

AGREEMENT

BY THE CITY OF FITCHBURG AND THE CITY OF MADISON
FOR THE INTERCONNECTION OF MUNICIPAL WATER SYSTEMS

THIS AGREEMENT by the CITY OF FITCHBURG and the CITY OF MADISON FOR THE INTERCONNECTION OF MUNICIPAL WATER SYSTEMS (hereafter AGREEMENT) is entered into effective this 25th day of August, 2009 by and between the CITY OF FITCHBURG (hereafter FITCHBURG) and the CITY OF MADISON (hereafter MADISON) or collectively referred to as the MUNICIPALITIES.

WITNESSETH:

WHEREAS, Wisconsin Statutes, Section 66.0301, authorizes cities, village, towns, counties, and other public agencies to enter into agreements for the receipt of furnishing of services and other cooperative ventures; and

WHEREAS, the parties wish to connect the MADISON and FITCHBURG water distribution systems; and

WHEREAS, it appears to be in the best interests of both MUNICIPALITIES to complete the proposed interconnection of the water distribution systems; and

NOW, THEREFORE, in consideration of the fulfillment of the promises and obligations of the parties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

(I) SCOPE AND CONFIGURATION

The parties hereby agree to the connection of the FITCHBURG and MADISON water distribution systems by constructing a point of interconnection (hereafter referred to as INTERCONNECTION) with the construction of the MADISON watermain in the Cannonball Trail at the intersection of Seminole Highway.

The location, configuration, materials of construction, planning to complete the INTERCONNECTION and selection/installation of equipment shall be mutually approved by FITCHBURG and MADISON staff prior to execution of this AGREEMENT.

(II) CONSTRUCTION

MADISON shall be responsible for installation and related costs for the INTERCONNECTION on Seminole Highway with FITCHBURG reimbursing MADISON the cost of the live tap and tapping valve on the FITCHBURG water main on Seminole Highway.

(III) OPERATION

(A) FITCHBURG and MADISON shall have access to the INTERCONNECTION POINT(S) at all times.

(B) NORMAL STATUS AND PURPOSE

The normal status of the INTERCONNECTION VALVES shall be closed. The purpose of the interconnection is to provide an emergency source of water for the two MUNICIPALITIES. If the INTERCONNECTION VALVE is found by either MUNICIPALITY to be open without approval, the INTERCONNECTION VALVE shall be immediately closed and the other MUNICIPALITY shall be notified of the situation. For identification purposes the INTERCONNECTION VALVE will be clearly marked in a mutually agreed upon manner.

(C) NOTICE

Either FITCHBURG or MADISON may open the INTERCONNECTION POINTS following notice and approval of the other MUNICIPALITY. For FITCHBURG, notice shall be given to and approval received from the Director of Public works or his/her assignees. For MADISON, notice shall be given to and approval received from the Water Utility's General Manager or his/her assignees. The MUNICIPALITY opening the connection will attempt to give as much notice to the other as possible. If prior notice is not able to be given due to an emergency, the MUNICIPALITY opening the connection will provide such notice as soon as practicable (see Section (VII)(F) of this AGREEMENT for the emergency notice contact number). The MUNICIPALITY opening the connection shall close the connection as soon as conditions have returned to normal and shall promptly notify the other MUNICIPALITY of the closure.

(D) COST

The INTERCONNECTION will not be metered, and no customers of the receiving MUNICIPALITY will become customers of the supplier MUNICIPALITY. Rather, the receiving MUNICIPALITY will pay the supplier MUNICIPALITY for the volume of water used. To determine the amount owed by the receiving MUNICIPALITY, the volume of water used by the receiving MUNICIPALITY will be estimated by the receiving MUNICIPALITY and verified by the supplier MUNICIPALITY. Both MUNICIPALITIES must agree on the amount of water used. Payment will be made during the next payment cycle of the receiving MUNICIPALITY based on the retail rate then in effect for the highest volume industrial user in the supplier MUNICIPALITY.

(IV) MAINTENANCE

The PARTIES shall maintain and be responsible for the cost of any required maintenance of the INTERCONNECTION POINT(S).

(V) TERM/TERMINATION

This AGREEMENT shall remain in full force and in effect until terminated by either MADISON or FITCHBURG, by giving written notice one (1) year, in advance of the date of termination. The MUNICIPALITY desiring to terminate shall be responsible for all costs of disconnection.

(VI) HOLD HARMLESS

FITCHBURG shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its public officers or employees acting within the scope of their employment, in accordance with sec. 895.46(1). Wis. Stats.

MADISON shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its public officers or employees acting within the scope of their employment, in accordance with sec. 895.46(1), Wis. Stats.

(VII) MISCELLANEOUS

(A) ENTIRE AGREEMENT

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

(B) AMENDMENT

The AGREEMENT shall be binding on the parties hereto, their respective successors and assigns and cannot be varied or waived by any oral representations or promises of any agent of the parties. It is expressly understood that no party may assign any rights or obligations hereunder without the prior written consent of the other parties. Any change in any provision of this contract may only be made by a written amendment, signed by the parties or their authorized agent.

(C) GOVERNING LAW

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

(D) HEADINGS; REFERENCES

The headings used in this AGREEMENT are for convenience only and shall not constitute a part of this AGREEMENT. Unless the context clearly requires otherwise, all references to "Sections" and other subdivisions are to the sections and subdivisions of this AGREEMENT.

(E) SERVERABILITY

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.

(F) NOTICE

All notices to be given under the terms of this AGREEMENT shall be in writing, signed by the person serving the notice and deemed delivered as of the date of postmark, if sent by certified mail, postage prepaid, addressed to:

City of Fitchburg
Attn: Director of Public Works
5520 Lacy Road
Fitchburg, WI 53711

City of Madison
Madison Water Utility
Attn: General Manager
523 East Main St.
Madison, WI 53703

Emergency notice to Madison Water Utility shall be given by calling the operator on duty (24) hours at 261-4665.

Emergency notice to Fitchburg Utility District No. 1 shall be given by calling the operator on duty (24) hours at 235-2589.

(G) EXECUTION

The parties may evidence their AGREEMENT to the foregoing upon one of several counterparts of this instrument, which together shall constitute a single instrument.

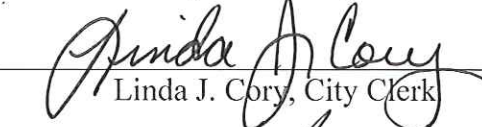
IN WITNESS WHEREOF, FITCHBURG AND MADISON, by their respective duly authorized agents, have executed this agreement effective as of the date when all parties hereto have affixed their respective signatures.

FOR THE CITY OF FITCHBURG

Date Signed: SEPTEMBER 1, 2009


Jay Allen, Mayor


Date Signed: SEPTEMBER 1, 2009


Linda J. Cory, City Clerk

Date Signed: SEPTEMBER 1, 2009


Tony Roach, City Comptroller

Date Signed: Sept. 1, 2009


Mark R. Sewell, City Attorney

FOR THE CITY OF MADISON

Date Signed: _____

Dave Cieslewicz, Mayor

Date Signed: _____

Maribeth Witzel-Behl, City Clerk

Date Signed: _____

Dean Brassler, City Comptroller

Date Signed: _____

Mike May, City Attorney

