

INTERGOVERNMENTAL AGREEMENT

AMONG

TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG

The parties to this Agreement are the Town of Madison, the City of Fitchburg, and the City of Madison, all located in Dane County, Wisconsin.

RECITALS

- A. The Town of Madison and the City of Madison have a long history of boundary disputes, including a dispute over whether the Town should continue to exist as a separate governmental entity.
- B. Recent developments in this history of disputes include a State budget bill proposal for the City of Madison to annex the Town in its entirety and a petition by the City of Fitchburg (presented at the Town's request) to annex those portions of the Town contiguous to Fitchburg. Fitchburg's petition is pending in Dane County circuit court. These developments and others render the Town's long-term future uncertain.
- C. While facing the prospect of further disputes and protracted litigation, the parties have explored a boundary agreement that would determine the Town's future with certainty, put an end to disputes and litigation over Town territory, and establish a basis for future intergovernmental cooperation.
- D. The Town and the Cities desire to provide for an orderly transition of Town territory from town to city government, preserve the Town's financial integrity while it remains a town, and establish long-term rational boundaries between the City of Fitchburg and the City of Madison that reasonably satisfy each city's goals.
- E. To attain the objectives of the Town and the Cities, and to provide for their mutual peace and cooperation that will be beneficial to citizens in all three communities, the Town of Madison, the City of Fitchburg, and the City of Madison desire to enter into this intergovernmental Agreement.

AGREEMENT

Therefore, in accordance with the authority granted them under Wisconsin statutes and for their mutual benefit and in the public interest, the Parties agree as follows:

1. Town Protected for a Period of 20 Years

A "Protected Period" is established for the Town:

The Town remains a town for 20 years. Town territory remains intact, except as provided below. There will be no annexations or other jurisdictional boundary changes of the Town during the Protected Period unless: (1) approved by all property owners affected; and (2) approved by the Town board and by the common council of the annexing City. The Town and the Cities may shorten the Protected Period by mutual agreement.

2. Future Boundary

- A. A future boundary is established (the "Line"). The Line is depicted and described on Exhibit A, attached.
- B. At the end of the Protected Period, Town territory north of the Line becomes part of the City of Madison, and Town territory south of the Line becomes part of the City of Fitchburg. Except as provided in paragraph 3(d)(3) below, if there are any mutually agreed annexations before the end of the Protected Period ("Early Annexations"), lands north of the Line may be annexed only by the City of Madison. Lands south of the Line may be annexed only by the City of Fitchburg. Territory in an Early Annexation need not be contiguous to the annexing City. (It will become contiguous at the end of the Protected Period.)

3. Early Annexations

- A. The general rule is no Early Annexations except upon approval of: (1) all property owners affected; and (2) the Town Board.
- B. A limited exception to this general rule is created for the potential creation of a tax incremental financing or redevelopment district, or both (Early TID-RD Annexation).
- C. Either the City of Madison or the City of Fitchburg shall be entitled to an Early TID-RD Annexation if the following conditions are met:
 - (1) The City has conducted the necessary blight studies and prepared a complete TID or redevelopment plan that includes some territory in the Town. The Early TID or RD attachment may consist of multiple parcels, which need not be contiguous, and shall include no more Town territory than is included in the prepared plan which is

consistent with applicable law. The City shall proceed expeditiously with the statutory plan approval process and implementation of the TID or RD upon annexation of the Town territory.

- (2) The City agrees to provide revenue sharing payments to the Town to compensate the Town for lost local tax revenues. The Town shall keep 100% of the local government share of tax revenues for the year of the Early TID or RD annexation. The City shall pay the Town that same amount annually for nine subsequent years, but not beyond the Protected Period. Payments are due in two equal installments: the first due on February 15, and the second due on August 15. The amount and schedule of revenue sharing payments may be modified by mutual agreement.
- (3) If the Cities and the Town do not agree on whether these conditions have been met, the affected City or the Town may submit the matter to binding arbitration. In that case, the annexation shall not occur unless and until the arbitrator determines that the conditions have been met. The arbitrator shall be directed to decide the matter expeditiously.
- (4) The City of Madison may employ an Early TID or RD Annexation no more than twice, and the City of Fitchburg no more than once, during the Protected Period.

D. Four Additional Early Transfers of Jurisdiction

- (1) Property that is owned by Genesis and the Fountain of Life Church, which is within a pending annexation petition, shall be annexed to the City of Madison, effective upon adoption of the annexation ordinance, and shall include only those parcels, pursuant to agreement of the parties, provided the Town and City of Fitchburg agree not to challenge the validity of the annexation on the basis that the annexed property is not contiguous to the City of Madison or that it includes less property than described in the annexation petition, but the Town and Cities preserve their rights otherwise. Regarding the Genesis property, at the end of the Protected Period, Genesis is detached from the City of Madison and attached to the City of Fitchburg, and beginning August 15 after the end of the Protected Period, and for twenty years thereafter, the City of Fitchburg shall pay the City of Madison a Property Tax Payment in the amount as follows:

The outstanding and remaining portion of the \$575,000 CDBG Loan, divided by 1,000 and then multiplied by 8.78.

- (2) Arboretum lands currently in the Town and owned by the University of Wisconsin Board of Regents shall be annexed to the City of Madison effective upon State approval of the Agreement. This annexation shall not include the Beltline right-of-way.
- (3) Property within a pending annexation petition by Mortenson Investment Group shall be annexed to the City of Madison effective upon adoption of the annexation ordinance, subject to a tolling agreement to be signed by the Parties, and a reservation of rights of all parties otherwise, enabling the Town and City of Fitchburg to challenge the validity of the annexation judicially, in the event that State approval of the Agreement is not obtained. The City of Madison shall make a revenue-sharing payment to the Town annually, beginning in the year when local taxes are first paid to the City, continuing through and including 2017, but not beyond the Protected Period. The annual amount shall be equal to the local taxes on the property in 2002. Payments are due in two equal installments: the first due on February 15, and the second due on August 15.
- (4) Upon State approval of the Agreement, the E-Way conservancy land in the Nine Springs Area, adjacent and along Highway 14, north to Highway 14 and south to Clayton Road (as depicted in Exhibit A) shall become a part of the City of Fitchburg by detachment from the City of Madison; the 31-acre parcel in the E-Way owned by the City of Madison between McCoy Road and Clayton Road shall be conveyed by warranty deed to the City of Fitchburg. Separate from State approval, the City of Madison agrees to adopt, concurrent with its approval of this Agreement, such ordinances and resolutions to accomplish the following:
 - a. Extend interim, temporary public water service to Fitchburg to the Rimrock Property until December 1, 2005, and extend Fitchburg's obligation to complete construction of its own water supply to the Rimrock Property until November 30, 2005, or such later dates as shall provide Fitchburg two full years' notice to meet its construction obligation;
 - b. Void Ordinance No. 11,291, upon State approval of this Agreement; and

- c. Amend Madison General Ordinance Section 13.16 to include the Rimrock Property in the Madison service area effective upon State approval of this Agreement.

4. Town Retains Governmental Authority

Except as otherwise mutually agreed, the Town retains full and independent governmental authority throughout the Protected Period. The Town shall exercise that authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period.

5. Joint Land Use Decisions

During the Protected Period, the following land use decisions will be made jointly by the Town and the City designated to take over the area in question:

- (1) Extraterritorial zoning (ETZ) shall be established. During the Protected Period, decisions shall be made by a joint committee that has three Town members and three City members. (There shall be two such committees: one for the area north of the Line and another for the area south of the Line.) Initially, ETZ shall be established conditionally, to take effect upon State approval of this Agreement.
- (2) Land division authority shall be exercised jointly by the Town and the Cities through their use of extraterritorial jurisdiction (Madison for the area north of the Line; Fitchburg for the area south of the Line.)

6. Public Transportation and Public Improvements

During the Protected Period, the Town and the Cities agree to maintain support for the Madison Metropolitan Transit System in equitable proportions.

The Town and the Cities agree that in levying special assessments for public improvements caused by a new development or redevelopment, they may credit benefitted properties for special assessments previously levied against such properties for improvement components of the same type.

The Town and the Cities agree that for any street lying partly in two or three of their jurisdictions, or for any street that under the Agreement shall eventually be within another jurisdiction, they shall not rename such street

if the renaming is opposed in writing by three-fourths or more of the owners of property abutting on the street segment proposed for renaming.

7. Job Continuity for Town Employees

The Town and the Cities shall cooperate to provide job security and job continuity for Town employees. In the absence of some other mutual Agreement, Town employees shall have job security in the form of a severance benefit. Any person who is a Town employee at the end of the Protected Period, and who is not offered suitable employment by either of the Cities on terms at least equivalent to those provided by the Town job, shall be entitled to a lump sum severance payment according to the following schedule:

Duration of Town Employment	Amount of Severance Payment
Less than 6 months	none
More than 6 months, less than 5 years	3 months' pay
More than 5 years, less than 10 years	6 months' pay
More than 10 years, less than 15 years	9 months' pay
15 years or more	1 year's pay

The amount of pay for the above purpose shall not exceed the level of pay for comparable positions in either City.

If a Town employee is employed by a City on a probationary basis and dismissed during the probationary period, but not for cause, the severance payment is due, less a credit for payments from the City to the employee during the period of City employment.

This severance benefit is the joint obligation of both Cities, and shall be paid by one or both Cities, not the Town. The Cities may share the cost between them as they mutually agree. Such cost sharing shall be taken into account in the division of assets and liabilities under paragraph 9 below.

8. Good Faith Cooperation; Conversion to State-Approved Boundary Plan

- A. The Town and the Cities shall cooperate in good faith to implement the Agreement, and may enter further agreements to facilitate a smooth transition at the end of the Protected Period. The Town and the Cities agree that they shall not hinder the performance and implementation of the

Agreement in any way and that they will not oppose the Agreement in any way privately or publicly, either when communicating with any government agency which is charged with review and evaluation of any part of the Agreement or otherwise.

- B. The Town and Cities agree to pursue further cooperative agreements that will qualify each of them for additional shared revenues.
- C. The Town and the Cities shall use their best efforts to secure timely State approval of the Agreement under the provisions of Wis. Stat. § 66.0307. Reference in this Agreement to “annexation” includes summary attachment procedures as part of a State-approved cooperative boundary plan.
- D. Provisions of the Agreement that take effect upon State approval, shall take effect after State approval and appeals, if any.
- E. The Town and the Cities agree that a party’s failure to comply with paragraphs A or C in this section 8 will do substantial harm to the other parties, that the amount of actual damages may be difficult or impossible to establish, and that \$250,000 is a reasonable estimate of what such damages may be. Accordingly, if any party breaches paragraphs A or C of this section 8, that party shall be liable to each of the other parties in the amount of \$250,000 liquidated damages or its actual damages, whichever is greater. The breaching party shall also be liable to the other parties for their actual attorney fees and costs to enforce this provision.

9. Ultimate Division of Town Assets and Liabilities

Town assets and liabilities shall be divided between the Cities 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 annexations and revenue sharing. Notwithstanding the foregoing, the Cities 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.

10. Disputes Settled by Arbitration

Except as to liquidated damages under paragraph E of section 8, disputes over compliance with the Agreement shall be resolved by binding arbitration. Mediation may be used prior to arbitration if all parties agree.

11. Binding Effect

The Agreement shall bind, and accrue to the benefit of, all successors of the parties, whether one or more. Except as to the rights of owners of land currently in the Town as expressly set forth herein, the Agreement is for the exclusive benefit of the parties and their successors and assigns and shall not be deemed to give any legal or equitable right, remedy, or claim to any other person or entity.

12. Recording

The parties shall cause a notice of the Agreement to be recorded in the office of the Register of Deeds.

13. Challenge to Agreement

- A. All parties waive all rights to challenge the validity or enforceability of the Agreement or any of its provisions or to challenge any actions taken pursuant to or in accordance with the Agreement.
- B. In the event of a court action by a third party challenging the validity or enforceability of the Agreement or any of its provisions, all parties shall fully cooperate to vigorously defend the Agreement.
 - (1) If only one party is named as a party to the action, the others shall seek to intervene and the named party shall support such intervention.
 - (2) No settlement of such an action shall be permitted without the approval of the governing bodies of all parties.
 - (3) The workload to defend the Agreement shall be shared equally.
- C. A challenge to the Agreement by one of the parties or a failure to vigorously defend the Agreement constitutes a breach of the Agreement.

14. Remedies

In addition to other remedies provided in the Agreement,

- A. Any party may seek specific performance of the Agreement in addition to any other remedies available at law or in equity.

- B. The breaching party shall pay the other's attorney fees reasonably incurred in seeking remedies for the breach.

15. Term

The term of the Agreement shall commence when approved by the governing bodies of the parties and executed by the authorized representatives of the parties and shall terminate at 11:59 p.m. on October 30, 2022.

16. Entire Agreement

The Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior discussions, drafts, agreements, and writings are specifically superseded by the Agreement. The Agreement represents the mutual intent of the parties and the fact that one or more of its provisions was drafted by one party or another shall not be construed to the benefit or detriment of any party.

17. Authority

Each party represents that it has the authority to enter into the Agreement and that all necessary procedures have been followed to authorize the Agreement. Attached are copies of the resolutions of the governing bodies of all parties, authorizing the Agreement. Each person signing the Agreement represents and warrants that he or she has been duly authorized to do so.

18. Counterparts

The Agreement may be signed in counterparts which, when taken together, shall be effective as if all signatures appeared on the same original.

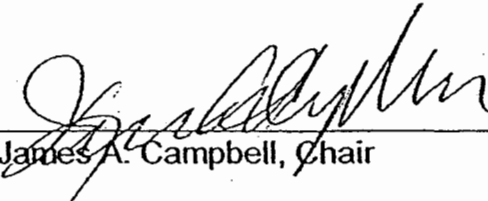
19. Non-Discrimination

In the performance of the services under the Agreement, the parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The parties further agree not to discriminate against any subcontractor or person who offers to subcontract on the

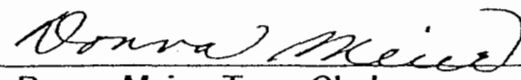
Agreement because of race, religion, color, age, disability, sex, or national origin.

Dated this 8th day of November, 2002.

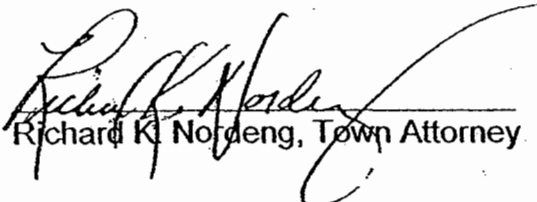
TOWN OF MADISON
Dane County, Wisconsin

By: 
James A. Campbell, Chair

Attest:

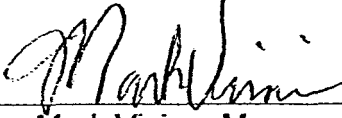

Donna Meier, Town Clerk


Approved as to Form:


Richard K. Nordeng, Town Attorney

Dated this 8th day of November, 2002.

CITY OF FITCHBURG
A Wisconsin municipal corporation

By: 
Mark Vivian, Mayor

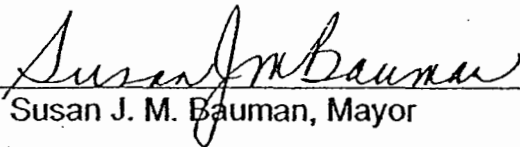
By: 
Karen A. Peters, Clerk

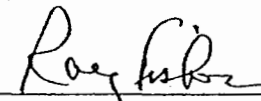
Approved as to Form:


M. Elizabeth Winters, City Attorney

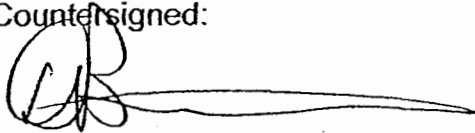
Dated this 8th day of November, 2002.

CITY OF MADISON
A Wisconsin municipal corporation

By: 
Susan J. M. Bauman, Mayor

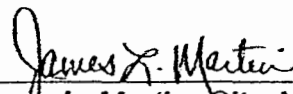
By: 
Ray Fisher, City Clerk

Countersigned:



Dean Brassler, City Comptroller

Approved as to Form:


James L. Martin, City Attorney

Attachment:

Exhibit A - Future Boundary Line
Authorizing Resolutions of All Governing Bodies

Town of Madison, City of Fitchburg, City of Madison Map of Boundary Changes

Legend

JURISDICTIONS

- City of Fitchburg
- City of Madison
- Town of Madison

AREAS OF ANNEXATION

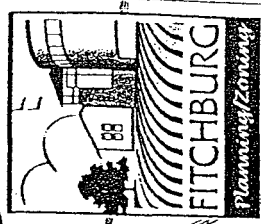
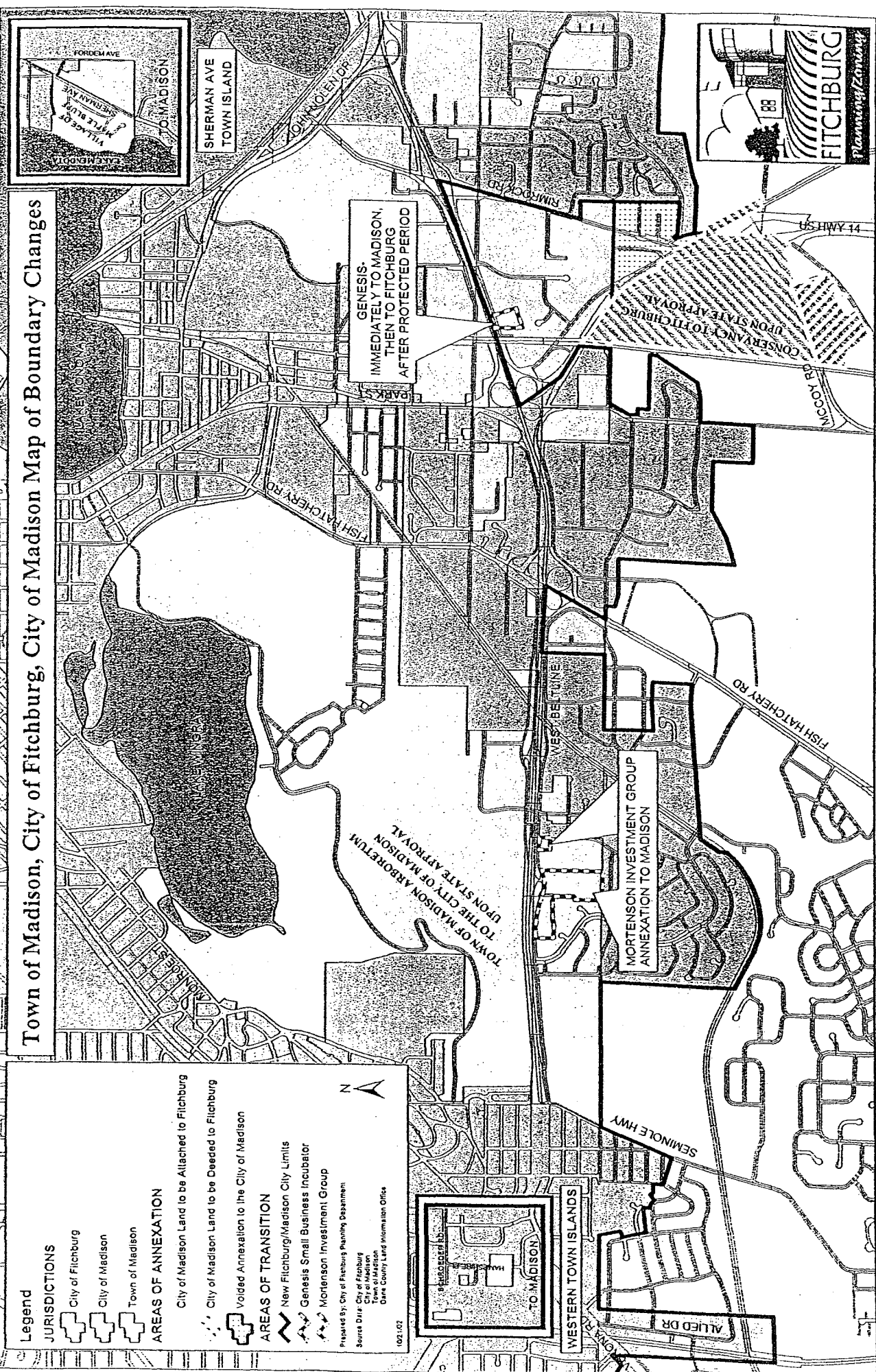
- City of Madison Land to be Attached to Fitchburg
- City of Madison Land to be Deeded to Fitchburg
- Voided Annexation to the City of Madison

AREAS OF TRANSITION

- New Fitchburg/Madison City Limits
- Genesis Small Business Incubator
- Mortenson Investment Group

Prepared By: City of Fitchburg Planning Department
 Source Data: City of Fitchburg
 City of Madison
 One County Land Information Office

102/02



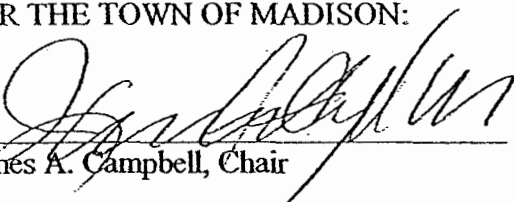
**MEMORANDUM OF UNDERSTANDING AMONG
THE TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG**

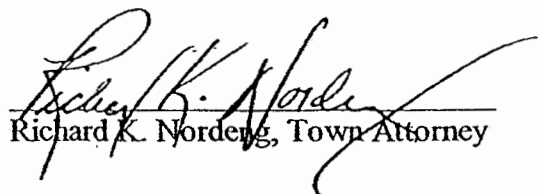
The purpose of this Memorandum of Understanding is to provide evidence of the parties' drafting intent as to what is meant by Section 3.D. of the Intergovernmental Agreement Among Town of Madison, City of Madison and City of Fitchburg (the "Parties"), executed on November 8, 2002, and as that provision is to be incorporated in a corresponding provision of a § 66.0307, Wis. Stats. Cooperative Plan between the Parties, notwithstanding Section 16 of the Intergovernmental Agreement.

Section 3.D. of the Intergovernmental Agreement pertains to "Four Additional Early Transfers of Jurisdiction". Upon execution of the Intergovernmental Agreement, no additional Town approval is required to authorize the transfers as set forth in Section 3.D.

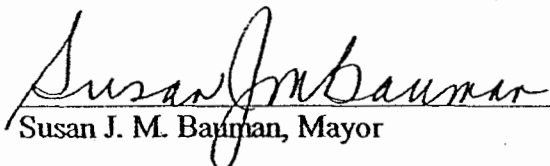
Dated: November 8, 2002.

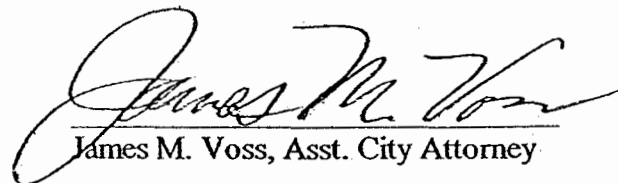
FOR THE TOWN OF MADISON:


James A. Campbell, Chair

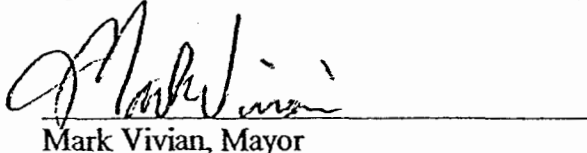

Richard K. Nordeng, Town Attorney

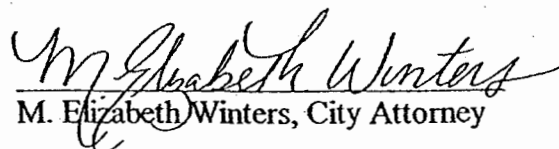
FOR THE CITY OF MADISON:


Susan J. M. Bauman, Mayor


James M. Voss, Asst. City Attorney

FOR THE CITY OF FITCHBURG:


Mark Vivian, Mayor


M. Elizabeth Winters, City Attorney

**MEMORANDUM OF UNDERSTANDING AMONG
THE TOWN OF MADISON, CITY OF MADISON AND CITY OF FITCHBURG**

The purpose of this Memorandum of Understanding is to provide evidence of the parties' drafting intent as to what is meant by Section 4 of the Intergovernmental Agreement Among Town of Madison, City of Madison and City of Fitchburg (the "Parties"), executed on November 8, 2002, and as that provision is to be incorporated in a corresponding provision of a § 66.0307, Wis. Stats. Cooperative Plan between the Parties, notwithstanding Section 16 of the Intergovernmental Agreement.

The said Section 4 reads as follows:

Except as otherwise mutually agreed, the Town retains full and independent governmental authority throughout the Protected Period. The Town shall exercise that authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period.


Examples where the Town would not be exercising its governmental authority in good faith to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to the Cities at the end of the Protected Period include, but are not limited to, the following, if the dollar amount is material and the Town's action is not otherwise justifiable as reasonably prudent financial management:

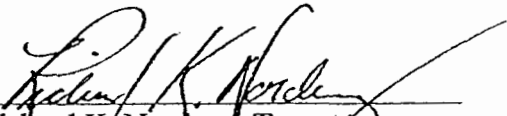
1. Borrowing funds for current operational expenses that are repaid beyond the fiscal year in which the borrowed proceeds were used.
2. Borrowing funds whose unamortized principal at any time during the payback period is greater than the depreciated value of the facilities acquired with borrowed funds, or having an exceptionally long payback period that extends beyond the end of the Protected Period.
3. Borrowing funds at terms and rates that are less favorable than market rates.
4. Substantial deferral of or substantial failure to perform routine or necessary maintenance to current standards on public infrastructure and facilities.
5. Entering into agreements for goods, or services for which payment has been deferred beyond the period where the goods and services have been consumed or obtained.

6. Except as agreed by the Town and the City in which the facility will be located after the Protected Period, undertaking the development of a capital facility, or joint participation in such a project that is not essential to the efficient operation of the Town, and would unreasonably commit a City to future operating, maintenance and debt retirement costs, or contingent liability for non-essential purposes.
7. Hiring to significantly increase the total number of Town employees in later years of the Protected Period.
8. Entering into contractual obligations (including collective bargaining agreements) extending unreasonably beyond the Protected Period.
9. Consistent refusal or failure to provide reasonably sufficient necessary municipal services (including but not limited to protective services), consistent with the Town's size and characteristics, to protect the health, safety, and general welfare of Town residents and visitors, and to preserve and protect private property in all areas of the Town.

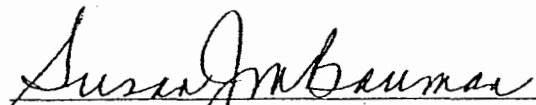
Dated: November 8, 2002.

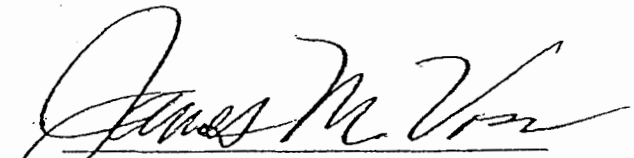
FOR THE TOWN OF MADISON:


James A. Campbell, Chair

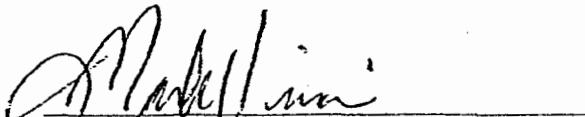

Richard K. Nordeng, Town Attorney


FOR THE CITY OF MADISON:


Susan J. M. Bauman, Mayor


James M. Voss, Asst. City Attorney

FOR THE CITY OF FITCHBURG:


Mark Vivian, Mayor


M. Elizabeth Winters, City Attorney