Employee's attorneys or on Employee's behalf within ten days of the receipt of such payment.

This Section shall have no effect on and shall not apply to any claim by Employee: (a) pursuant to Wisconsin's unemployment compensation laws; (b) to challenge the validity of this Agreement or for breach of this Agreement; (c) that Employee cannot waive by law.

**6. Waiver.** The Parties acknowledge that Employee may become eligible for payment of a retention benefit under Town policy and Employee's entitlement to that benefit is solely in the discretion of the Town. However, by accepting payment under this Agreement, Employee waives claim to all other payments or benefits from the Town and the Cities, including but not limited to payouts for accrued sick leave.

**7. Phase-Down Period.** Employee agrees that from the date Employee was presented with this Agreement until the Separation Date, Employee is eligible, upon signing this Agreement and subject to the terms and conditions of this Agreement including the requirements set forth in Paragraph 8, to participate in a Phase-Down Period during which Employee will continue to earn Employee's current salary and benefits. During the Phase-Down Period, Employee understands and agrees that Employee's job duties until the Separation Date will remain as those indicated on Employee's job description.

**8. Requirement of Full Performance; Agreement to Written Communications.** Employee agrees that from the date Employee is presented with this Agreement until the Separation Date, Employee is an at-will employee at the Town, and that nothing in this Agreement constitutes a contract of employment. Employee agrees that Employee's continued employment until the Separation Date is dependent upon Employee competently and completely performing all aspects of Employee's job with the Town and having appropriate workplace conduct and attitude in accordance with the Town policies. Employee agrees to use best efforts and maintain a positive, constructive, and businesslike attitude and demeanor while performing all aspects of Employee's job through the Separation Date, and that Employee will perform all aspects of Employee's job competently and completely, consistent with the Town policies and expectations.

**9. OWBPA Acknowledgement.** Other than stated herein, Employee represents, warrants and certifies that: (a) this Agreement is written in a manner calculated to be understood by Employee; (b) under the terms of this Agreement, Employee is not waiving any future rights or claims that may arise after each date this Agreement is executed; (c) Employee is legally competent to execute this Agreement and accepts full responsibility therefor; (d) by this paragraph, Employee has been advised to consult with an attorney, and Employee has had sufficient opportunity to consult with an attorney prior to signing this Agreement; (e) Employee has twenty-one (21) days from its initial presentation within which to consider this proposed Agreement, and the Parties have agreed that should any provision of this Agreement be revised based upon negotiation, the 21-day period will not restart; and (f) for a period of seven (7) days following each execution of the Agreement, Employee may revoke this Agreement. Employee understands and agrees that if

Employee revokes the Agreement after Effective Date II, that such revocation will not affect Employee's waiver and release of claims up through, and including, the date Employee first executed this Agreement. To be an effective revocation, Employee must make a revocation in writing and provide it to the Town Business Manager within said seven-day period. The Parties understand and agree that if Employee revokes this Agreement within the seven-day period referred to above, the Town will have no obligation to Employee under this Agreement, and this Agreement will not become effective or enforceable.

**10. Choice of Law and Forum Selection.** This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement, the venue shall be a court of competent jurisdiction in Dane County, Wisconsin, and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such dispute according to any law.

**11. No Third Party Beneficiary.** This Agreement is intended to be solely among the Town, the Cities, and the Employee. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.

**12. Amendment.** This Agreement may be amended or modified only by written amendment approved and executed by the Town, the Cities, and the Employee.

**13. Construction.** The parties acknowledge that this Agreement is the product of negotiations among 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 of that party's attorney drafted this Agreement or any part hereof.

**14. Binding Effect/Assignment.** This Agreement shall be binding upon all undersigned parties and shall continue to be binding upon the Cities after Final Attachment under the Cooperative Plan until the Cities have fulfilled their obligations under this Agreement. None of the parties may assign its obligations hereunder to any nonparty without the prior written consent of the other three parties. Subject to the foregoing, this Agreement shall be binding upon and insure to the benefit of all four parties, as well as their respective heirs, successors, and assigns.

**15. Entire Agreement.** This Agreement, including any and all addenda, recitals, exhibits and the like attached hereto, sets forth the entire agreement among the Town, the Cities, and the Employee regarding the Town's payment of a severance payment to Employee upon the dissolution of the Town and supersedes any prior discussions, agreements, or understandings, either written or oral.

**16. Authority.** Each party represents that it has the authority to enter into the Agreement and that all necessary procedures have been followed to secure authorization to enter into this Agreement from the party's respective governing body. Each person signing the Agreement represents and warrants that he or she has been duly authorized to do so.

**17. Counterparts; Electronic Delivery.** This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document.

Signatures on this Agreement may be exchanged among the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. 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 the execution of this Agreement by authority of their respective governing bodies effective as of the date when all parties hereto have affixed their respective signatures.

**First Execution:**

\_\_\_\_\_  
(EMPLOYEE)

\_\_\_\_\_  
Date

**Second Execution:**

\_\_\_\_\_  
(EMPLOYEE)

\_\_\_\_\_  
Date

FOR THE TOWN OF MADISON

\_\_\_\_\_  
James A. Campbell, Town Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Renee Schwass, Town Clerk

\_\_\_\_\_  
Date

FOR THE CITY OF FITCHBURG

\_\_\_\_\_  
Aaron Richardson, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tracy Oldenburg, City Clerk

\_\_\_\_\_  
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 Haas, City Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES \_\_\_\_ - \_\_\_\_\_,  
ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 20\_\_.