

## **INTERGOVERNMENTAL AGREEMENT ESTABLISHING A POTENTIAL MADISON EXPANSION AREA**

Between the City of Madison and the Town of Cottage Grove

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**THIS AGREEMENT**, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “Madison”) and the Town of Cottage Grove, a Wisconsin municipal corporation (hereinafter referred to as “Cottage Grove”), is effective as of the date by which all parties have signed hereunder.

### **WITNESSETH:**

**WHEREAS**, Cottage Grove is a rural town in Dane County with a population of approximately 3,900. Cottage Grove has faced continued annexation and development pressure from the Village of Cottage Grove and has recently been subject to the annexation of lands to the Village of McFarland; and,

**WHEREAS**, under the terms of a Cooperative Plan with the Town of Blooming Grove, Madison has annexed most of the lands of the Town of Blooming Grove and now shares an approximately 5.5 mile long municipal border with Cottage Grove. Madison anticipates continued growth and development interests within and outside its current borders and Madison and Cottage Grove (the “Parties”) expect that this municipal growth and development interest will eventually include Cottage Grove territory; and,

**WHEREAS**, the Parties recognize that, given the shared boundary, their present and future planning and municipal needs will overlap and be interdependent upon one another in this boundary area, and that both Parties will be better served by working with one another to achieve their desired outcomes, within clearly established future growth areas; and,

**WHEREAS**, in recognition of their respective interests in planned and orderly growth, the Parties have engaged in discussions about how to best address future urban growth in this boundary area, including establishing limitations upon Madison’s annexation and extraterritorial authority, and designating an area for potential Madison expansion in which the Parties will have certainty regarding development activity, while also providing Cottage Grove with increased certainty regarding its future boundary with Madison and continued opportunities to expand its tax base; and,

**WHEREAS**, Cottage Grove desires to protect lands from being annexed against the owners’ wishes, and Madison desires to prevent new development adjacent to Madison within a future planning area which does not conform to City development standards; and,

**WHEREAS**, pursuant to Wis. Stat. § 66.0301(2), Wisconsin municipalities are authorized to enter into intergovernmental agreements, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. Under this authority, the Parties now wish to formalize this cooperation and to establish limitations upon the exercise of their municipal authority between themselves.

**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” (the “Agreement”) is to establish an area within Cottage Grove, the Potential Madison Expansion Area, in which Madison may potentially expand into while also protecting Cottage Grove’s interests. During the term of the Agreement, it is anticipated that development within the Potential Madison Expansion Area will occur in Madison, and the Parties agree to cooperate on several matters of shared interest as identified herein, thereby protecting the interests of both Parties and encouraging continued intermunicipal cooperation over the next several decades. This Agreement is not a boundary agreement under Wis. Stat. Sec. 66.0301(6) and does not determine all or a portion of the common boundary line between the municipalities.
2. Term. This Agreement shall be effective through December 31, 2061. This Agreement will be automatically renewed for one ten (10) year period, to run through Dec. 31, 2071, unless either party notifies the other party, no later than Jan. 1, 2061, that it does not want the renewal to take effect.
3. Potential Madison Expansion Area and Future Planning Area Agreement.
  - a. Annexations. The Parties agree that, during the term of this Agreement, Madison will not exercise its annexation authority to approve the annexation of any Cottage Grove territory east of the annexation line as shown and depicted on Exhibit 1 to this Agreement (the “Annexation Line”). In establishing the Annexation Line, the Parties recognize that annexations east of this line would not be in the public’s interest as that term is used in Wis. Stat. § 66.0217(6)(c). Cottage Grove territory lying between the Annexation Line and Madison is the Potential Madison Expansion Area, and is identified on Exhibit 1 as Area A. Cottage Grove agrees not to oppose unanimous annexation to Madison within the Potential Madison Expansion Area, nor will Cottage Grove support or encourage annexation of land in the Potential Madison Expansion Area to any other municipality. Notwithstanding the foregoing, Madison may annex land owned by Madison to the east of the Annexation Line if the lands are needed to provide the Potential Madison Expansion Area with sanitary sewer and/or water services.

Lands may be annexed to Madison, under this Agreement, irrespective of the size, or shape of the lands covered by the annexation petition, pursuant to Wis. Stat. §§ 66.0217(2) and 66.0223. Such annexations may create town islands. Madison, however, may reject any petition to annex lands that are not contiguous, configured or located in a manner as will enable Madison to provide adequate and timely service. Madison is authorized to confer with landowners interested in annexation to recommend the size, shape and contiguousness of the territory to be covered by the petition. Any annexation shall include the public right of way to the centerline.

- b. Development. Cottage Grove will not approve any development within the Potential Madison Expansion Area except as provided in this subsection. “Development” or “Develop” refers to the division of land, declaration of a condominium, construction of more than one principal structure on a parcel, or rezoning a parcel from a residential or agricultural classification to a non-residential classification. Property owners within the Potential Madison Expansion Area wanting to develop their property shall seek annexation of the property to Madison and conform to Madison development requirements. However, Cottage Grove may approve development in the Potential Madison Expansion Area if Madison and the property owner enter into a recordable agreement addressing the development that is consistent with the long-term interests of the Parties set forth herein.
- c. Single-Family Residential Development. Notwithstanding the restrictions on land divisions in Subsection b, the division of five (5) acres or more of lands in contiguous ownership (contiguous lands within the control of a single owner), that exists as of the date of this Agreement, to facilitate a maximum of two single-family homes is not considered “development” under this Agreement. Lands under contiguous ownership where there is an existing single-family home and no other existing principal structures may create one new single-family home on the lands under this provision. Lands under contiguous ownership where there is no existing principal structures may be divided to create two single-family home parcels on the lands under this provision. Each parcel that contains a single-family home shall be zoned or rezoned to a single-family residential district. To maintain consistency with the Town of Cottage Grove’s maximum lot size policy for residential lots (2 acres as of the date of this Agreement) and lot clustering policy for residential lots, lands under contiguous ownership may be divided into three parcels. In this situation, the two residential lots shall be clustered (contiguous to each other) and the remaining acreage/parcel shall be deed restricted, for the benefit of Madison, to preclude future development on the remaining acreage/parcel in the Town. Lots created under this provision shall conform to Town and County regulations, including Dane County’s Land Division and Subdivision regulations. In all circumstances, no more than two single-family homes shall result from the division of lands under contiguous ownership.
- d. Future Planning Area. The Parties have identified an area to the east of the Annexation Line that has been designated as the Future Planning Area. The Future Planning Area is depicted on Exhibit 1 as Area B. During the term of the Agreement, Madison shall keep the Future Planning Area within the long term growth area of its Comprehensive Plan.
- e. Extraterritorial Jurisdiction. Madison agrees that it will only exercise its extraterritorial review authority within Cottage Grove in the Potential Madison Expansion Area. Madison waives its extraterritorial review authority to the east of the Annexation Line within Cottage Grove during the term of this Agreement.
- f. Preservation of Open Space Corridors. The Parties will collaborate on the preservation of open space corridors along its current boundary line and Annexation

Line, including collaboration with adjacent municipalities and Dane County on identifying and preserving corridors of regional significance.

- g. Comprehensive Plans. The Parties agree to update their respective Comprehensive Plans, and related plans, to reflect the provisions of this agreement within 5 years.
- h. Future Boundary Agreements. Cottage Grove agrees that should it pursue boundary agreements, including a cooperative plan or a consolidation agreement, with either the Village of Cottage Grove or the Village of McFarland, it will inform Madison of such discussions and will not agree to any terms or proposals that would be contrary to the terms of this Agreement or that would cause the lands in the Potential Madison Expansion Area to annex or attach to any municipality other than Madison during the term of this Agreement. Madison further agrees that should it pursue any boundary agreements with either the Village of Cottage Grove or the Village of McFarland which impacts territory of Cottage Grove other than the Potential Madison Expansion Area or that would be contrary to terms of this Agreement, that it will inform Cottage Grove of such discussions and that it will not agree to any terms or proposals that would impact Cottage Grove lands outside of the Potential Madison Expansion Area during the term of this Agreement. This provision may be enforced by specific performance under Section 9.
- i. Highway Improvements.
  - (1) US Highway 12 & 18 Highway Improvements. The Parties agree to facilitate the implementation of the planned USH 12 & 18 and CTH AB interchange. In addition, the Parties will facilitate implementation of the planned USH 12 & 18 freeway conversion between the existing CTH AB interchange and the CTH N interchange by not seeking or approving new driveway access along this segment of USH 12 & 18.
  - (2) Road Improvement Reimbursement. If a property west of the Annexation Line annexes to Madison during the term of this Agreement, Madison agrees to reimburse Cottage Grove for any Vilas Road, Vilas Hope Road and Femrite Drive road construction expenses that Cottage Grove previously incurred for the abutting portion of property frontage, to the centerline of the road. Following the annexation, the reimbursement shall be made by Madison within ninety (90) days of Cottage Grove sending Madison an invoice detailing the year of the road construction expenses and the costs to Cottage Grove. The reimbursement shall be made on the following schedule, as measured from the year of the improvement to the year of annexation:

Year of improvement	100%
Year 1	90%
Year 2	80%
Year 3	70%

Year 4	60%
Year 5	50%
Year 6-8	40%
Year 9-10	30%
Year 11-15	20%
Year 16-19	10%

- (3) Future Highway Projects. During the term of this Agreement, the Parties agree to cooperate on any other highway improvement projects that may impact the Potential Madison Expansion Area and pursue other specific intergovernmental agreements as necessary.
4. Liability. Each party shall be responsible for the consequences of 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 be responsible only 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. Stats. § 893.80 or any other protections available to the parties by law.
5. Notices. All notices to be given shall be in writing and delivered by personal delivery or United States mail, as follows:
- To Madison:           Planning Division Director  
                               Madison Municipal Building, Suite 017  
                               215 Martin Luther King, Jr. Blvd.  
                               Madison WI 53703
- To Cottage Grove:    Town Clerk  
                               4058 County Highway N  
                               Cottage Grove, WI 53527
6. Non-Discrimination. In the performance of the obligations under this Agreement, the Parties agree to abide by their own respective affirmative action plans and in doing so agree not to discriminate, in violation of any state or federal law, 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, in violation of any state or federal law, 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.

7. No Third Party Beneficiary. This Agreement is intended to be solely between Madison and Cottage Grove. Nothing in this Agreement accords any third party, including, specifically, the Village of Cottage Grove, the Village of McFarland, the Madison Metropolitan School District, the McFarland School District, or the Monona Grove School District, any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
8. Amendment. This Agreement may be amended only by the written agreement of both of the parties hereto.
9. 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 10. 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.
10. Enforcement. This Agreement shall be governed by the laws of the State of Wisconsin. 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.
11. 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.
12. Termination. This Agreement may only be terminated upon the written agreement of the Parties hereto, or successors thereof. No other breach of any terms of conditions of this Agreement shall be cause for termination by either party.
13. Entire Agreement. This Agreement represents the entire agreement between the parties with regards to the subject matter expressed herein, and supersedes all prior negotiations, representations, understandings, or agreements, either written or oral, dealing with these issues.
14. 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.
15. 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.


16. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of Madison or Cottage Grove 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 Cottage Grove 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.
17. 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 that cannot be mutually resolved, 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.
18. 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.
19. 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 TOWN OF COTTAGE GROVE

  
Kris Hampton, Town Board Chair

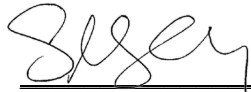
5/11/2022  
Date

  
Kim Banigan, Town Clerk

5/11/2022  
Date



FOR THE CITY OF MADISON



Satya Rhodes-Conway, Mayor

05/17/2022

Date



Maribeth Witzel-Behl, City Clerk

May 10, 2022

Date

Countersigned:

Approved as to form:



David P. Schmiedicke, Finance Director

05/16/2022

Date



Michael Haas, City Attorney

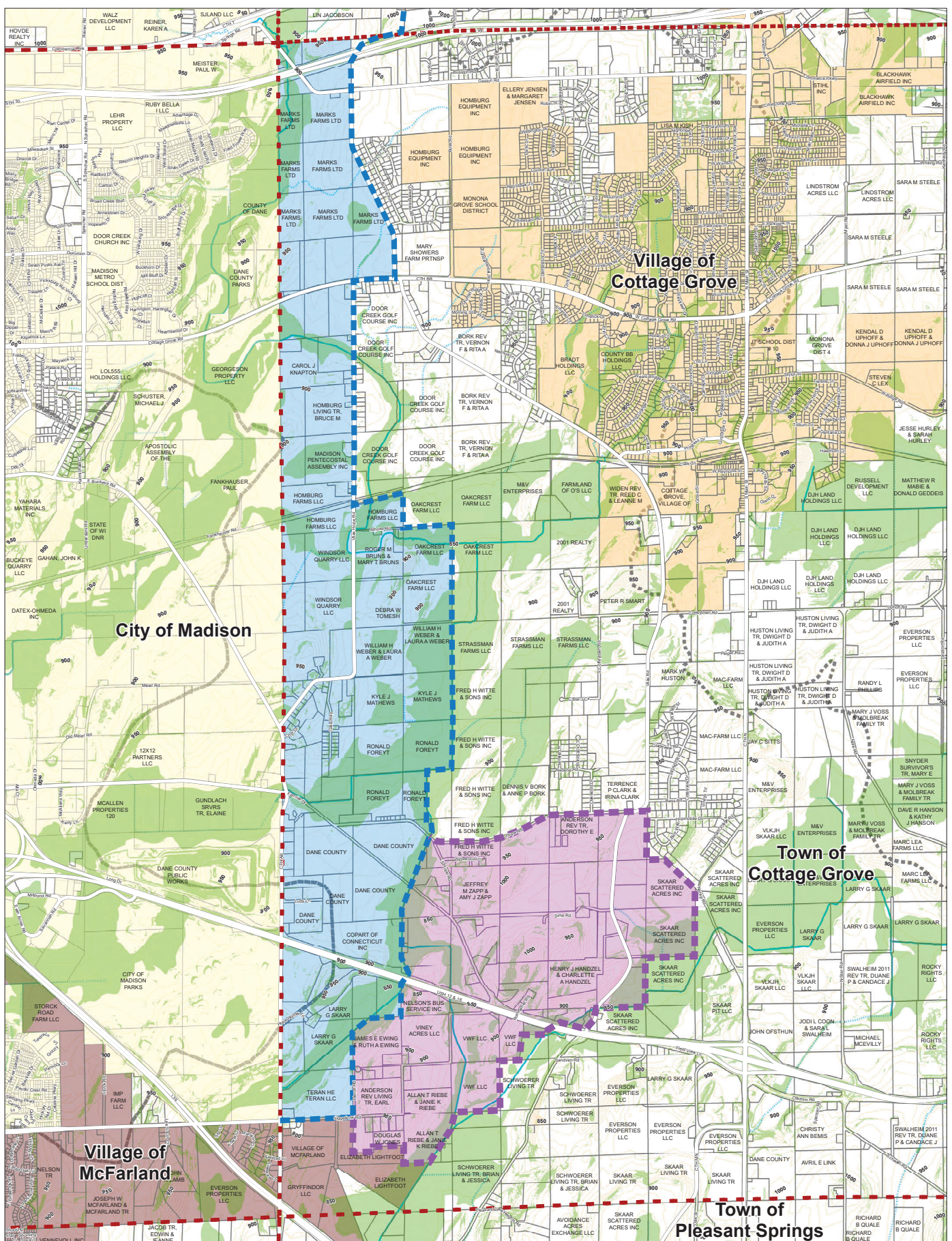
5/17/22

Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES-22-00316, ID No. 70631, adopted by the Common Council of the City of Madison on April 19, 2022.

**EXHIBIT 1**  
Map





**Intergovernmental Agreement**

February 11, 2022

City of Madison Planning Division

City of Madison

Village of Cottage Grove

Town of Cottage Grove

Village of McFarland

Annexation Line

Future Planning Boundary

Area A

Area B

Perennial Stream

Intermittent Stream

10 Foot Contour Lines

Natural Features  
(Wetland, Floodplain, Steep Topography, Hydric Soils)

Scale: 0 to 0.5 Miles

North Arrow

Prepared by the City of Madison Planning Division