Whitewater Aquatic and Fitness Center Subcommittee Meeting Agenda

Thursday, March 2, 2023
6:00 - 8:00 PM

City of Whitewater Municipal Building
Community Room
312 W. Whitewater St.
Whitewater, WI 53190
or Virtual

You are invited to a Zoom webinar.
When: Mar 2, 2023 06:00 PM Central Time (US and Canada)
Topic: Whitewater Aquatic and Fitness Center Subcommittee

Please click the link below to join the webinar:
https://us06web.zoom.us/j/84632353300?pwd=SUkrTTRqV0I2d2YxMIY3bVVER000UT09
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Dial(for higher quality, dial a number based on your current location):
US: +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 689 278 1000 or +1 719 359 4580
Webinar ID: 846 3235 3300
Passcode: 826380
International numbers available: https://us06web.zoom.us/u/kcl0zn9THg

1. Call To Order And Roll Call

2. Goals And Recommendations

   Documents:

   WUSD WHITEWATER AQUATIC CENTER AGREEMENT CONSIDERATIONS.PDF
   AQUATIC CENTER COMMON COUNCIL MEMO HISTORY AND RECOMMENDATIONS.PDF

3. Operations And Financials

   Documents:

   MEMBERSHIP SUMMARY REPORT.PDF
   MARKETING AUDIT SUMMARY.PDF

WAFC MARKETING GUIDE - UPDATED JANUARY 2023.PDF
WAFC SOCIAL MEDIA POLICY.DOC.PDF

4. Public Comment Period

5. Establish Meeting Timeline

6. Whitewater Aquatic And Fitness Center Previous Agreements

   Documents:

   2001 ARTICLES OF INCORPORATION.PDF
   2001 BY-LAWS.PDF
   2001 COOPERATION AGREEMENT.PDF
   WUSD LEASE AGREEMENT 2016-0119.PDF
   2016 LEASE AGREEMENT.PDF
   2021 UNSIGNED LEASE AND OPERATION AGREEMENT.PDF
   DRAFT AQUATIC CENTER PROGRAM LEASE AGREEMENT 2021 - DRAFT.PDF

7. Adjournment

Anyone requiring special arrangements is asked to call the Parks & Recreation Director at (262) 473-0122 or EBoettcher@whitewater-wi.gov at least 72 hours prior to the meeting.

WUSD Whitewater Aquatic Center Agreement Considerations
1/30/2023 Special Board Meeting

Positions	Summary/Details
As outlined in both prior Lease and Operational agreements, section 6.04, maintenance and repair obligations are the responsibility of the City.	It is the position of the School Board that the repairs, maintenance and replacements have not been made in accordance with the agreement and need to be made in order to move forward with negotiations/creation of a new agreement. Additionally, negotiations should include a presented budget including a fund plan for long term maintenance.
The District requests copies of all necessary inspections for record: mechanical, safety, chemical, electrical, etc.	Current slide inspection sticker notes 2003, please update and provide inspection records.
In order to make the necessary updates and changes to keep the Aquatic Center current and the type of facility that Whitewater wants/deserves, it is our position that we should bring this question to the public via a referendum.	Consider a referendum in Fall 2023.
Prior debt, $413,429.00 is not the responsibility of the school district.	It is not a reasonable use of school funds to split the prior deficit connected with programming outcomes.
A new agreement will need changes in plans for who manages the new equipment moving forward.	It is the position of the School District that, due to lack of maintenance/repairs, the HVAC is not running at optimal efficiency. The school district recommends our staff take over the operation and maintenance of the HVAC systems.

11/30/22 @ 4:30 p.m.

To: City of Whitewater Common Council

From: John Weidl, Eric Boettcher, Steve Hatton and Wally McDonell

Date: December 1, 2022

Re: Whitewater Aquatic Center (WAC)

I. Brief Background

2001 The City of Whitewater Aquatic Center started operations. The public contributed $3.5 million, the City of Whitewater contributed $2 million (funded by a bond issuance) and the School District provided the land.

The facility was operated by a Board.

2003 Mercy Healthcare took over operating the facility.

2009 The WAC Board took over the operations of the facility.

2016 The 15 year operation agreement expired, and the City of Whitewater Park & Recreation Board took over operation of the WAC under a new agreement with the School District. The WAC facility operated at a deficit of over $400,000 from 2016 – 2021 that was paid by the City. The School District is responsible for one half of that deficit but has not paid it to date.

2021 The 2016 Agreement expired. A new agreement was drafted, and the School Board passed a draft (attached hereto). The City Council passed the draft with some minor changes. The School Board never passed a revised agreement that included the changes requested by the City Council.

2022 The City staff believes that the 2021 agreement (that was never signed) does not sufficiently address the annual operating costs of the facility, the School Districts $200,000 delinquent payment owed to the City or the capital costs that will be incurred in the next approximately 5 years necessary to keep the facility operating. The estimated costs of the renovations are HVAC $1.3 million, Pool Floor $250,000, Roof (possible) $463,000, Play Features (unknown) and Boilers $100,000.

II. The staff is requesting direction from the City Council on the following matters:

1. How to deal with the accumulated deficit. The WAC accumulated deficit was $413,429 at the end of 2021. The School District's share was $251,215. The City's share was $162,214.

   Staff recommendation: Request that the School District pay the deficit to the City by June 30, 2023.

2. Establish an annual date to determine any annual deficit and require an annual balancing payment

   Staff recommendation: Establish a date

3. Create a capital expense funding plan

   Staff recommendation: Establish an annual payment by City and the School District to a capital expense reserve fund that cannot be used for operational costs.

4. Decide whether the City should be responsible for the exterior maintenance and repair costs of the facility (roof, bricks, dedicated parking lot maintenance, etc.)

   Staff recommendation: Request that the School District be responsible for these costs.

5. Annual operation cost contribution

   Staff recommendation: Negotiate a more realistic annual contribution by the City and School District to operational expenses that will not cause an annual deficit and add a 2% annual increase.

6. Additional lease for school extra use

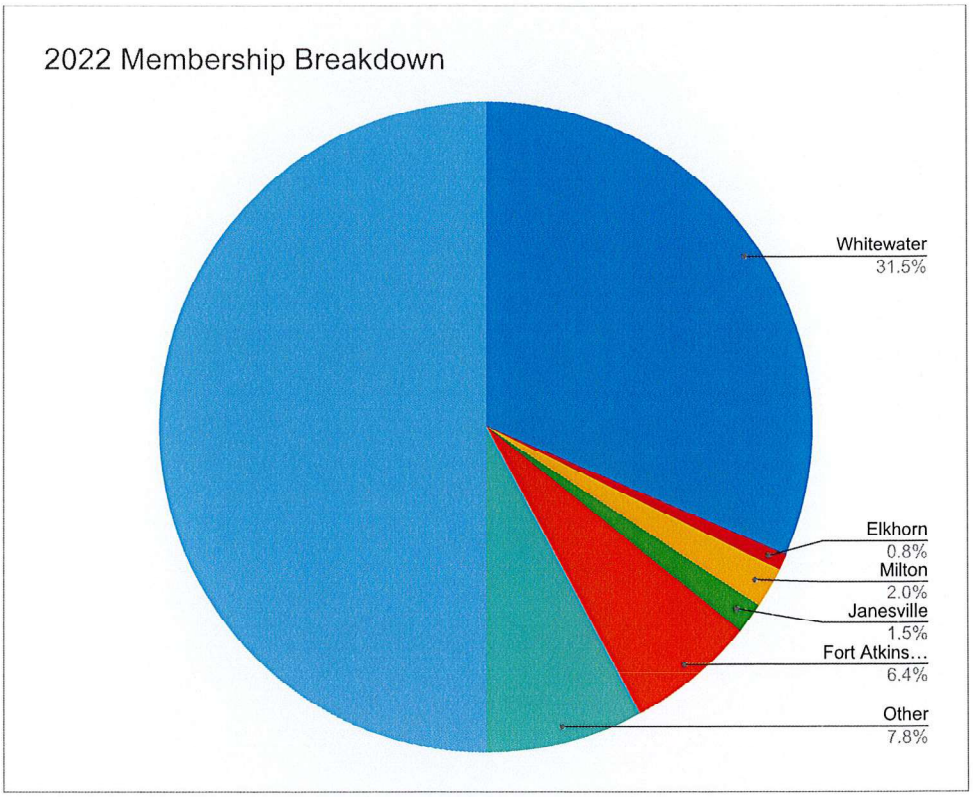
   Staff recommendation: Require the School District to pay an additional amount for its program use as opposed to having equal contributions to operation costs by the City and School District.

January Membership Report	2023	2022
Revenue By Membership Level		
247-41000-55 - WAC Family Membership Revenue		
	$ 12,880.39	**$ 15,189.49**
247-41200-55 - WAC Youth Membership Revenue		
	$ 1,590.24	**$ 67.50**
247-41250-55 - WAC Adult Membership Revenue		
	$ 3,667.34	
247-41300-55 - WAC Senior Membership Revenue		
	$ 2,988.72	
247-41350-55 - Insurance Program Membership Revenue		
	$ 3,593.00	**$ 1,533.00**
Total Membership Revenue	$ 24,719.69	$ 16,789.99

January Membership Summary	2023	2022
New Primaries	238	122
All New	610	263
Primary Renewals	23	56
All Renewals	26	114
Active Primaries	1016	743
All Active	2176	1488

Day passes summary	2023	2022
	$ 8,963.69	$ 5,887.07

Whitewater	1139
Elkhorn	29
Milton	72
Janesville	56
Fort Atkinson	231
Other	283
	1810



Marketing Audit Summary

Outline

The following provides an outline of this document:

1) Overview & process
2) Review of what is working, what is not working, & changes going forward
3) Recommendations
4) 2023 Customer Journey Touchpoints
5) 2023 Promotional Schedule

Overview & Process

From January to February 2023, Kreative Solutions worked with the Whitewater Aquatic and Fitness Center to audit the 2021 Marketing Strategy.

Our initial consultation on January 12th, 2023 focused on:

- Reviewing the last three years of membership data,
- Discussing what tactics are being used to target new members and what is working,
- Reviewing marketing efforts so far and ways to improve,
- Outlining recommendations and changes going forward.

Following the first consultation, Kreative Solutions

- Drafted this summary, February content calendar, & March Content Calendar
- Gained access to the various accounts to evaluate efforts and analytics
- Designed email template
- Revised the marketing guide with an updated promotional & campaign schedule.

Our second consultation on February 7th focused on:

- Gain insights from new employee
- Define new member checklist & exit survey
- Define referral program & campaign schedule
- Demo website member signup & events

Following the first consultation, Kreative Solutions

- Provided guidance on new brochure
- Defined Social Media Policy & send meeting follow-up documents

Our final consultation focused on:

- Start Instagram & verify Google Business Brochure
- Add survey link to non-renewing template
- Bookmark new member checklist on front desk computer

Current vs. Future Implementation

The Marketing Memo by Eric Boettcher provides a detailed account of what has happened, what is working, and what can be improved. The table below summarizes what is working (+) vs. what is not working (-) on the left and the right provides changes going forward.

What is Working vs. is not Working	Changes Going Forward
+ Sharing announcements on the website	• Share how to subscribe to announcement guide with members
+ Actively using Facebook to share announcements, events & cancellations	• Content calendar to consistently share what followers are looking for (ex: Monday weekly fitness class roundup & Thursday open swim schedule) and more of what we offer (ex: Friday Feature & Wednesday Did You Know)
- Few testimonials (little user-generated content, only owned content)	• Aim for one testimonial per month to share on the 1st Tuesday of the month
- No member success story (little user-generated content, only owned content)	• Aim for one member success story to share on the 3rd Tuesday of the month • Give a t-shirt for sharing their story
- Only a Facebook channel	• Add Instagram for younger audience
- Not utilizing Google Business	• Post the monthly fitness schedule • Post events/programs as needed • Share review link with members
- Day passes are still down since pre COVID	• Incorporate day pass promotions into campaign schedule to increase volume
+ Schedule a tour, try the day for free	• Share this on social monthly/quarterly
+ Fitness classes included in membership	• This is a huge differentiator so promote it. Share a "did you know" every month on social media
+ Word-of-mouth	• Give each member ___ free guest passes each month/quarter/year • Define referral program - Refer a friend for an annual membership & get one month free
+ Improve Email Marketing Open Rates	• Send to WAFC members only • Define routine email sections • Incentive opens with a special offer. • Outline 12-month exclusive offers • Clean up email list every December
Direct Mail	• Target new potential members – Segment neighborhoods and send postcard with a free day pass to different addresses each month/quarter

Recommendations

Membership

Year	Avg. Members
2020	1515
2021	1628
2022	1850
2023	~ 2,150

1) Set specific goals.
    a. Increase revenue by $20,000 in 2023
    b. Bring in 300 new members in 2023
    c. Increase day passes with incentives & campaigns.
2) Create New Member Checklist for the front desk and always ask new members, "How did you hear about us?"
3) Automate an exit process for members.
    a. Currently, members get a 10-day renewal notice.
    b. Once membership expires, send a "We want you back! What can we do?" email with a survey to understand why they left & what would bring them back.
    c. Semi-annually segment a list of non-renewals and send them a "Would you like to give the WAFC another try? Visit us with this free day pass."
4) Current members are the best source of new members, so create a referral program.
    a. Give each member ___ free guest passes each month/quarter/year.
    b. Refer a friend for an annual membership & get one month free.

Partnership & Cross Promotion

1) Develop new partnerships
    a. UW-Whitewater - Partner so students use the WAFC when UWW is at capacity.
    b. Connect with Student Rental companies to offer a free week to new renters.
    c. Senior Center Membership – Give a free membership
    d. WUSD & City – Discounted employee membership
2) Outreach to local businesses to increase sponsorship and include a WAFC discount for participating lane sponsors (5 out of 8 lines are currently sponsored)
3) Increase cross promotion.
    a. Park & Recreation – Be present at all events
        i. Discover Whitewater Series – Table and day pass giveaway
        ii. Concert in the Park – Day pass giveaway
    b. W3 - Attend farmers markets with day pass giveaways
    c. University - Continue Family Fest Table with day pass giveaways
    d. Reach out to the Whitewater Chamber to see if they would include upcoming programs, events, and promotions in their newsletter
    e. Send upcoming programs, events, promotions, and updates to the City of Whitewater PR contact to share on the City social media

Marketing Recommendations

1) Outline campaign schedule to execute promotions & giveaways on a regular basis.
2) Make existing promotions known by posting announcements on the website, sharing on social media, or including in the email newsletter
    a. Groupon for a 10 pack of day passes
3) Promote free community nights to encourage new visitors.

2023 Customer Journey

The following is an updated customer journey that is also listed in the marketing guide:

Stage	How to Target
Awareness	• SEO • Referral & city/school partnership • Social media • Press releases (example: 24/7 access) • Direct mail – Holiday card with free guest pass • Health fairs – As applicable • Job fairs – High school or college for lifeguards & front desk • Referral program – Refer a friend & guest pass each month • City Guide • University Community Showcase • Partnerships – WUSD, City, and maybe University • Summer Big Rig Event – People who attended got day passes • Parks & Recreation cross promotion • On-campus flyer promotion for lifeguards
Interest	• Website • Social media • Member testimonials and/or success stories • Brochure • Galleries, video tours, & images
Consideration	• Pricing matrix • Testimonials & reviews • Brochures & flyers • Member introduction phone calls and/or appointments • Daily pass for classes and/or center access
Purchase	• In-person membership sign-up meeting
Loyalty	• Member-focused guidance and customer service • Training & coaching • Referral program • Newsletter – add exclusive offers • Social Media

Promotion Strategy

Owned Promotional Channels & Content Distribution

The following table lists "owned" promotional channels, details the frequency of updates and specifies which type of content is appropriate for that channel.

Channel	Frequency	Content
Website	As needed	• Add copy & content to pages. • Update announcements
RecDesk	Weekly/monthly	• Update swim/class schedule • Update calendar of events
Facebook & Instagram	3-5 posts/week	Follow content calendar: • 1 Monthly Fitness Schedule • Monday Fitness Class Schedules • Thursday Open Class Schedule • Friday Feature of Amenities & Classes • Wednesday Promotions & DYK • 1st Tuesday Testimonials • 2nd Tuesday Staff Highlight • 3rd Tuesday Member Success • Integration of campaign schedule
Email	Monthly	• Classes, open swim, & hours
GoogleMyBusiness	Monthly	• Monthly fitness schedule • Upcoming events & programs
Direct Mail	Semi-annual	• Mail a postcard to local residents offering a free daily pass to check out the center • December win-back postcards

Partner Promotional Channels & Content Distribution

The following table lists "partner" promotional channels, details the frequency of updates and specifies which type of content is appropriate for that channel. For cross-promotion, it is best to share the partners original content than repost as your own.

Channel	Frequency	• Content
Facebook	As-needed	• Share content from the original source and mention the source in the share (i.e., City of Whitewater, Seniors in the Park, etc.)
Banner	As-needed	• Share newsletters
Park & Rec Newsletter	Monthly	• Calendar of events & swim lessons • Highlight amenities and offerings • Have a presence at P&R events

Marketing Guide

Last Updated January 2023

Overview

Based in Whitewater, WI, the Whitewater Aquatic and Fitness Center is operated by the City of Whitewater's Park and Recreation Department and offer the following amenities:

Aquatic	Fitness Center	Training & Classes
• Lap pool • Leisure pool with play structure, lazy river, and water slide • Whirlpool • Locker rooms • Swim lessons • Aerobics, arthritis, & movement	• Cardio equipment • Free motion weights • Free weight area • Personal training	• Barre • Bootcamp • Cycling • EMOM • Pilates • Strong • Tabata • Yoga • Zumba

Objectives

Marketing efforts will focus on the following six objectives:

1) Increase Brand Awareness
Raise awareness of the Whitewater Aquatic & Fitness Center and its amenities.

2) Build Following & Generate Interest
Build a following and engagement online and generate interest in the facility through both traditional and digital marketing channels.

3) Generate Leads
Capture membership inquires via the website and/or Rec Desk software.

4) Grow Membership
Increase number of new and returning members.

5) Increase Member Involvement
Increase registrations for programs (i.e., CPR, Lifeguard, etc.) and/or classes (i.e., Cycling, Yoga, etc.)

6) Build Loyalty
Encourage positive word of mouth, bringing a guest, and/or membership upgrades (i.e., from fitness only to aquatic/fitness membership).

Target Audience

Marketing efforts will target the following target audiences:

Audience	Families	Individuals
Demographics	• Household with kids	• 18-64 years year old
Behaviors	• Fitness, Aquatic, or Combo • Tire out the kids	• Working out in fitness center • Workout routines
Goals/Needs	• Divide & conquer • Kids entertainment • Credible lessons/training	• Staying fit • Health & wellness • Keeping or building strength
Motivations	• Pool & open swim • Swim lessons • Concessions	• Amenity variety • Recreational fitness • Quieter environment
Frustrations	• Absence of zero-depth	• Limited hours • Limited equipment or access
Key Strategies	• J- Hawks • Social media • Posting events • Hosting swim meets	• Corporate partnerships • Social media • Advertising

Audience	High School Students	Seniors
Demographics	• Ages 14-18 years old	• 65 years/old+
Behaviors	• Stop in for concessions • Working out in fitness center • Staying fit • Socializing	• Leisure pool & hot tub • Classes (yoga, senior, & water)
Goals/Needs	• Cardio • Work out between seasons	• Recovery • Movement • Socialization
Motivations	• Greater variety than just free weights • Energy drinks & concessions • Being social with friends	• Recovery • Movement • Structure programming
Frustrations	• HS only has free wights	• Unsure, don't want to get hurt • Lack of cleanliness • Cold pools • Limited accessibility
Key Strategies	• Proximity to high school • High school coach referrals	• Seniors in the Park • Insurance program referral

Target Audience

Marketing efforts will target the following target audiences:

Audience	Faculty & Staff	Commuters
Demographics	• 30 years old+ female/male • Bachelors degree+	• 18-64 years old • Live out of town
Behaviors	• Lap swimming • Yoga & fitness classes	• Fitness center • Lap or leisure swimming
Goals/Needs	• Life fitness & keep moving • Health & wellness	• Health & wellness • Employer encouraged
Motivations	• Approachable staff • Off campus (fewer students) • Recreational fitness • Quieter environment	• Employer insurance discounts • Recreational fitness
Frustrations	• Work-life imbalance (i.e. separate fitness from campus) • Lap capacity	• Limited time • Needs to be on the way home
Key Strategies	• Whitewater Unified Teacher Discount Program • City Employee Discounts	• Corporate partnerships

Competitive Analysis

Key Membership Factors

In addition to the individual's social influences and motivation for joining the gym, the following key membership factors often influence one's decision making:

	WAFC Offering	Competition
Amenities	Pool Fitness	Gymnasium Racquet ball courts Indoor tracks
Insurance Programs	Renew Active (United Healthcare) Silver Fit (Insurance groups)	Silver Sneakers (Medicare??)
Proximity	Research shows most people drive 6 miles for specialized gyms	
Hours	Various by Day	24/7 Access
Membership Type & Cost	Guest, Daily, Monthly, & Annual (no joining/initiation fee)	Guest, Daily, Monthly, & Annual
Equipment	Cardio Free weights Strength training	Cardio Free weights Strength training
Availability	Spacious, not too crowded	Can be crowded
Personal Training	Available	Varies
Supplemental	Physical therapist	Tanning & massage
Classes	Barre, Bootcamp, Cycling, EMOM, Pilates, Strong, Tabata, Yoga, & Zumba	Depends on facility
Programs	CPR, First Aid, etc.	Depends on facility
Environment	Off-campus near high-school	

These key membership factors give rise to key selling points and amenities to highlight on your website and other promotional channels. Specifically,

- Showcase images and descriptions of offering.
- Highlight insurance programs and other key partnerships (i.e., discounts for City employees and Whitewater Unified School District employees).
- Clearly describe your location to make it easy for prospects to find.
- Highlight guest and daily memberships to encourage new members to try out a class and/program, the fitness center, and/or aquatic center
- Emphasize no initiation fee and no contracts – that is definitely a differentiator.
- Highlight the extras and unique offerings like a physical therapist on site.
- Create a flyer and website page that makes it easy to view class offerings
- Community pride and support

Positioning Strategy

Local Comparison

	Whitewater Aquatic	Warhawk Fitness	Anytime Fitness
Price Comparison	$35/month Adult	$165/sem. ($41.25/mo.)	$36.99/month
Fitness & Cardio	X	X	X
Personal Training	X	X	X
Open Swim	X	X	
Swim Lessons	X		
Flexible Membership	X	X	X
Guest Passes	X	X	X
Senior Discounts	X	X	
Hours	Varies by Day	Variable by Day/ Events	24/7
Environment	Off-campus	On-campus	Off-campus
Parking	Accessible	???	Accessible

How can you differentiate yourself from the local competition?

- Flexible memberships
  - No contracts
  - Aquatic, fitness, vs. combo for student, household, and/or seniors.
  - Simplify with a pricing matrix table vs. wordy descriptions.
  - Discounts for city and Whitewater Unified employees
- Make it easy to try it out:
  - Classes/programs are available to non-members with a daily passes
  - Guest passes and daily passes available
- Unique offerings
  - Swim lessons
  - On-site physical therapist
  - Classes including Barre, Pilates, Tabata, and Zumba
- Make it easy to learn about the senior discounts offered.
- Highlight what makes your environment special:
  - Recreational fitness with approachable staff
  - More laid back, quiet, less competitive environment

Positioning Strategy

Mission
The Whitewater Aquatic and Fitness Center is dedicated to providing our members with a clean, safe, inclusive, and accessible recreational fitness and aquatic center.

Values

- **Wellness** – Promote healthy living, fitness, and wellness through amenities, coaching, training, classes, programs, & services.
- **Accommodating** – Providing personalized services and quality amenities in a clean, accessible, and inclusive environment.
- **Fun** – Provide a welcoming space for recreational fitness that appeals to young adults, couples, families, and seniors.
- **Community** – Provide a welcoming, accommodating, inclusive environment to all.

Tagline

- Guiding You Along Your Fitness Journey

Supporting Messages

- Hidden gem of the community
- Enabling Wellness in Whitewater

Why Members Join

- Affordable price
- Variety of amenities & indoor pool with zero-depth access
- Recreational fitness
- Personable, approachable staff
- Guidance, support, training, & coaching
- Member-focused (i.e., staff meetings & follow-up on member feedback)
- Cleanliness
- Inviting, accommodating, warm environment
- Convenient parking
- Community pride

What benefits does the competition claim vs. what is unique to WAFC?

Classic Benefits	***Unique Features***
• Affordable membership options • Personable, approachable staff • Guidance for personal success • Partner & insurance discounts • Family-oriented • Group classes & personal training • All access to variety of amenities • Convenient & close parking • Cleanliness	• Indoor pool with zero-depth access • Indoor pool with slide & lazy river • Lap Lane Reservations • Swim Lessons & Water Movement Classes • Proximity to high school • Newer, well-maintained equipment

Positioning Strategy

Unique Selling Proposition
With a member-focused approach, the Whitewater Aquatic and Fitness Center provides a clean, safe, welcoming, and accommodating recreational aquatic and fitness center to enable healthy living and wellness for residents of Whitewater and beyond.

Brand Positioning Statement
For individuals, families, students, seniors, and commuters in Whitewater and beyond, the Whitewater Aquatic and Fitness Center provides an affordable, convenient recreational fitness environment with a variety of amenities including a fitness center, aquatic center, personal training services, group classes, locker rooms, and concessions. With a member-focused hands-on-approach, the approachable staff are here to guide and enable you on your wellness journey.

SWOT Analysis

Strengths	**Weaknesses**
• Variety of amenities • Various affordable membership options • Approachable, welcoming staff • Convenience • City & school supported • Concessions • Insurance programs • On-site physical therapist & personal trainers • Patio • Newer, well-maintained equipment • Swim Lessons & Water Movement Classes • Indoor pool with zero-depth access • Plenty of close & convenient parking • Cleanliness • Friends of Whitewater Aquatic Center where ½ the membership fee is paid for low-income families • Community involvement & giveback	• Hours and availability • No gym, courts, or indoor track • Lack of outdoor amenities • No massage and/or tanning • Location & findability • Dated offerings of classes. • Limited scale and size • No childcare • Limited resources
Opportunities	**Threats**
• Virtual and/or recorded classes • Well-rounded wellness experience • Specialized, unique classes • Nutrition (smoothies coming soon) • Birthday parties & group reservations • Offering 24/7 access • Daily and guest passes • Patio • High School Swim Meets	• COVID-19 • External regulations • Rural location in a small town • At-home fitness • Nearby outdoor and indoor pools

Content Strategy

Content Sources
Always remember, "Great content needs to be all of the following: credible, shareable, useful or fun, interesting, relevant, different, and on brand" (Simon Kingsnorth, 2016).

Content that you can share today:	Content that you can start building:
• Facility photos • Class & Open Swim Schedules • Special Trainings • Recipes • Motivational & Inspirational • Humor/Memes • Training intros • Articles, how-to's, tips, etc.	• Challenges • Member recognition & success stories • Authentic in-action member photos • Facebook live in-action videos • Facebook live tips • What we offer/Member benefits • Promotional partnerships • Community involvement • Daily themed hashtag content • Staff appreciation • Recorded workouts

Content Suggestions

- **FAQs:** Answer your customers questions truthfully and accurately.
    - Create an FAQ page for commonly asked questions.
    - Clearly, transparently display membership pricing/packages on website.
    - Outline # reasons to join.
- **Custom Journey:** What customers need to know before purchasing.
    - Showcase amenities on website and on a flyer.
    - Create a flyer that outlines classes and timing (link to example)
    - Create an about the staff, trainer, and/or physical therapist page.
    - Create a virtual tour video and/or gallery.
- **Research:** Look at the competition & note applicable topics
    - Showcase members in action via Facebook Live videos and/or photos.
    - Share member success stories & testimonials (see examples)
- **Keyword:** Identify long-tailed keywords to optimize content for
    - Benefit of Swimming & How We Can Help
    - Workouts, how-to, getting started, nutrition, etc. (see examples)
    - Ask a Coach, Trainer, etc. (see examples)

Promotion Strategy

Competitive Analysis

	Facebook	Instagram	LinkedIn	Pinterest	Twitter	YouTube	Email
Whitewater Aquatic & Fitness Center	X						X
Warhawk Fitness & Aquatics	X						
Anytime Fitness – Whitewater	X	X					
Geneva Lakes Family YMCA	X		X	X		X	X
Mukwonago YMCA	X	X	X		X	X	
YMCA Northern Rock County	X						
Fort Atkinson Family Aquatic Center	X						
Four Lakes Athletic Club	X						
Jefferson Family Aquatic Center							
Blackhawk Fitness Club	X						
Janesville Athletic Club	X	X				X	
Anytime Fitness – Wales	X	X					
Anytime Fitness – Jefferson	X						
Anytime Fitness – Mukwonago	X						
Anytime Fitness – Delavan	X	X					
Planet Fitness	X						
Sara's Health & Fitness	X	X		X		X	
Snap Fitness – Elkhorn	X	X					
Snap Fitness – East Troy	X						
	18/19	7/19	2/19	2/19	1/19	4/19	2/19

What are the key takeaways for promotional channels?

- Definitely continue Facebook.
- Instagram is great for B2C but it requires great photographs and videos.
- YouTube could be leverage for videos.
- Email marketing for scheduling/classes.

Promotion Strategy

Customer Journey

Outline how you will target prospects and/or customers every step of the journey:

- Awareness: A consumer becomes aware of your brand
- Interest: A consumer thinks you can solve their problem & wants to learn more
- Consideration: The consumer is evaluating alternative solutions to their problem
- Purchase: The consumer takes action.
- Loyalty: The consumer provides referral and/or repeat business

Stage	How to Target
Awareness	• SEO • Referral & city/school partnership • Social media • Press releases • Direct mail – Holiday card with free guest pass • Health fairs – As applicable • Job fairs – High school or college for lifeguards & front desk • Referral program – Refer a friend & guest past each month • City Guide • University Community Showcase • Partnerships – WUSD, City, and maybe University • Summer Big Rig Event – People who attended got day passes • Parks & Recreation cross promotion • On-campus flyer promotion for lifeguards
Interest	• Website • Social media • Member testimonials and/or success stories • City Guide • Galleries, video tours, & images
Consideration	• Pricing matrix • Testimonials & reviews • Brochures & flyers • Member introduction phone calls and/or appointments • Daily pass for classes and/or center access
Purchase	• In-person membership sign-up meeting
Loyalty	• Member-focused guidance and customer service • Training & coaching • Referral program • Newsletter • Social Media

Promotion Strategy

Owned Promotional Channels & Content Distribution

The following table lists "owned" promotional channels, details the frequency of updates and specifies which type of content is appropriate for that channel. The Campaign Schedule should be used to guide seasonal content & promotions.

Channel	Frequency	Content
Website	As needed	• Add copy & content to pages. • Update announcements
RecDesk	Weekly/monthly	• Update swim/class schedule • Update calendar of events
Facebook & Instagram	3-5 posts/week	Follow content calendar: • 1 Monthly Fitness Schedule • Monday Fitness Class Schedules • Thursday Open Class Schedule • Friday Feature of Amenities & Classes • Wednesday Promotions & DYK • 1st Tuesday Testimonials • 2nd Tuesday Staff Highlight • 3rd Tuesday Member Success • Integration of campaign schedule
Email	Monthly	• Classes, open swim, & hours
GoogleMyBusiness	Monthly	• Monthly fitness schedule • Upcoming events & programs
Direct Mail	Semi-annual	• Mail a postcard to local residents offering a free daily pass to check out the center • December win-back postcards

Partner Promotional Channels & Content Distribution

The following table lists "partner" promotional channels, details the frequency of updates and specifies which type of content is appropriate for that channel. For cross-promotion, it is best to share the partners original content than repost as your own.

Channel	Frequency	• Content
Facebook	As-needed	• Share content from the original source and mention the source in the share (i.e., City of Whitewater, Seniors in the Park, etc.)
Banner	As-needed	• Share newsletters
Park & Rec Newsletter	Monthly	• Calendar of events & swim lessons • Highlight amenities and offerings • Have a presence at P&R events

Social Media Strategy

Owned vs. Partner Content
Whether you post or share is a very important decision, as a rule of thumb post your owned content (i.e., images, videos, Canva templates, etc.) and share partner content (i.e., city news). Cross promotion helps both parties, but credit should be given to the original source by either mentioning the source via @ or sharing the post directly. Partner content should be shared sparingly to avoid diluting your own presence. Followers choose who they want to follow. If they want fitness and aquatic updates, they will follow the Whitewater Aquatic and Fitness page. If they want city news and updates, they will follow the City Page. By including the @ mention link, you are giving them a direct path to follow whichever pages they prefer.

Quality Check Before Posting
Before posting to the blog or social media, ask yourself:

- Is this on-brand?
- Is this shareable, useful, fun, or interesting to my audience?
- Is this relevant to my audience?
- Does this post support my credibility?
- Does the post include all the elements of a "good post"?

Elements of a Good Social Post

- Attention Getter
- Clear, concise, & compelling writing
- Visual (i.e., image or video)
- Call-to-action with a link or a button
- 1-2 Hashtags & Mentions or tags

Recommended Content

Priority Content	Filler Content
• Facility photos • What we offer/Member benefits • Class & Open Swim Schedules • Special Trainings & Programs • Training intros • Staff appreciation • Member recognition/success stories • Authentic in-action member photos • Daily themed hashtag content • Upcoming events & job openings	• Recipes • Motivational & Inspirational • Humor/Memes • Challenges • Facebook live in action videos • Facebook live tips • Promotional partnerships • Community involvement • Recorded workouts • Articles, how-to's, tips, etc.

Content Strategy

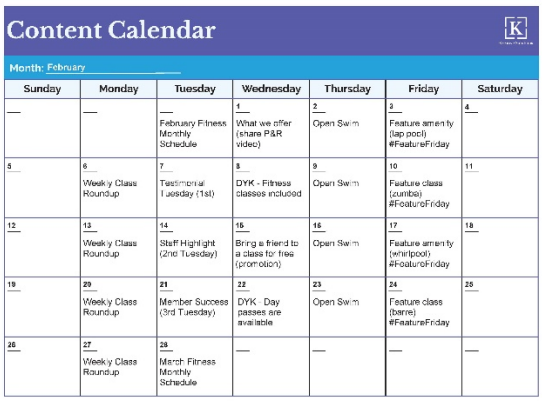
Content Suggestions

Use the content calendar to schedule posts as a baseline. Post updates and announcements as applicable.

As a rule of thumb:

- Mondays = This week's fitness schedule
- 1st Tuesday = Testimonial
- 2nd Tuesday = Staff Highlight
- 3rd Tuesday = Member Success
- 4th Tuesday = Next month's fitness class schedule
- Wednesday = Feature a did you know? (DYK), promotion, program, or event
- Thursday = This week's open swim schedule
- Friday = Feature an amenity and/or class

February Sample

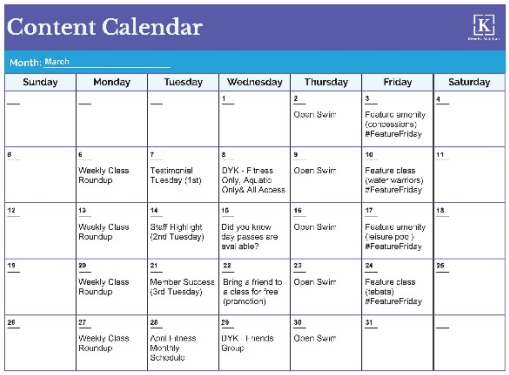


Content Calendar

Month: February

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		February Fitness Monthly Schedule	1 What we offer (share P&R video)	2 Open Swim	3 Feature amenity (lap pool) #FeatureFriday	4
5	6 Weekly Class Roundup	7 Testimonial Tuesday (1st)	8 DYK - Fitness classes included	9 Open Swim	10 Feature class (zumba) #FeatureFriday	11
12	13 Weekly Class Roundup	14 Staff Highlight (2nd Tuesday)	15 Bring a friend to a class for free (promotion)	16 Open Swim	17 Feature amenity (whirlpool) #FeatureFriday	18
19	20 Weekly Class Roundup	21 Member Success (3rd Tuesday)	22 DYK - Day passes are available	23 Open Swim	24 Feature class (barre) #FeatureFriday	25
26	27 Weekly Class Roundup	28 March Fitness Monthly Schedule				

March Sample



Content Calendar

Month: March

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 Open Swim	3 Feature amenity (concessions) #FeatureFriday	4
5	6 Weekly Class Roundup	7 Testimonial Tuesday (1st)	8 DYK - Fitness Only, Aquatic Only& All Access	9 Open Swim	10 Feature class (water warriors) #FeatureFriday	11
12	13 Weekly Class Roundup	14 Staff Highlight (2nd Tuesday)	15 Did you know day passes are available?	16 Open Swim	17 Feature amenity (leisure pool) #FeatureFriday	18
19	20 Weekly Class Roundup	21 Member Success (3rd Tuesday)	22 Bring a friend to a class for free (promotion)	23 Open Swim	24 Feature class (tabata) #FeatureFriday	25
26	27 Weekly Class Roundup	28 April Fitness Monthly Schedule	29 DYK - Friends Group	30 Open Swim	31	

The did you know, promotions, programs, or events can be inspired by the campaign schedule on the following page. For example, if swim lessons start in January, post at the end of December and early January a graphic with the classes & start/end dates and make sure to include a link to sign up in the copy of the post. For any upcoming program or event, schedule 2-3 posts in the weekly leading up to it. Use the did you know or promotions as filler in between*

Hashtag Strategy

What is a Hashtag & How to Use?
A hashtag is a word or phrase preceded by a hash mark (#). A hashtag is used within a post to identify a keyword or topic of interest. Hashtags help facilitate searches on social media platforms and can be thought of as a "label" or "category." Hashtags help increase engagement, build your brand, and expand your reach.

Facebook	*Instagram*
1-2 hashtags	9-15 hashtags

Branded Hashtag
Branded hashtags are great but be specific on when to use them. Consider including #WAFC when posting owned content.

Industry Hashtags
A few industry specific hashtags to consider:

#fitness	#PersonalTrainingSpecial	#HealthyLiving	#openswim
#fitnessmotivation	#PersonalTraining	#WeightLossJourney	#swimmingpool
#fitnessjourney	#Pilates	#InvestInYourHealth	#swimlessons
#fitnessgoals	#Barre	#HealthyLifestyle	#watersafety
#recreation	#cycling	#BeFitAndHealthy	#aquafitness
#exercise	#EMOM	#Helathandwellness	#waterworkout
#workout	#Tabata	#Fitandstrong	#pooltime
#workouttups	#Yoga	#Wellbeing	#lapswimming
#Fymlife	#Zumba	#WhitewaterWellness	#lapswim
		#Wellness	#swim

Daily Hashtags
For content inspiration, here are a few daily hashtags for consideration:

- #MotivationMonday – Share something inspirational and/or motivational.
- #MaxOutMonday – Goal setting for personal trainers & fitness
- #TransformationalTuesday – Share a member success story or before/after.
- #TuesdayTip - Share helpful, educational content
- #TuesdayTraining - Introduce a trainer and/or share a success story
- #TestimonialTuesday – Share a member testimonial
- #WellnessWednesday – Provide tips for staying healthy
- #WorkoutWednesday – Share a workout or share a sneak peek of a class.
- #ThankfulThursday – Thank a customer or someone who helped your business
- #FridayFreebie – Promote sales, deals, etc.
- #FormFriday – Share the proper form for a workout via a photo/video.
- #FitnessFriday – Share a workout or upcoming class/program

Hashtag Strategy (Continued)

Hashtag Holidays

Hashtag holidays are a great way to mix things up and post themed content.

Date/Month	*Hashtag Holiday*	*Hashtag*
February	American Heart Month	#HeartMonth
April	Stress Awareness Month	#StressAwarenessMonth
April 16th	National Stress Awareness Day	#StressAwarenessDay
May	Water Safety	#WaterSafetyMonth
June 21	International Yoga Day	#InternationalYogaDay
August	National Wellness Month	#WellnessMonth
September 29	National Women's Health & Fitness Day	#FitnessDay
November 3	International Stress Awareness Day	#StressAwarenessDay

The above are just a sampling. For more inspiration, https://nationaldaycalendar.com/calendar-at-a-glance/

Email Marketing

Historical Performance

	01-23	12-22	11-22	10-22	09-22	08-22	07-22	06-22	05-22
Sends	2,800	2,800	985	1,802	822	2,804	824	825	829
Open Rate	47%	41%	47%	51%	52%	44%	48%	48%	56%
Click Rate	2%	1%	1%	3%	3%	3%	3%	3%	2%

Outline

- Welcome & special announcements
- Lap pool schedule
- Leisure pool schedule
- Fitness class schedule
- Upcoming events & programs
- Exclusive offer

Implementatio n

Roles & Responsibilities
To be determined by internal staff.

Approvals
To be determined by internal staff.

Tools
The contractor recommends using:

- Buffer and the Facebook Creator Studio to schedule social posts
- Canva to create social media images
- Google Alerts to monitor online mentions
- In-platform analytics for reporting.

Evaluation Framework

The following metrics may be observed or tracked on a monthly/bi-monthly basis. The client will receive monthly/bi-monthly reports and the contractor will be available to consult accordingly.

Channel	***Objective***	***Goal***	***Evaluation***
Website, Rec Desk, & SignUp Genius	Brand Awareness	Increase traffic	# of visitors # number of new visitors
	Engagement	Increase engagement	# of sessions, # pageviews # pages/session Avg. Session Duration
	Leads	Increase leads	# form submissions
	Membership	Increase purchases	#Increase order quantity #Increase online revenue
	Member Involvement	Increase registration	# class registrations
	Member Loyalty	Increase returning traffic	# sessions per user % of returning visitors
Facebook	Brand Awareness	Brand Awareness	Expand reach
	Engagement	Engagement	Increase likes & comments
	Leads	Increase website traffic	# of clicks to website
	Customer Loyalty	Build Loyalty	Increase shares
Google My Business	Brand Awareness	Brand Awareness	Expand reach
	Engagement	Engagement	Increase clicks to website
Email	Engagement	Stay in touch	% open rate
	Purchase	Increase purchases	# clicks to purchase
	Quote Leads	Increase quotes	# clicks to request a quote # clicks to online store
	Customer Loyalty	Provide value	% click rate

WAFC Social Media Policy

I. PURPOSE
   A. The Whitewater Aquatic & Fitness Center (WAFC) will use social media to increase brand awareness, build a following and generate interest, generate leads, grow membership, increase member involvement, and build loyalty.
   B. Social media includes Facebook, Instagram, Google Business Profile, and other online profiles where updates can be shared.
   C. This WAFC Social Media Policy was modified based on the City of Whitewater Social Policy.

II. GUIDELINES
   A. Under the direction of Whitewater Aquatic and Fitness Center Manager, designated staff will have access to social media for the purpose of posting and monitoring updates.
   B. All communications must be consistent with the purpose of the WAFC. The Whitewater Aquatic and Fitness Center is dedicated to providing our members with a clean, safe, inclusive, and accessible recreational fitness and aquatic center.
   C. Communications will be monitored for quality assurance purposes by the staff that is designated by the WAFC Manager, Parks & Recreation Director, or City Manager.
   D. The WAFC Manager, in consultation with the Director of Parks & Recreation, will be responsible for selecting the social media channels, frequency of updates, & content.

III. LOGOS
   1. Social media profiles will include the WAFC logo as their profile picture.
   2. The WAFC logo will be included on all owned graphics posted to social media (ex: fitness schedules, photos, etc.)
   3. The intent of such logo is to help create a brand for the WAFC.

IV. CONTENT
   1. The WAFC Manager will provide a content calendar detailing priority content to staff each month. Staff is to implement this calendar. If time and resources permit, the staff may add to the content calendar as long as all posts align the filler content detailed below:

Priority Content	Filler Content
• Facility photos • What we offer/Member benefits • Class & Open Swim Schedules • Special Trainings & Programs • Training intros • Staff appreciation • Member recognition/success stories • Authentic in-action member photos • Daily themed hashtag content • Upcoming events & job openings	• Recipes • Motivational & Inspirational • Humor/Memes • Challenges • Facebook live in action videos • Facebook live tips • Promotional partnerships • Community involvement • Recorded workouts • Articles, how-to's, tips, etc.

   2. The monthly content calendar will follow the pattern detailed below:
      a. Mondays = This week's fitness schedule

b. 1st Tuesday = Testimonial
c. 2nd Tuesday = Staff Highlight
d. 3rd Tuesday = Member Success
e. 4th Tuesday = Next month's fitness class schedule
f. Wednesday = Feature a did you know? (DYK), promotion, program, or event
g. Thursday = This week's open swim schedule
h. Friday = Feature an amenity and/or class

3. Whether you post or share is a very important decision, as a rule of thumb post your owned content (i.e., images, videos, Canva templates, etc.) and share partner content (i.e., city news). Cross promotion helps both parties, but credit should be given to the original source by either mentioning the source via @ or sharing the post directly.
4. Elements of a Good Social Post
   a. Attention Getter
   b. Clear, concise, & compelling writing
   c. Visual (i.e., image or video)
   d. Call-to-action with a link or a button
   e. 1-2 Hashtags & Mentions or tags
5. Before posting to the blog or social media, ask yourself:
   a. Is this on-brand? Is the logo included?
   b. Is this shareable, useful, fun, or interesting to my audience?
   c. Is this relevant to my audience?
   d. Does this post support my credibility?
   e. Does the post include all the elements of a "good post"?

V. COMMENTS

1. Official social media pages for the WAFC will accept user comments.
2. Public users visiting official social media sites may also be directed to appropriate pages of the WAFC's website where comments will be allowed.
3. Social media sites and WAFC blog pages may allow for the posting of citizen comments in response to WAFC communications.
4. Such comments will be accepted or rejected based on the following standard:
   a. Citizen comments will be welcome on these sites.
   b. Citizens wishing to post a comment through City Blogs will need to register in a manner similar to the registration/verification process used by most news media sites.
   c. Citizens wishing to post to social media sites will have their posts reviewed for appropriate content. If the post is in violation of this policy, then the content shall be backed up and deleted from the post.
   d. The City will not allow to be posted the following comments:
      1) <u>Personal attacks.</u> Posts may express a user's opinion regarding a posted issue or a specific comment made about a posted issue, but posted comments cannot directly attack a specific person.
      2) <u>Profanity or offensive comments regarding a person's race, gender, sexual orientation, disability, ethnicity, or religion.</u>
      3) <u>Encouragement of illegal activity.</u>
      4) <u>Comments unrelated to the initial blog post.</u> Posted comments must relate to the subject of the post.

5) Advertisements related to posts, unless approved by the City Manager, in consultation with the Whitewater Parks & Recreation Director.

e. Response to posted comments, when relevant, will be posted within the normal hours of operation by the staff assigned to the administration of those Social Media sites.

f. Response times to comments are encouraged to be within 24 hours of posting.

g. WAFC will hold a standard practice of allowing comments on a particular subject to remain visible on the website for a minimum of seven (7) days. However, WAFC reserves the right to close any posting at any time.

E. MONITORING

1. Access to social media tools will be monitored by the WAFC Manager and the City Communication PR contact under the direction of the Director of Parks of Recreation, the City Manager, or the desired designate.
2. Only those individuals assigned with posting communications will be allowed to access social media tools.
3. Use of social media for personal purposes by any employee in any department on WAFC time or on the WAFC's network is not allowed.

F. Private Use of Social Media

1. Employees may not attribute personal statements, opinions, or beliefs to the City of Whitewater when engaging in private use of social media.
2. Any person identified as an employee of the City of Whitewater on a publicly accessible social media site is expected to maintain a positive online image and conduct that is consistent with the Mission and Values of the City of Whitewater as well as the City's goals and objectives.
3. Employees may be subject to disciplinary action for internet postings that are inconsistent with the interest of the City, display conduct unbecoming of a City employee, or demonstrate disloyalty to the goals and objectives of the City.

VI. REPORTING

RECEIVED
JUN 12 2001
WISCONSIN DFI

Sec. 181.0202
Wis. Stats.

State of Wisconsin
Department of Financial Institutions

ARTICLES OF INCORPORATION – NONSTOCK CORPORATION

(NOTE: **Do not use** *this form for organizing a for-profit business corporation. Use Form 2*)

Executed by the undersigned for the purpose of forming a Wisconsin nonstock corporation under Ch. 181 of the Wisconsin Statutes, repealed and recreated by 1997 Wisconsin Act 79:

STATE OF WISCONSIN
FILED
JUN 19 2001
DEPARTMENT OF FINANCIAL INSTITUTIONS

Article 1. Name of corporation: Whitewater Aquatic Center, Inc.

Article 2. The corporation is organized under Ch. 181 of the Wisconsin Statutes.

Article 3. Name of the initial registered agent: Jim Schroeder

Article 4. Street address of the initial registered office: (*The complete address, including street and number, if assigned, and ZIP code. P.O. Box address may be included as part of the address, but is insufficient alone.*)

1666 Mound View Place
Whitewater, WI 53190

Article 5. Mailing address of the initial principal office:

1666 Mound View Place
Whitewater, WI 53190

Article 6. (Select and mark (X) one of the statements below)

(☐) The corporation will have members. **OR** (☒) The corporation will not have members.

Article 7. The number of Directors shall be fixed by the By-Laws but shall not be less than three (3).

Article 8. The purpose or purposes for which the corporation is organized:

The corporation shall be operated for the purpose of developing, managing, operating and maintaining an indoor multi-purpose aquatic facility as a public facility serving the general public recreational needs of the City of Whitewater, Wisconsin and its recreational programs and the programmatic needs of the Whitewater Unified School District (collectively the "Supported Organizations").

Upon dissolution of the Corporation, after paying or making provision for payment of all of the liabilities of the Corporation, the Board of Directors shall dispose of all assets of the Corporation to or for the benefit of the Supported Organizations. If either of the Supported Organizations or its successor shall not then be in existence or shall fail to qualify as an

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exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Code), then the Board of Directors shall dispose of all such remaining assets to or for the benefit of the remaining Supported Organization that does qualify as an exempt organization under the applicable provisions of said Internal Revenue Code. If both of the Supported Organizations and their respective successors shall not then be in existence or shall fail to qualify as an exempt organization as set forth above, the Board of Directors shall in its discretion dispose of all remaining assets of the Corporation exclusively for the use of such organization or organizations selected by the Board of Directors which are organized and operated exclusively for charitable purposes in accordance with Section 501(c)(3) of said Internal Revenue Code. Any assets of the Corporation not disposed of by the Board of Directors as provided herein shall be disposed of as ordered by the Circuit Court of Walworth County, Wisconsin, exclusively for such purposes and to such organization or organizations which are organized and operated exclusively for such purposes, as said Court shall determine.

Article 9. The Corporation is organized exclusively for charitable, educational or scientific purposes as provided in Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Code). No distribution or other use of the assets of the Corporation and/or income thereof shall be made to any person or organization other than an organization organized and operated exclusively for charitable purposes or which otherwise jeopardizes the federal income tax exemption of the Corporation pursuant to said Section 501(c)(3). So long at the Corporation qualifies and otherwise satisfies the requirements of this provision and the applicable provisions of the Internal Revenue Code, the assets of the Corporation and any income thereof shall be used for the purposes set forth herein.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, private individuals; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered in accordance with the Corporation's By-Laws.

No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under said Section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Code).

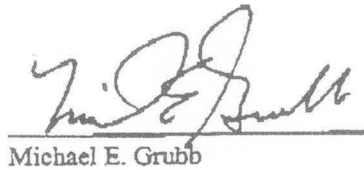
In the event the Corporation is classified as a private foundation under Section 509(a) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Code), (a) income of the Corporation for each taxable year shall be distributed at such time and in such manner as not to become subject to tax on undistributed income imposed by Section 4942 of said Internal Revenue Code; and (b) the Corporation shall not (i) engage in any act of self-dealing as defined in Section 4941(d) of said Internal Revenue Code, (ii) retain any excess business holdings as defined in Section 4943(c) of said

Internal Revenue Code, (iii) make any investments in any manner as to incur tax liability under Section 4944 of said Internal Revenue Code or (iv) make any taxable expenditures as defined in Section 4945(d) of said Internal Revenue Code.

FILING FEE - $35.00 SEE instructions, suggestions, and procedures on following pages.

Article 10. **Name** and **complete address** of each incorporator:

Attorney Michael E. Grubb
One East Milwaukee Street
P.O. Box 1148
Janesville, WI 53547-1148



Michael E. Grubb

This document was drafted by Attorney Michael E. Grubb
(Name the individual who drafted the document)

▶ OPTIONAL - Second choice corporate name if first choice is not available:

ARTICLES OF INCORPORATION
Nonstock Corporation

Attorney Michael E. Grubb
Brennan, Steil, Basting
& MacDougall, S.C.
One East Milwaukee Street
P.O. Box 1148
Janesville, WI 53547-1148

▲ Your **name, return address,** and **phone number** during the day: (608) 756-4141

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BY-LAWS
OF
WHITEWATER AQUATIC CENTER, INC.

BY-LAWS
OF
WHITEWATER AQUATIC CENTER, INC.

ARTICLE I.
General

Section 1. Purpose of Corporation. The purposes of this Corporation shall be as set forth in the Articles of Incorporation of the Corporation and these By-Laws. These By-Laws further specify various matters affecting the operation and governance of the Corporation.

The Corporation is organized and at all times shall be operated for the purpose of developing, managing, operating and maintaining an indoor multi-purpose aquatic facility as a public facility serving the general public recreational needs of the City of Whitewater, Wisconsin (the "City") and its related recreational programs and the programmatic needs of the Whitewater Unified School District (the "School District") (said organizations being sometimes hereinafter referred to as the "Supported Organizations" or "Supported Organization") on certain real property leased by the Corporation from the School District. Said real property, and the purposes, rights and obligations therein, are to be more specifically set forth in a Lease and Operation Agreement to be entered into by and between the Corporation, the City, the School District and S.W.I.M., Inc. ("SWIM"), a non-profit organization organized under the laws of the State of Wisconsin. A copy of said Lease and Operation Agreement shall be attached to these By-Laws and incorporated herein by reference upon execution thereof.

Section 2. Solicitation and Receipt of Gifts. The Corporation may seek gifts, contributions, donations and bequests (herein generally called "gifts") for its purposes. While the Corporation specifically encourages unrestricted gifts whose principal and/or income therefrom may be used for the Corporation's purposes in the discretion of the Board of Directors of this Corporation, the Board of Directors will accept gifts for a restricted or otherwise designated purpose if such restriction is determined by the Board of Directors to be acceptable or otherwise conforms with these By-Laws and any other guidelines established by the Board of Directors for such restricted gifts.

Section 3. Non-Discrimination. In the operation of the indoor multi-purpose aquatic facility, the Corporation shall not permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and said facility shall be operated in compliance with all laws, ordinances and regulations related to discrimination on any of said grounds.

ARTICLE II.
Members

Section 1. Membership. The Corporation shall have no members but shall be governed by a Board of Directors elected in accordance with these By-Laws. Upon request and/or authorization

of the Board of Directors, members of the public shall be eligible to participate in and assist in achieving the charitable purposes of the Corporation as set forth in these By-Laws and/or as otherwise established from time to time by the then acting Board of Directors.

Section 2. Annual Meeting. The annual meeting shall be held on the second Monday in the month of May each year beginning with the year 2002, at the hour of 7:00 o'clock p.m. for consideration and action on such matters as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Wisconsin, such meeting shall be held on the next succeeding Monday. Notice of such annual meeting shall be given in writing to the organizations responsible for appointing and/or electing Directors as set forth in Article III below and the then acting Directors not more than thirty (30) days or less than seven (7) days before the date set for such meeting, said notice to be in writing addressed to said organizations and the then acting Directors at their address as shown the records of the Corporation. Notice shall be deemed delivered if deposited in the United States Mail, postage pre-paid, and so addressed.

ARTICLE III.
Directors

Section 1. Powers. Subject to the limitations of the Articles of Incorporation of the Corporation, these By-Laws and the laws of the State of Wisconsin, the affairs of the Corporation shall be managed by the Board of Directors. Such responsibilities shall include the achievement of the Corporation's goals through officers, employees and an administrative structure designated and developed by the Board of Directors; the solicitation, development and investment of funds to assist the Corporation in achieving such goals; the formulation of any desirable amendments to the Articles of Incorporation or these By-Laws of the Corporation; and attendance at meetings of the Board of Directors and committees thereof.

Section 2. Number: Election; Term.

Subject to the provisions set forth herein, the number of Directors of this Corporation shall be nine (9) Directors which shall include the following:

Two (2) Directors appointed by the City (the "City Directors")
Two (2) Directors appointed by the School District (the "School District Directors")
Five (5) Directors appointed by SWIM (the "SWIM Directors")

The City Directors, School District Directors and SWIM Directors are sometimes collectively referred to in these By-Laws as the "Directors" or "Board of Directors."The City Directors shall serve for such term as may be designated by the Common Council of the City and any such City Directors may be removed and/or replaced in the discretion of the City's Common Council. The School District Directors shall serve for such term as may be designated by the Board of the School District and any such School District Directors may be removed and/or replaced in the discretion of the School District's Board. The SWIM Directors shall reside, work or own real property in the City or the School District; provided, however, that when appointing SWIM Directors, preference shall be given

to interested and qualified individuals who reside in the City or the School District. One SWIM Director may be rejected by the unanimous vote of the City and the School District and, upon any such rejection, SWIM shall appoint another SWIM Director which is acceptable to the City and the School District. A vacancy created by the death, resignation or removal of a SWIM Director for any reason shall be filled by the majority vote of the remaining SWIM Directors. Except as otherwise provided herein with respect to the terms of the initial SWIM Directors, each SWIM Director shall hold office for a term of three (3) years or until such SWIM Director's successor shall have been duly appointed or until such SWIM Director's death, resignation or removal. Two (2) of the initial SWIM Directors shall serve for three (3) years, two (2) of the initial SWIM Directors shall serve for two (2) years and one (1) of the initial SWIM Directors shall serve for one (1) year. After said initial terms, it is intended that the SWIM Directors shall serve rotating terms with the general result that two (2) SWIM Directors will be subject to re-appointment every two (2) years and one (1) SWIM Director shall be subject to re-appointment each third (3rd) year.

In addition to the above-listed Directors who shall be voting members of the Board of Directors, the City and the School District shall each have the right to appoint two (2) additional ex-officio non-voting Board members. One of the ex-officio non-voting Board members to be appointed by the City shall be the City Manager.

Section 3. Resignation. A Director may resign at any time by giving written notice to the Secretary of the Corporation, who shall advise the Board of Directors and the Supported Organization electing the Director, of such resignation. Such resignation shall take effect at the time specified therein or, if no time is specified, then upon receipt of the resignation by the Secretary of the Corporation, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal.

(a) Any City Director may be removed at any time and from time to time at the discretion of the Common Council of the City. Written notice of such removal shall be given to the remaining Directors.

(b) Any School District Director may be removed at any time and from time to time at the discretion of the Board of the School District. Written notice of such removal shall be given to the remaining Directors.

(c) Any SWIM Director may be removed from office by the majority vote of the remaining SWIM Directors taken at a meeting of the Corporation called for said purpose.

Section 5. Vacancies. Any vacancy in the Board positions held by the City Directors and the School District Directors occurring for any reason shall be filled by the organization that appointed the Director. Any vacancy of a SWIM Director shall be filled by a majority vote of the remaining SWIM Directors. Each SWIM Director so elected shall hold office for the unexpired portion of the term such SWIM Director was elected to fill and until such SWIM Director's successor is elected and qualified, or until such SWIM Director's death, resignation or removal.

Section 6. Meetings.

(a) Annual Meetings. A regular meeting of the Board of Directors shall be held at the time and date set forth in Section 2 of Article II above. The Board of Directors may provide by resolution the time, place and location of additional regular meetings without notice other than such resolution.

(b) Special Meetings. Special meetings of the Board of Directors may be called by, or at the request of the President, Secretary or any three (3) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place in the Whitewater, Wisconsin area as the place for holding any special meeting of the Board of Directors called by said person(s).

(c) Open Meetings. Annual meetings and special meetings shall be conducted in compliance with the Wisconsin Open Meetings Law, unless otherwise authorized by law.

Section 7. Notices. With the exception of regular meetings as set forth in Section 6(a) of this Article, notice of any special meeting of the Board of Directors, in each case specifying the place, date and hour of the meeting, shall be given to each Director by delivering notice, orally or in writing, not more than thirty (30) days or less than three (3) days before the date set for such meeting or, if notification is by mail, by mailing such notice at least seven (7) days before the date set for such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage prepaid, addressed to the Director at the Director's address as it appears on the records of the Corporation. Unless otherwise required by law or in these By-Laws, neither the actions to be considered or taken at said special meeting nor the purpose of any special meeting of the Board of Directors need be specified in the notice or waiver of such notice of such meeting.

Section 8. Waiver of Notice. Any actions taken at any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though such actions were taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, a written waiver of notice of the meeting, containing the same information as would have been required to be included in a proper notice of the meeting, is signed by (a) each Director not present at the meeting, and (b) each Director present at the meeting who objects at the meeting because the meeting was not lawfully called or convened. All such waivers shall be filed with and made a part of the minutes of the meeting.

Section 9. Action Without Meeting. Unless otherwise prohibited by law, any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if all the Directors shall consent in writing to such action. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors.

Section 10. Quorum. A majority of the number of Directors fixed pursuant to these By-Laws shall constitute a quorum for the taking of any action that came before the Board at such meeting. The act of the majority of the Directors present at a meeting at which a quorum is present

shall be the act or decision of the Board of Directors, unless the act of a greater proportion is required by law, the Articles of Incorporation or these By-Laws.

Section 11. Adjournment. Any meeting of the Board of Directors, whether regular or special, and whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the Directors present. Notice of the time and place of an adjourned meeting shall be given to absent Directors. At any such adjourned meeting at which a quorum is present, any actions may be taken which might have been taken at the originally scheduled meeting.

Section 12. Organization. The President of the Corporation, or in the absence of the President, a chairperson chosen by a majority of the Directors present, shall act as chairperson at every meeting of the Board of Directors. The Secretary of the Corporation, or in the absence of the Secretary, any person appointed by the chairperson of the meeting, shall act as Secretary of the meeting.

Section 13. Compensation. Upon resolution of the Board of Directors, any one or more Directors may receive reimbursement of expenses for attending any meeting of the Board of Directors or in otherwise fulfilling their duties as Directors hereunder, but no compensation shall be paid to Directors for services performed.

Section 14. Proxies. At all Directors' meeting, a Director entitled to vote may vote in person or by proxy appointed in writing by said Director. A proxy appointment shall become effective when received by the Secretary or other officer of the Corporation authorized to tabulate votes. A proxy appointment shall be of limited duration and, in no event, shall a proxy appointment extend for more than three (3) months from the date of its execution or expiration of the term of the Director making the proxy appointment, whichever is earlier. The Board of Directors shall have the power and authority to make rules concerning the validity and sufficiency of proxy appointments. Nothing contained herein shall limit or in any way restrict the right to remove a Director as provided in Section 4 of this Article III.

ARTICLE IV.
Committees

Section 1. Standing and Special Committees. The Board of Directors may create such standing and special committees as it may deem necessary to promote the purposes of the Corporation.

Section 2. Organization and Duties. Each committee shall have such duties as may be specified by the Board of Directors. The committee work shall be advisory in nature and no committee work shall be undertaken without the consent of the Board of Directors. The President or the President's designee shall be an ex-officio member of all committees. The Board of Directors may adopt from time to time rules and regulations for the conduct of committee meetings.

ARTICLE V.
Officers

Section 1. Officers. The Corporation shall have a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers or assistant officers as the Board of Directors may from time to time elect. No more than one office may be held by the same person.

Section 2. Election. The officers of the Corporation shall be chosen annually by the Board of Directors at its annual meeting, and each officer shall hold office until such officer's successor shall have been duly elected and qualified, or until such officer's death, resignation or removal. Election or appointment as an officer shall not of itself create contract or any other rights in favor of the individual so elected or appointed.

Section 3. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein or, if no time is specified, then upon receipt of the resignation by the Secretary or the Board of Directors as the case may be, and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. Any officer may be removed from office by the affirmative vote of a majority of the Directors entitled to vote for the election of such officer, taken at a special meeting called for that purpose.

Section 5. Vacancies. A vacancy occurring in any office, for any reason, may be filled for the unexpired portion of the term of said office by a majority vote of the Board of Directors.

Section 6. President. The President shall be the chief administrative officer of the Corporation and shall have such duties, responsibilities and powers as may be necessary to carry out the directives and policies of the Board of Directors, those prescribed in these By-Laws, and/or those otherwise delegated by the Board of Directors. The President shall at all times be subject to the policies, control and direction of the Board of Directors. The President may sign and execute, in the name of the Corporation, any instrument or document consistent with the foregoing general delegation of authority or any other instrument or document specifically authorized by the Board of Directors, except when the signing and execution thereof shall have been expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, provided, that neither the President nor any other officer may sign any deed or instrument of conveyance or endorse any security or execute any checks, drafts, or other orders for payment of money, notes, acceptances, or other evidence of indebtedness without the specific authority of the Board of Directors pursuant to Article VI below of these By-Laws dealing with such matters. The President shall, whenever it may in the President's opinion be necessary, prescribe the duties of other officers and employees of the Corporation, in a manner not inconsistent with the provisions of these By-Laws and the directives and policies of the Board of Directors.

Section 7. Vice President. In the absence or disability of the President, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of, and be

subject to all the restrictions on the President. If at any such time the Corporation has more than one Vice President, the duties and powers of the President shall pass to the Vice Presidents in order of their rank as fixed by the Board of Directors, or if they are not so ranked, to the Vice President designated by the Board of Directors. The Vice Presidents shall have such other powers and perform such other duties as may be prescribed for them from time to time by the Board of Directors or by these By-Laws.

Section 8. Secretary. The Secretary shall:

(a) Certify and keep at the principal office of the Corporation the original or a copy of its Articles of Incorporation and By-Laws, as amended or otherwise altered to date.

(b) Keep at the principal office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings of the members of the Corporation, the Board of Directors and committees thereof, with the time and place of holding, whether regular or special and, if special, how authorized, the notice thereof given, and the names of those present at the meetings.

(c) Ensure that all notices of meetings are duly given in accordance with the provisions of these By-Laws or as required by law.

(d) Be custodian of the records and of the seal of the Corporation, if any.

(e) Ensure that the books, reports, statements and all other documents and records required by law are properly kept and filed.

(f) In general, perform all duties incident to the Office of the Secretary, and such other duties as from time to time may be assigned or delegated by the Board of Directors.

Section 9. Treasurer. The Treasurer shall perform or have performed under the Treasurer's direction the following functions:

(a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors.

(b) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including account of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.

(c) Exhibit for inspection upon request the relevant books and records of the Corporation to any member of the Board of Directors or officer of the Corporation for any proper purpose at any reasonable time.

(d) Render interim statements of the condition of the finances of the Corporation to the Board of Directors upon request, and render a full financial report at the annual meeting of the Board of Directors.

(e) Receive and give receipt for monies due and payable to the Corporation from any source whatsoever.

(f) In general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board of Directors.

ARTICLE VI.
Instruments; Bank Accounts; Checks and Drafts; Loans; Securities

Section 1. Execution of Instruments. Except as otherwise provided in these By-Laws, the Board of Directors may authorize any office or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authorization may be general or confined to specific instances. Except as so authorized, or as otherwise expressly provided in these By-Laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or to render it liable for any purpose in any amount.

Section 2. Bank Accounts. The Board of Directors from time to time may authorize the opening and keeping of general and/or special bank accounts with such banks, trust companies or other depositories as may be selected by the Board or by any officer or officers, agent or agents of the Corporation to whom such power may be delegated from time to time by the Board of Directors. The Board of Directors may make such rules and regulations with respect to said bank accounts, not inconsistent with the provisions of these By-Laws, as the Board may deem expedient.

Section 3. Checks and Drafts. All checks, drafts, or other orders for the payment of money, notes, acceptances, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors. Endorsements for deposit to the credit of the Corporation in any of its duly authorized depositories may be made without counter-signature, by the President or any Vice President, or the Treasurer or any Assistant Treasurer, or by any other officer or agent of the Corporation to whom the Board of Directors, by resolution, shall have delegated such power, or by hand-stamped impression in the name of the Corporation.

Section 4. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authority may be general or confined to specific instances. No loans may be made to any officer or Director of the Corporation, directly or indirectly, except that reasonable advances of reimbursable expenses may be made in the discretion of the President or, in the case of the President, as determined by the Board of Directors.

Section 5. Sale of Securities. The Board of Directors may authorize and empower any officer or officers to sell, assign, pledge or hypothecate any and all shares of stock, bonds or securities, or interest on stocks, bonds or securities, owned or held by this Corporation at any time, including without limitation because of enumeration, deposit certificates for stock and warrants or rights which entitle the holder thereof to subscribe for shares of stock, and to make and execute to the purchaser or purchasers, pledgee or pledgees, on behalf and in the name of this Corporation, any assignment of bonds or stock certificate representing shares of stock owned or held by this Corporation, and any deposit certificates for stock, and any certificates representing any rights to subscribe for shares of stock. However, this Corporation shall not offer or sell any of its securities in violation of any state or federal securities law registration or other requirement.

ARTICLE VII.
Miscellaneous

Section 1. Fiscal Year. The initial fiscal year shall commence upon adoption of these By-Laws and end on December 31, 2001. The fiscal year thereafter of the Corporation shall end on a date as determined by the Board of Directors.

Section 2. Corporate Seal. The Corporation shall have no corporate seal.

ARTICLE VIII.
Indemnification

Section 1. Successful Defense. The Corporation shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of any proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the Corporation.

Section 2. Other Cases. In cases not included in Section 1 above, the Corporation shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the Corporation, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the Corporation, and the breach or failure to perform constitutes one of the following:

(a) A willful failure to deal fairly with the Corporation or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer has reasonable cause to believe his or her conduct was lawful and no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Willful misconduct.

Section 3. Definitions.

(a) As used herein, the terms "director or officer" mean a natural person who is or was a director or officer of the Corporation, as well as any natural person who while a director or officer of the Corporation is or was serving at the Corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of another corporation or foreign corporation, partnership, joint venture, trust or other enterprise.

(b) As used herein, the term "expense" includes fees, costs, charges, disbursements, attorneys' fees, and all other expenses incurred in connection with a proceeding.

(c) As used herein, the term "liability" includes the obligation to pay a judgment, settlement, penalty, assessment, fine or forfeiture.

(d) As used herein, the term "party" means a natural person who is or was, or who is threatened to be made, a named defendant or respondent in any proceeding.

(e) As used herein, the term "proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether the same be formal or informal, and which involves foreign, federal, state or local law, and regardless of whether brought by or in the right of the Corporation or of any other person.

Section 4. Presumption. The termination of any proceeding, as defined in this Article, by judgment, order, settlement, or conviction, or upon a plea of no contest, nolo contendere, or an equivalent plea, does not by itself create a presumption that indemnification of the director or officer is not required under this Article.

Section 5. Application. Any officer or director seeking indemnification under this Article shall make a written request to the Corporation therefore. Indemnification shall not be required if the director or office has previously received indemnification or an allowance of expenses from any person, including the Corporation, in connection with the same proceeding.

In addition to the above, and upon written request of a director or officer who is a party to a proceeding, the Corporation may pay or reimburse his or her reasonable expenses as incurred, if the director or officer provides the Corporation with the following:

(a) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the Corporation.

(b) A written undertaking to repay the allowance and, if required by the Corporation, to pay reasonable interest on the allowance to the extent it is ultimately determined that indemnification is not required or allowed under this Article and is not otherwise required or ordered by a court pursuant to Wis. Stats. Chapter 181.

Any allowance for expenses provided under this Section shall be an unlimited general obligation of such officer or director and may be accepted by the Corporation without reference to his or her ability to repay the same. The undertaking may be secured or unsecured as the Corporation, in its discretion, shall determine.

Section 6. Nonexclusive. The indemnification provided by this Article shall not be deemed exclusive of all other rights to which the directors or officers may be entitled under any by-laws, agreement, vote of disinterested directors, vote of the members, or otherwise as to any liability, as defined hereinabove, and shall further continue as to any person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 7. Insurance. The Corporation may, upon resolution of its Board of Directors duly adopted, purchase and maintain insurance on behalf of any person who is or was a director or officer, as defined hereinabove against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against liability under this provision of the Corporation's By-Laws.

ARTICLE IX.
Amendment

The Board of Directors may, from time to time, by vote of a majority of its members, adopt, amend or repeal any and all of the By-Laws of this Corporation.

ARTICLE X.
Dissolution

Upon dissolution of the Corporation, after paying or making provision for payment of all of the liabilities of the Corporation, the Board of Directors shall dispose of all assets of the Corporation to or for the benefit of the Supported Organizations. If either of the Supported Organizations or its successor shall not then be in existence or shall fail to qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Code), then the Board of Directors shall dispose of all such remaining assets to or for the benefit of the remaining Supported Organization that does qualify as an exempt organization under the applicable provisions of said Internal Revenue Code. If both of the Supported Organizations and their respective successors shall not then be in existence or shall fail to qualify as an exempt organization as set forth above, the Board of Directors shall in its discretion dispose of all

remaining assets of the Corporation exclusively for the use of such organization or organizations selected by the Board of Directors which are organized and operated exclusively for charitable purposes in accordance with Section 501(c)(3) of said Internal Revenue Code. Any assets of the Corporation not disposed of by the Board of Directors shall be disposed as ordered by the Circuit Court of Walworth County, Wisconsin, exclusively for such purposes and to such organization or organizations which are organized and operated exclusively for such purposes, as said Court shall determine.

These By-Laws are adopted as of the 12th day of June, 2001 to be effective upon the filing of the Articles of Incorporation of the Corporation with the Wisconsin Department of Financial Institutions.

Respectfully submitted,

Kathleen S Granum

Kathy Granum, Secretary

APPROVED:

Jim Schroeder, President

COPY

COOPERATION AGREEMENT

This Cooperation Agreement is made as of the 19th day of March, 2001, by and among the CITY OF WHITEWATER, WISCONSIN, a Wisconsin municipal corporation and political subdivision ("City"), the WHITEWATER UNIFIED SCHOOL DISTRICT, a Wisconsin school district and political subdivision ("School District") and S.W.I.M., Inc., a non-profit organization organized under the laws of the State of Wisconsin ("S.W.I.M.").

ARTICLE I
W I T N E S S E T H

WHEREAS, the parties hereto and the general public have identified and found a need for an Aquatic Facility to (i) provide recreational opportunities to the general public; (ii) serve the needs of the aquatic organizations within the community; and (iii) support the School District's program needs for its students; and

WHEREAS, the parties have jointly undertaken studies to determine the feasibility of constructing an Aquatic Facility (as hereinafter defined) on a Site on the grounds of the Whitewater High School located at 534 South Elizabeth Street, in the City of Whitewater, Wisconsin ("School Site"); and

WHEREAS, in connection with the study, private individuals and entities within the community have pledged funds to be used for the construction and operation of the Aquatic Facility; and

WHEREAS, as a result of the general public support and the result of the study, the parties hereto intend to undertake the construction and operation of the Aquatic Facility whereby (i) the School District will make available a portion of the School Site for the Aquatic Facility and will pay for the construction of a locker room facility for school use; (ii) the City will manage the construction of the Project and contribute $2,000,000 on a matching fund basis toward the Aquatic Facility construction, plus an additional $150,000.00 which shall be allocated first to the construction of the project, and then any amount remaining shall be allocated to the endowment fund for the project; (iii) S.W.I.M. will contribute not less than $3.5 million of private donations toward the Aquatic Facility construction; and (iv) all parties will create a non-profit entity to undertake the operation and management of the completed Aquatic Facility in accordance with a Lease and Operation Agreement to be entered into by the parties, all as set forth in this Agreement; and

WHEREAS, this Cooperation Agreement is intended to provide for certain duties and obligations of the parties for the construction and subsequent operation of the Aquatic Facility; and

WHEREAS, the parties find that the construction of the Aquatic Facility and development of the School Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the School District and their

respective residents and students and in accordance with the public purposes and conditions governing each.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the others as follows:

ARTICLE II
Definitions; Appendices

2.01. DEFINITIONS.

As used in this Agreement, the following terms having an initial capital letter shall have the following meanings:

"Aquatic Facility" means an indoor multi-purpose facility which shall include an eight lane, twenty-five yard competitive pool of not less than 4,698 square feet, a leisure pool of not less than 2,625 square feet (or such larger square footages as may be required to provide a maximum depth of four (4) feet) and an approximately 130 to 150 foot long slide with the appurtenant fixtures, mechanical systems and related improvements, and a school use locker room facility which shall be maintained and controlled by the School District.

"Agreement" means this Cooperation Agreement by and among the City, the School District and S.W.I.M. as amended and supplemented from time to time.

"Trust Funds" shall mean the following funds created and established by the parties in connection with the construction and operation of the Aquatic Facility including:

1. Construction Fund into which all City, School District and S.W.I.M. funds for the construction of the Aquatic Facility shall be deposited, administered and disbursed by City for the Project construction in accordance with the provisions of this Agreement; and

2. Operating Endowment Fund into which all surplus construction monies are deposited together with funds made available to or provided by the City, School District and S.W.I.M. and the Operating Entity to be used for the continued operation and capital improvements of the Project in accordance with the terms of the Lease and Operation Agreement.

"Costs" means the hard and soft costs enumerated in the Development Budget set forth in Appendix A.

"Development" means the Site and the Project.

"Lease and Operation Agreement" means that certain Agreement to be entered into by the City, the School District, S.W.I.M. and the Operating Entity setting forth the terms and conditions for the management and operation of the Project and under which the Project is operated as a public facility serving general public recreational needs and one serving

programmatic needs of the School District; an outline of the general terms of which is attached as Appendix B.

"Operating Entity" means a to-be-created, not-for-profit entity created and organized under the laws of the State of Wisconsin which will operate and maintain the completed Project in accordance with the Lease and Operation Agreement.

"Project" means the Aquatic Facility and related site improvements constructed in accordance with the approved plans and specifications.

"Site" means that portion of the School Site necessary for the construction and operation of the Project as more fully described in Appendix C.

"Substantial Completion" means the time at which a Certificate of Occupancy is issued for the Project.

2.02. **APPENDICES.**

The following appendices are hereby attached to and incorporated to this Agreement:

Appendix A: Development Costs

Appendix B: Outline of Lease and Operation Agreement

Appendix C: Site

Appendix D: Construction Insurance Requirements

ARTICLE III
City Obligations

3.01. Manage Construction of Project. The City shall undertake the administration and management of the construction of the Project. The construction contract shall be let by the City consistent with the public bidding laws of the State of Wisconsin applicable to all public construction. The City shall require the successful contractor to maintain or cause to be maintained in effect during the term of the construction, policies of insurance against such risks, both generally and specifically with respect to the construction of the Project, as are customarily assured against in projects of like size and character; including the insurance requirements set forth in the attached Appendix D. The City, School District and S.W.I.M. shall be named as additional insureds under all insurance policies. In addition, the contractor shall be required to provide payment and performance bonds in such amount as necessary to insure the satisfactory completion of the Project as well as payment for the performance of all labor and furnishing of materials for the Project. No liens shall be permitted to be maintained on the Development.

The plans and specifications for the Project will include the High School locker rooms, the cost of which will be borne by the School District.

The letting of the construction contracts by the City shall be subject to the availability of funds which in the sole discretion of the City are sufficient and available to pay all liability to be incurred under the construction contracts and accepted alternates. The parties agree that the City shall not be required to execute the construction contracts and alternates if sufficient funds are not available to pay the liabilities to be incurred under such contracts.

3.02. Trust Funds. In connection with the Project, the parties shall create and administer the following trust funds.

A. Construction Fund. The City shall create and establish a Construction Fund into which all funds for the construction of the Project shall be deposited. Such funds shall include the City construction funding provided in accordance with Section 3.03 below, the School District funding for the locker room, and the deposit of contributions for the Project construction by S.W.I.M. in accordance with Section 5.01 below. All interest earnings, if any, from the Construction Fund shall be applied to hard and soft (e.g., legal fees and bond placement fees) construction costs of the Project. All surplus funds remaining in the Construction Fund upon final completion of the Project shall be transferred to the Operating Endowment Fund created in Section 3.02(B) below and the Construction Fund shall be closed. The construction fund shall also be used for the payment of interest on any loan necessary during the construction due to funds on hand being insufficient to make contractor draw payments.

B. Operating Endowment Fund. The parties shall create and establish an Operating Endowment Fund to be maintained and controlled by the Operating Entity which shall be used for capital improvements, operation revenue shortfalls, subsidies for youth and families in need of financial assistance to use the Aquatic Facility, and other expenditures related to the operation of the Project in accordance with the Lease and Operation Agreement. All endowment funds appropriated or received by the City, School District or S.W.I.M. shall be deposited into the Operating Endowment Fund. The City may, but shall be under no obligation so to do, appropriate funds from time to time for the Operating Endowment Fund. The Operating Entity shall quarterly provide to School District and City a fund activity report.

3.03. Project Construction Funding. The City shall deposit $2,150,000 into the Construction Fund. The City contribution to the Project is specifically contingent upon the deposit of $3.5 million by S.W.I.M. into the Construction Fund. In addition, the City contribution is further conditioned upon the deposit by the School District under 4.02 below of sufficient funds to pay for the locker room improvement into the Construction Fund.

3.04. Plans and Specifications. The City has caused the retention of architects and consultants, including those specialized in aquatic facilities, necessary for the construction. The City shall cause to be prepared all plans and specifications for the Project. The plans and specifications shall include a Project budget setting forth the estimated Development Costs for the Project. The plans and specifications and Development Costs and any material changes thereto shall be subject to the final approval of City, School District and S.W.I.M. The locker

room improvement shall be subject to the final approval of the School District. The source of payment for construction of Site Improvements shall be the Construction Fund.

3.05. Permits, Licenses and Approvals. The City shall be responsible for obtaining or causing to be obtained, all permits, licenses and approvals necessary for the Project construction.

3.06. Creation of Operating Entity. The City, the School District and S.W.I.M. shall cooperate in the creation of the Operating Entity which once created, will operate and maintain the Project in accordance with the Lease and Operation Agreement.

ARTICLE IV
School District Obligations

4.01. Availability of Site. The School District shall make the Site available to the City by temporary construction license (the "License") for construction of the Project. The License shall include all reasonable means of access to the Project as deemed necessary for Project construction. The Lease and Operation Agreement shall include permanent access upon Substantial Completion of the Project. The School District shall execute all consents deemed necessary by the parties for this access.

4.02. Locker Room Facilities. The School District has elected to build school locker room facilities connected to the project for School District student and staff use. The cost of said locker room facilities is $177,627.00 and shall be borne solely by the School District, and the maintenance and control of the locker room shall be the responsibility of the School District.

4.03. Ownership and Lease of Project. At all times, the School District shall hold title to the Development and shall lease the Development to the Operating Entity for a nominal rent in accordance with the Lease and Operation Agreement. The lease of the Development shall be specifically conditioned upon operation of the Project as a public facility servicing general public recreational needs and School District programming needs and upon such other terms and conditions as may be set forth in the Lease and Operation Agreement. The Lease and Operation Agreement shall be for an initial term of twenty (20) years with an option to renew the Lease and Operation Agreement, exercisable by Lessee, for two (2) additional twenty (20) year terms. Thereafter, additional leases shall be agreed to by the parties which shall provide for reasonable recreation and program services to School District and the general public.

Under the terms of the Lease and Operations Agreement, the School District shall make a $75,000 annual financial commitment to the operation costs of the Development.

4.04. Creation of Operating Entity. The School District shall cooperate with S.W.I.M. and City in the creation of the Operating Entity which, once created, will operate and maintain the Project in accordance with the Lease and Operation Agreement.

ARTICLE V
S.W.I.M. Obligations

5.01. Project Construction Funding. Within ten (10) days of the execution of this agreement, S.W.I.M. shall deposit all construction funds exclusive of interest earnings in its possession or control into the Construction Fund to be disbursed by City in connection with the Project construction. As additional Construction Fund donations are received by S.W.I.M. it shall, within sixty (60) days of receipt, deposit such funds into the Construction Fund. If S.W.I.M. accumulates $50,000 or more of construction funds, such funds shall be deposited into the Construction Fund within 15 days of such accumulation. S.W.I.M. shall contribute a minimum of $3.5 million to the Construction Fund by December 31, 2001.

5.02. Operating Funds. In the event S.W.I.M. receives fund donations dedicated to the operation of the Project, it shall within fifteen (15) days of receipt deposit such funds into the Operating Endowment Fund. The operating entity shall manage the Operating Endowment Fund.

5.03. Creation and Organization of Operating Entity. Not later than three (3) months prior to Substantial Completion, S.W.I.M., the City and the School District shall cause to be created the Operating Entity. The Operating Entity board shall consist of not more than nine (9) voting members which shall include two (2) members appointed by the City, two (2) members appointed by the School District and five (5) members appointed by S.W.I.M. who shall be residents of the City or School District. S.W.I.M. shall designate one of its five board position seats as a member whose appointment can be rejected if the City and the School District both object to the appointment of that member. Following initial appointments, the non-City and non-School District appointed members shall be selected by the remaining non-City and non-School District Operating Entity Board members under the same procedure as stated above. In addition to the voting members, the Operating Entity shall include two (2) ex-officio non-voting School District members, and two (2) ex-officio non-voting City members, one of whom shall be the City Manager. The Operating Entity shall have the duties and responsibilities as set forth in Article VI.

ARTICLE VI
Lease and Operations
Operating Entity Obligations

6.01. Lease and Operation Agreement. Upon Substantial Completion of the Project, the City, School District, S.W.I.M. and Operating Entity shall enter into the Lease and Operation Agreement granting to the Operating Entity full responsibility for the operation and management of the Project. The Lease and Operation Agreement shall be specifically

conditioned upon continued use and operation of the Project as a public facility and one serving programmatic needs of the School District. The Lease and Operation Agreement shall incorporate the general terms and conditions set forth in Appendix B.

6.02. Annual Budget and Reports. The Operating Entity shall be required to prepare an annual budget for the operation of the Project which shall be submitted to the City and School District no later than September 1st of each year. In addition, the Operating entity shall be required to submit quarterly reports within 30 days after the end of each calendar quarter and annual reports regarding the prior year's project operation to the City and School District no later than May 1st of each year and if requested by the City and/or School District, the Operating Entity shall provide an annual audit of its operations.

6.03. The Operating Entity shall during the life of the Project solicit donations and conduct other fundraising activities for the Project operation. Any fundraising activities (other than normal project operations such as concessions , user fees, entry fees) which take place on School district property shall be subject to School Board approval.

6.04. Operating Entity Failure to Perform. In the event that the Operating Entity fails to substantially perform its obligations hereunder the Lease and Operation Agreement shall provide for the assignment of the Project's operations to the City and School District. The Assignment shall include the Assignment by Operating Entity of all assets, contracts, funds, permits, and personal property and all rights and interests of Operating Entity in and to the Project. The City and School District shall have the right to operate the Project under City and School District directed management or through a third party service provider acceptable to City and School District. The terms and conditions for City and School District's assumption of Project operation shall be as set forth in the Lease and Operation Agreement. The City and School District reserve the right to decline to undertake the Project operation under such circumstances.

ARTICLE VII
Non-discrimination

In the construction and operation of the Project under this Agreement, the City, School District and S.W.I.M. agree and the Operating Entity and construction contractor shall be required to agree not to discriminate against any employee or applicant for employment within the Project, nor shall the Project or any portion thereof be used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all laws, ordinances and regulations related to discrimination on any of the foregoing grounds.

ARTICLE VIII
No Personal Liability

Under no circumstances shall any Alderman, officer, official, commissioner, director, member, partner or employee of the City, the School District or S.W.I.M. have any

personal liability arising out of this Agreement and no parties shall seek or claim any such personal liability.

ARTICLE IX
Special Provisions

9.01. Wisconsin Law. This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin. No provision of this Agreement shall be construed to require any party to take any action in violation of law.

9.02. Approval. Whenever under this Agreement approvals, authorization, determination, satisfactions or waivers, are authorized or required, such approvals, authorizations, determinations, satisfaction or waivers shall be effective and valid only when given in writing by the officers of the City, School District and S.W.I.M. authorized by law to give such approval and delivered to the party to whom it is directed at the address specified hereto under.

9.03. Notices and Demands. A notice, demand or other communication under this Agreement by any party to any other party (parties) shall be sufficiently given or delivered, if dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally to the party at their addresses as follows:

CITY OF WHITEWATER

312 Whitewater Street

Whitewater, WI 53190

To: City Manager

With copies to: City Attorney

WHITEWATER UNIFIED SCHOOL DISTRICT

401 South Elizabeth Street

Whitewater, WI 53190

To: District Superintendent

With copies to:

S.W.I.M.

Michael Ciardo

221 South Cottage Street

Whitewater, WI 53190

To: President

With copies to:

Or such other addresses as the parties may designate to each other in writing from time to time.

9.04. Counterparts. This Agreement may be executed in any number of Counterparts, each of which shall constitute an original.

9.05. Amendments and Supplements. This Agreement may be supplemented or amended only by written instrument executed by all parties.

9.06. Severability. If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof, or any constitution of statute, rule or public policy or for any other reason said circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

9.07. City and School District Authorization. Execution of this Agreement by the City and the School District is authorized by Resolution of the Common Council adopted December 5, 2000 and the School District Board adopted March 19, 2001, respectively.

9.08. Except as expressly stated to the contrary in this Agreement or in the Lease and Operation Agreement, this Agreement shall terminate upon the execution of the Lease and Operation Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement or caused it to be duly executed as of the date shown below.

CITY OF WHITEWATER

By: [signature] 05-03-01
City Manager Date

By: Michele R. Smith 5/2/01
City Clerk Date

WHITEWATER UNIFIED SCHOOL DISTRICT

By: James McStewart Mar 19 2001
School Board President Date

By: Kathleen S Hanum 3-28-01
School Board Clerk Date

SWIM, INC.

By: 5-7-01
President Date

By: 5-21-01
Secretary Date

LEASE AGREEMENT BETWEEN
WHITEWATER UNIFIED SCHOOL DISTRICT
AND THE CITY OF WHITEWATER

This Lease Agreement ("this Agreement") is entered into as of the 19th day of Jan., 2016 2015 ("the Effective Date"), by and among the **Whitewater Unified School District** ("the School District"), a Wisconsin school district, and the **City of Whitewater**, a Wisconsin municipal corporation and political subdivision ("the City").

RECITALS

A. The School District and the City are currently parties to a Lease and Operating Agreement, dated 1-19-16, which provides for the operation of a recreation facility constructed on land owned by the School District and adjacent to Whitewater High School (the "Site"), an aquatic facility consisting of an eight lane, twenty-five yard competitive pool, a leisure pool, a slide, a Fitness Center, and appurtenant fixtures, mechanical systems, and related improvements (collective, the "Aquatic Facility").

B. The Lease and Operating Agreement provides for the use of the Aquatic Facility by the general public. The Aquatic Facility is primarily intended to serve the recreational and programmatic needs of the general public, but the School District also wishes to use the Aquatic Facility for curricular, special education, and extracurricular purposes.

NOW, THEREFORE, in consideration of the foregoing Recitals, and further in consideration of the rents to be paid hereunder, and subject to all of the covenants and agreements contained in this Agreement, the parties agree as follows:

1. **Use of Space**. The City agrees to rent the Aquatic Facility to the School District to be used for curricular, special education, and extracurricular purposes.

2. **Annual Rent**. The School District agrees to pay the City $7,500.00 on or about July 1 annually for its use of the Aquatic Facility for curricular, special education, and extracurricular purposes.

3. **Scheduling**.

   (a) The Park and Recreation Board of the City of Whitewater (the "Park Board") shall exercise its best efforts to schedule use of the Aquatic Facility to meet within reason the School District's Program Needs and the General Public's Recreational Needs. For purposes of this Agreement, (i) the "School District's Program Needs" shall include use of the Lap Pool, Leisure Pool, and Fitness Center, during the school year or during the summer, for health and physical education courses and related curricular activities and practice, individualized instruction for students with disabilities, training and competition for co-curricular competitive swim teams representing the School District and (ii) the "General Public's Recreational Needs shall mean use of the Lap Pool, Fitness Center, and/or the Leisure Pool for youth and adult swim

lessons and related aquatics training and instruction, parent-child recreational programs, senior citizens health and recreational programs, the publics' general recreational use and similar activities historically and/or customarily sponsored by the City.

The parties acknowledge that, in order to maximize the efficiency and fairness with which the Aquatic Facility is used, it will be essential that the parties cooperate in working out the Aquatic Facility's yearly schedule. Toward that end, the School District shall, not later than April 30 of each calendar year, provide Park Board and the City a proposed schedule of the School District's Program Needs for the period from August 1 of that year through July 31 of the following year. Similarly, a proposed schedule of the General Public's Recreational Needs shall be developed by the Park Board for the same period. If the Aquatic Facility is available on the dates and at the times selected by the School District, then the School District's use of the Aquatic Facility shall be included in the Aquatic Facility's schedule as proposed. If, on the other hand, the Aquatic Facility may be scheduled for another use at a time proposed for the School District's Program Needs, the Park Board shall notify the School District, and the parties shall meet to resolve the conflict to the reasonable satisfaction of all concerned, said resolution to be concluded within thirty (30) days after receipt of the School District's proposed schedule or June 1 of that year, whichever is later.

(b) Notwithstanding the foregoing, it is also agreed and understood that the School District shall be entitled to, at a minimum, use of the same amount of time and space in the Aquatic Facility on an annual basis as is used by the School District during the 2015-2016 school year and summer, and that the School District shall be entitled to, at a minimum, use of the same locations within the Aquatic Facility during the same, or substantially similar, dates and times as are used by the School District during the 2015-16 school year and summer.

(c) After the scheduling for the School District's Program Needs for the coming year has been approved and adopted by the Park Board as provided herein, said schedule shall not be modified by the Park Board without the School District's prior written consent. In addition, throughout each year during the term of this Agreement, at such times as may be necessary, the staff of the Park Board will meet with representatives of the School District to go over their various scheduling needs and to resolve any scheduling conflicts. The School District shall be responsible for providing and supervising all staff and other personnel necessary for the School District's scheduled uses of the Aquatic Facility, with the exception of a lifeguard. Upon request by the School District and subject to approval of the Park Board, Aquatic Facility personnel may be used to assist the School District in connection with supervision and/or administration of the School District's Program Needs so long as the School District remains primarily responsible for all liability associated with such activities and the Park Board is reimbursed for any unusual or irregular personnel or other costs incurred as a result of such activities.

(d) In addition to incorporating the School District's scheduled dates into the Aquatic Facility schedule, the Park Board shall use diligent efforts to arrange for ongoing use of the Aquatic Facility in such manner as is reasonably necessary to maximize revenues.

4. **Summer Programs**. The School District may decide to offer aquatics instruction in the future as part of its summer school curriculum. If the School District wishes to offer such instruction at the Aquatics Facility, its summer school aquatics instruction schedule shall be included in the proposed schedule of the School District's Program Needs provided pursuant to Section 3 above.

   The School District shall be responsible for all costs associated with the School District's summer school aquatics instruction program and supervision of all personnel necessary for the organization, administration and implementation of the School District's summer school aquatics instruction program, together with all liability arising from said program. It is anticipated that, subject to the approval of the Park Board, Aquatic Facility personnel (such as lifeguards and swimming instructors) may assist the School District in connection with such program. The parties agree to establish a mutually acceptable arrangement for staffing of the School District's summer school aquatics instruction program and reimbursement of the Aquatic Facility for its costs associated therewith no later than March 15 of each year. The rate of reimbursement will be substantially similar to the rate of reimbursement for Summer 2015.

5. **The District Locker Room Facility**

   (a) The Aquatic Facility includes a locker room facility constructed for the sole and exclusive use of the School District (the "District Locker Room Facility"). For purposes of this Agreement, the District Locker Room Facility means the area of the Aquatic Facility bounded by the interior walls, floor and ceiling of the District Locker Room Facility, as well as any portions of the Aquatic Facility utility and mechanical systems (wherever located) serving exclusively the District Locker Room Facility.

   (b) Exclusive Use By School District. Unless otherwise agreed, the School District shall have the sole and exclusive right to use and control the District Locker Room Facility.

   (c) Maintenance and Repair. The School District shall, at its sole cost and expense, maintain and repair the District Locker Room Facility. In that regard, the School District shall keep and maintain the District Locker Room Facility in clean and good condition and repair, normal wear and tear excepted, and shall provide such insurance as the School District deems necessary or desirable in connection with the ownership and operation of the District Locker Room Facility.

   (d) Utilities. The School District shall be responsible for the cost of all directly-metered utilities supplied to the District Locker Room Facility (i.e., sewer and water and utilities to heat water). Electricity and HVAC utilities provided to the District Locker

Room Facility shall not be separately metered, and shall be billed to and paid by the Park Board. The School District shall be responsible for the cost of all sewer, water, electricity, HVAC and other utilities necessary for or relating to any future improvements to and/or expansion of the District Locker Room Facility made by the School District pursuant to Section 8.04 below.

(e) Alterations, Additions or Improvements. The School District shall have the full right and authority, at its sole cost and without the consent of the Park Board or the City, to make such alterations, additions and/or improvements to the District Locker Room Facility, or to Whitewater High School and its environs, as the School District deems necessary or desirable in its sole discretion. All such work shall be carried out so as to limit, to the extent reasonably possible without incurring additional costs, interruption or disruption to the operation of the Leased Premises, provided, however, that the District makes no guaranty or warranty that such interruption or disruption will not occur.

6. **Term of Agreement**. The initial term of this Agreement shall run for five (5) years commencing on July 1, 2016 (the "Commencement Date") and ending at 11:59 p.m. on June 30, 2021 (the "Expiration Date", unless sooner terminated in accordance with this Agreement. The parties may extend this Lease by mutual written agreement of the city and the School District.

7. **Waiver of Claims**. The parties acknowledge that there are certain risks associated with the operation of the Aquatic Facility and related programs and activities. Each party hereby assumes all risks in connection with, and holds harmless and indemnifies the other parties hereto with respect to any damage, loss or destruction to the Leased Premises, or any part thereof, arising from or in any way attributable to the activities of each party and/or said party's directors, officers, officials, agents, employees and volunteers in, on or about the Aquatic Facility. It is agreed that all insurance proceeds available as a result of any damage, loss or destruction to the Aquatic Facility shall be applied as necessary to repair, restore, rebuild or replace the same as nearly as possible to the condition such were in immediately prior to such damage, loss or destruction.

8. **Indemnification**. Each party hereto and said party's permitted successors and permitted assigns, agree to indemnify, save harmless and defend all other parties hereto, and their respective directors, officers, officials, agents and employees (collectively, the "Indemnified Parties") from any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including attorney costs and fees, for claims of any character, including liability and expenses in connection with employment or personnel actions or policies of said party, the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any person, persons or property on account of or arising out of the operation, use or occupancy of all or any portion of the Leased Premises by said party, its permitted successors, permitted assigns, sublessees and other users and patrons, or at any time occurring on, at, or in the Leased Premises. No party shall be required to so indemnify any Indemnified Party whose negligence or willful misconduct was a cause

of the injury or loss that is the subject of such claim. This requirement shall also apply with equal force to all work performed by a party, its successors or permitted assigns, said party's contractor or any subcontractor or any other party directly or indirectly employed by or retained by said party to perform work relating to the operation, repair, maintenance or replacement of all or any portion of the Leased Premises or any equipment or fixtures thereon.

9. **Notices.** All notices, certificates or other communications hereunder shall be given in one of the following methods, and shall be deemed received (i) when hand delivered; or (ii) two business days after deposit in the U.S. Mail, postage prepaid, by certified or registered mail; or (iii) one business day after deposit with an overnight commercial courier, addressed as follows:

To The School District:	Whitewater Unified School District 419 South Elizabeth Street Whitewater, WI 53190 Attn: District Administrator
To the City:	The City of Whitewater 312 West Whitewater Street Whitewater, WI 53190 Attn: City Manager
To the Park Board:	The City of Whitewater Park Board 312 West Whitewater Street Whitewater, WI 53190 Attn: Director

Either party may, upon prior written notice to the other, specify a different address and/or recipient for the giving of notice.

10. **Miscellaneous**.

(a) Captions. The captions or headings in this Agreement are for convenience and in no way define, limit or describe the scope or intent of the provisions of this Agreement.

(b) Governing Law. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement.

(c) **Successors and Assigns**. Except as limited or conditioned by the express provisions hereof, the provisions of this Agreement shall inure to the benefit of and be binding upon the permitted successors and permitted assigns of the Park Board and the successors and assigns of the School District and the City.

(d) **Amendment**. This Agreement shall not be effectively amended, changed, modified, or altered without the written consent of all parties hereto (or any successor, if any),

and no modification, alteration or amendment to this Agreement shall be binding upon either hereto until such modification, alteration or amendment is reduced to writing and executed by all such parties.

(e) **Counterparts**. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

(f) **Severability**. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Agreement contained, shall not affect the remaining portions of this Agreement, or any part thereof.

(g) **No Third Party Beneficiaries**. This Agreement is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have, obtain or derive from this Agreement any rights or other benefits or interests, under any laws or otherwise.

(h) **Exculpatory Provision**. The parties to this Agreement expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or official (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Agreement, and no party hereto shall make any claim to the contrary.

(i) **Rules of Construction/Conduct**. The parties to this Agreement further acknowledge and agree that this Agreement is a good faith attempt to memorialize the intent of the parties, that in the course of its preparation, each party has been adequately and fully represented, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in a spirit of cooperation consistent with the intent of the Cooperation Agreement and with the aim of benefitting the entire Whitewater area community.

11. **Arbitration.**

(a) Agreement to Arbitrate. The parties to this Agreement agree that any dispute, grievance, controversy, demand, claim, counterclaim, or cause of action (all of which are referred to as a "Claim") by or between any of the parties hereto, which arises out of or relates to any term or requirement of this Agreement, shall be submitted to arbitration pursuant to the procedures set forth below, regardless of whether such Claim arises in tort, contract, or otherwise.

(b) Notice of Claim. If and when any Claim arises, the party asserting the Claim shall provide written notice of the claim ("Notice of Claim") to the opposing party within ninety (90) days of the event or occurrence giving rise to the Claim. Upon receipt of such Notice of Claim, the party against whom the Claim is made shall have twenty (20) days to either: (a) cure or satisfy the Claim, or (b) notify the other party in writing that the Claim is disputed ("Notice of Dispute"). Failure to satisfy either of the proceeding (a) or (b) shall also be considered a Notice of Dispute. If the Claim is disputed, then within twenty (20) days of the Notice of Dispute each party involved in the Claim shall select an arbitrator, attorney, or other individual (herein an "Arbitration Representative") to represent them in the Arbitration process set forth in Section 11 below, and each party shall notify the other party of said Arbitration Representative.

(c) Arbitration Panel. If a Notice of Dispute has been provided and all other requirements of Section 11 have been met, then:

The two (2) Arbitration Representatives as a body shall, as promptly as possible, select a third disinterested person to compose a panel of three to arbitrate the Claim. If a third person cannot be agreed upon by the two (2) Arbitration Representatives, the two (2) representatives shall jointly request that the Wisconsin Employment Relations Commission (WERC) submit a list of five (5) names from which the two (2) Arbitration Representatives, within three (3) days of receipt, shall each strike two (2) names. The remaining name shall be the disinterested person for the arbitration proceeding.

Except as otherwise provided for herein, the decision of a majority of the arbitration panel shall be final and binding upon the parties and any party to the arbitration may apply to the Circuit Court in Walworth County or Jefferson County for an order confirming the award in accordance with Chapter 70 of the Wisconsin Statutes. The arbitration panel shall not, however, have the authority to add to, subtract from, or otherwise modify or change the terms of this Agreement.

If there is any charge for the service of the disinterested third person arbitrator, or for a transcript of the proceedings, the parties shall share the expense equally. Each party shall bear the expense of preparing and presenting its own case.

(d) Arbitration Default. If any party fails or refuses to comply with any of the procedures or requirements of this Section 11, then the party aggrieved by such failure or refusal may petition the Circuit Court in Walworth County or Jefferson County for an order to enforce the terms of this Section 11. If such an order to enforce is entered by the Court, then the party who failed or refused to comply with this Section 11 shall be liable to the petitioning party for all costs and attorney's fees incurred in obtaining such an order.

(e) Right to Judicial Relief. The arbitration procedures set forth in this Section 11 shall be followed with respect to all Claims arising out of or relating to any term or requirement of this Agreement. However, notwithstanding the terms of this section, the parties may seek de novo judicial relief from a court of competent jurisdiction in the State of Wisconsin with respect to an arbitration decision arising out of or relating to Section 11(a) or the arbitrability of the claim under this Lease.

SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT

By: _____
Name:
Title: School Board President

By: _____
Name:
Title: School Board Clerk

THE CITY OF WHITEWATER

By: _____
Name: Cameron Clapper
Title: City Manager

By: _____
Name: Michele R. Smith
Title: City Clerk

AUTHENTICATION

Signature of _____ and _____, the School Board President and School Board Clerk, respectively, of the Whitewater Unified School District, authenticated as of the _____ day of _____, 2015.

_____
Name: _____
Member, State Bar of Wisconsin

LEASE AGREEMENT BETWEEN
WHITEWATER UNIFIED SCHOOL DISTRICT
AND THE CITY OF WHITEWATER

This Lease Agreement ("this Agreement") is entered into as of the 19th day of Jan., 2016 2015 ("the Effective Date"), by and among the **Whitewater Unified School District** ("the School District"), a Wisconsin school district, and the **City of Whitewater**, a Wisconsin municipal corporation and political subdivision ("the City").

RECITALS

A. The School District and the City are currently parties to a Lease and Operating Agreement, dated 1-19-16, which provides for the operation of a recreation facility constructed on land owned by the School District and adjacent to Whitewater High School (the "Site"), an aquatic facility consisting of an eight lane, twenty-five yard competitive pool, a leisure pool, a slide, a Fitness Center, and appurtenant fixtures, mechanical systems, and related improvements (collective, the "Aquatic Facility").

B. The Lease and Operating Agreement provides for the use of the Aquatic Facility by the general public. The Aquatic Facility is primarily intended to serve the recreational and programmatic needs of the general public, but the School District also wishes to use the Aquatic Facility for curricular, special education, and extracurricular purposes.

NOW, THEREFORE, in consideration of the foregoing Recitals, and further in consideration of the rents to be paid hereunder, and subject to all of the covenants and agreements contained in this Agreement, the parties agree as follows:

1. **Use of Space**. The City agrees to rent the Aquatic Facility to the School District to be used for curricular, special education, and extracurricular purposes.

2. **Annual Rent**. The School District agrees to pay the City $7,500.00 on or about July 1 annually for its use of the Aquatic Facility for curricular, special education, and extracurricular purposes.

3. **Scheduling**.

   (a) The Park and Recreation Board of the City of Whitewater (the "Park Board") shall exercise its best efforts to schedule use of the Aquatic Facility to meet within reason the School District's Program Needs and the General Public's Recreational Needs. For purposes of this Agreement, (i) the "School District's Program Needs" shall include use of the Lap Pool, Leisure Pool, and Fitness Center, during the school year or during the summer, for health and physical education courses and related curricular activities and practice, individualized instruction for students with disabilities, training and competition for co-curricular competitive swim teams representing the School District and (ii) the "General Public's Recreational Needs shall mean use of the Lap Pool, Fitness Center, and/or the Leisure Pool for youth and adult swim

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The parties acknowledge that, in order to maximize the efficiency and fairness with which the Aquatic Facility is used, it will be essential that the parties cooperate in working out the Aquatic Facility's yearly schedule. Toward that end, the School District shall, not later than April 30 of each calendar year, provide Park Board and the City a proposed schedule of the School District's Program Needs for the period from August 1 of that year through July 31 of the following year. Similarly, a proposed schedule of the General Public's Recreational Needs shall be developed by the Park Board for the same period. If the Aquatic Facility is available on the dates and at the times selected by the School District, then the School District's use of the Aquatic Facility shall be included in the Aquatic Facility's schedule as proposed. If, on the other hand, the Aquatic Facility may be scheduled for another use at a time proposed for the School District's Program Needs, the Park Board shall notify the School District, and the parties shall meet to resolve the conflict to the reasonable satisfaction of all concerned, said resolution to be concluded within thirty (30) days after receipt of the School District's proposed schedule or June 1 of that year, whichever is later.

(b) Notwithstanding the foregoing, it is also agreed and understood that the School District shall be entitled to, at a minimum, use of the same amount of time and space in the Aquatic Facility on an annual basis as is used by the School District during the 2015-2016 school year and summer, and that the School District shall be entitled to, at a minimum, use of the same locations within the Aquatic Facility during the same, or substantially similar, dates and times as are used by the School District during the 2015-16 school year and summer.

(c) After the scheduling for the School District's Program Needs for the coming year has been approved and adopted by the Park Board as provided herein, said schedule shall not be modified by the Park Board without the School District's prior written consent. In addition, throughout each year during the term of this Agreement, at such times as may be necessary, the staff of the Park Board will meet with representatives of the School District to go over their various scheduling needs and to resolve any scheduling conflicts. The School District shall be responsible for providing and supervising all staff and other personnel necessary for the School District's scheduled uses of the Aquatic Facility, with the exception of a lifeguard. Upon request by the School District and subject to approval of the Park Board, Aquatic Facility personnel may be used to assist the School District in connection with supervision and/or administration of the School District's Program Needs so long as the School District remains primarily responsible for all liability associated with such activities and the Park Board is reimbursed for any unusual or irregular personnel or other costs incurred as a result of such activities.

(d) In addition to incorporating the School District's scheduled dates into the Aquatic Facility schedule, the Park Board shall use diligent efforts to arrange for ongoing use of the Aquatic Facility in such manner as is reasonably necessary to maximize revenues.

4. **Summer Programs**. The School District may decide to offer aquatics instruction in the future as part of its summer school curriculum. If the School District wishes to offer such instruction at the Aquatics Facility, its summer school aquatics instruction schedule shall be included in the proposed schedule of the School District's Program Needs provided pursuant to Section 3 above.

   The School District shall be responsible for all costs associated with the School District's summer school aquatics instruction program and supervision of all personnel necessary for the organization, administration and implementation of the School District's summer school aquatics instruction program, together with all liability arising from said program. It is anticipated that, subject to the approval of the Park Board, Aquatic Facility personnel (such as lifeguards and swimming instructors) may assist the School District in connection with such program. The parties agree to establish a mutually acceptable arrangement for staffing of the School District's summer school aquatics instruction program and reimbursement of the Aquatic Facility for its costs associated therewith no later than March 15 of each year. The rate of reimbursement will be substantially similar to the rate of reimbursement for Summer 2015.

5. **The District Locker Room Facility**

   (a) The Aquatic Facility includes a locker room facility constructed for the sole and exclusive use of the School District (the "District Locker Room Facility"). For purposes of this Agreement, the District Locker Room Facility means the area of the Aquatic Facility bounded by the interior walls, floor and ceiling of the District Locker Room Facility, as well as any portions of the Aquatic Facility utility and mechanical systems (wherever located) serving exclusively the District Locker Room Facility.

   (b) Exclusive Use By School District. Unless otherwise agreed, the School District shall have the sole and exclusive right to use and control the District Locker Room Facility.

   (c) Maintenance and Repair. The School District shall, at its sole cost and expense, maintain and repair the District Locker Room Facility. In that regard, the School District shall keep and maintain the District Locker Room Facility in clean and good condition and repair, normal wear and tear excepted, and shall provide such insurance as the School District deems necessary or desirable in connection with the ownership and operation of the District Locker Room Facility.

   (d) Utilities. The School District shall be responsible for the cost of all directly-metered utilities supplied to the District Locker Room Facility (i.e., sewer and water and utilities to heat water). Electricity and HVAC utilities provided to the District Locker

Room Facility shall not be separately metered, and shall be billed to and paid by the Park Board. The School District shall be responsible for the cost of all sewer, water, electricity, HVAC and other utilities necessary for or relating to any future improvements to and/or expansion of the District Locker Room Facility made by the School District pursuant to Section 8.04 below.

(e) Alterations, Additions or Improvements. The School District shall have the full right and authority, at its sole cost and without the consent of the Park Board or the City, to make such alterations, additions and/or improvements to the District Locker Room Facility, or to Whitewater High School and its environs, as the School District deems necessary or desirable in its sole discretion. All such work shall be carried out so as to limit, to the extent reasonably possible without incurring additional costs, interruption or disruption to the operation of the Leased Premises, provided, however, that the District makes no guaranty or warranty that such interruption or disruption will not occur.

6. **Term of Agreement**. The initial term of this Agreement shall run for five (5) years commencing on July 1, 2016 (the "Commencement Date") and ending at 11:59 p.m. on June 30, 2021 (the "Expiration Date", unless sooner terminated in accordance with this Agreement. The parties may extend this Lease by mutual written agreement of the city and the School District.

7. **Waiver of Claims**. The parties acknowledge that there are certain risks associated with the operation of the Aquatic Facility and related programs and activities. Each party hereby assumes all risks in connection with, and holds harmless and indemnifies the other parties hereto with respect to any damage, loss or destruction to the Leased Premises, or any part thereof, arising from or in any way attributable to the activities of each party and/or said party's directors, officers, officials, agents, employees and volunteers in, on or about the Aquatic Facility. It is agreed that all insurance proceeds available as a result of any damage, loss or destruction to the Aquatic Facility shall be applied as necessary to repair, restore, rebuild or replace the same as nearly as possible to the condition such were in immediately prior to such damage, loss or destruction.

8. **Indemnification**. Each party hereto and said party's permitted successors and permitted assigns, agree to indemnify, save harmless and defend all other parties hereto, and their respective directors, officers, officials, agents and employees (collectively, the "Indemnified Parties") from any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including attorney costs and fees, for claims of any character, including liability and expenses in connection with employment or personnel actions or policies of said party, the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any person, persons or property on account of or arising out of the operation, use or occupancy of all or any portion of the Leased Premises by said party, its permitted successors, permitted assigns, sublessees and other users and patrons, or at any time occurring on, at, or in the Leased Premises. No party shall be required to so indemnify any Indemnified Party whose negligence or willful misconduct was a cause

of the injury or loss that is the subject of such claim. This requirement shall also apply with equal force to all work performed by a party, its successors or permitted assigns, said party's contractor or any subcontractor or any other party directly or indirectly employed by or retained by said party to perform work relating to the operation, repair, maintenance or replacement of all or any portion of the Leased Premises or any equipment or fixtures thereon.

9. **Notices.** All notices, certificates or other communications hereunder shall be given in one of the following methods, and shall be deemed received (i) when hand delivered; or (ii) two business days after deposit in the U.S. Mail, postage prepaid, by certified or registered mail; or (iii) one business day after deposit with an overnight commercial courier, addressed as follows:

To The School District:	Whitewater Unified School District 419 South Elizabeth Street Whitewater, WI 53190 Attn: District Administrator
To the City:	The City of Whitewater 312 West Whitewater Street Whitewater, WI 53190 Attn: City Manager
To the Park Board:	The City of Whitewater Park Board 312 West Whitewater Street Whitewater, WI 53190 Attn: Director

Either party may, upon prior written notice to the other, specify a different address and/or recipient for the giving of notice.

10. **Miscellaneous**.

(a) Captions. The captions or headings in this Agreement are for convenience and in no way define, limit or describe the scope or intent of the provisions of this Agreement.

(b) Governing Law. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement.

(c) **Successors and Assigns**. Except as limited or conditioned by the express provisions hereof, the provisions of this Agreement shall inure to the benefit of and be binding upon the permitted successors and permitted assigns of the Park Board and the successors and assigns of the School District and the City.

(d) **Amendment**. This Agreement shall not be effectively amended, changed, modified, or altered without the written consent of all parties hereto (or any successor, if any),

and no modification, alteration or amendment to this Agreement shall be binding upon either hereto until such modification, alteration or amendment is reduced to writing and executed by all such parties.

(e) **Counterparts**. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

(f) **Severability**. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Agreement contained, shall not affect the remaining portions of this Agreement, or any part thereof.

(g) **No Third Party Beneficiaries**. This Agreement is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have, obtain or derive from this Agreement any rights or other benefits or interests, under any laws or otherwise.

(h) **Exculpatory Provision**. The parties to this Agreement expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or official (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Agreement, and no party hereto shall make any claim to the contrary.

(i) **Rules of Construction/Conduct**. The parties to this Agreement further acknowledge and agree that this Agreement is a good faith attempt to memorialize the intent of the parties, that in the course of its preparation, each party has been adequately and fully represented, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in a spirit of cooperation consistent with the intent of the Cooperation Agreement and with the aim of benefitting the entire Whitewater area community.

11. **Arbitration.**

(a) Agreement to Arbitrate. The parties to this Agreement agree that any dispute, grievance, controversy, demand, claim, counterclaim, or cause of action (all of which are referred to as a "Claim") by or between any of the parties hereto, which arises out of or relates to any term or requirement of this Agreement, shall be submitted to arbitration pursuant to the procedures set forth below, regardless of whether such Claim arises in tort, contract, or otherwise.

(b) Notice of Claim. If and when any Claim arises, the party asserting the Claim shall provide written notice of the claim ("Notice of Claim") to the opposing party within ninety (90) days of the event or occurrence giving rise to the Claim. Upon receipt of such Notice of Claim, the party against whom the Claim is made shall have twenty (20) days to either: (a) cure or satisfy the Claim, or (b) notify the other party in writing that the Claim is disputed ("Notice of Dispute"). Failure to satisfy either of the proceeding (a) or (b) shall also be considered a Notice of Dispute. If the Claim is disputed, then within twenty (20) days of the Notice of Dispute each party involved in the Claim shall select an arbitrator, attorney, or other individual (herein an "Arbitration Representative") to represent them in the Arbitration process set forth in Section 11 below, and each party shall notify the other party of said Arbitration Representative.

(c) Arbitration Panel. If a Notice of Dispute has been provided and all other requirements of Section 11 have been met, then:

The two (2) Arbitration Representatives as a body shall, as promptly as possible, select a third disinterested person to compose a panel of three to arbitrate the Claim. If a third person cannot be agreed upon by the two (2) Arbitration Representatives, the two (2) representatives shall jointly request that the Wisconsin Employment Relations Commission (WERC) submit a list of five (5) names from which the two (2) Arbitration Representatives, within three (3) days of receipt, shall each strike two (2) names. The remaining name shall be the disinterested person for the arbitration proceeding.

Except as otherwise provided for herein, the decision of a majority of the arbitration panel shall be final and binding upon the parties and any party to the arbitration may apply to the Circuit Court in Walworth County or Jefferson County for an order confirming the award in accordance with Chapter 70 of the Wisconsin Statutes. The arbitration panel shall not, however, have the authority to add to, subtract from, or otherwise modify or change the terms of this Agreement.

If there is any charge for the service of the disinterested third person arbitrator, or for a transcript of the proceedings, the parties shall share the expense equally. Each party shall bear the expense of preparing and presenting its own case.

(d) Arbitration Default. If any party fails or refuses to comply with any of the procedures or requirements of this Section 11, then the party aggrieved by such failure or refusal may petition the Circuit Court in Walworth County or Jefferson County for an order to enforce the terms of this Section 11. If such an order to enforce is entered by the Court, then the party who failed or refused to comply with this Section 11 shall be liable to the petitioning party for all costs and attorney's fees incurred in obtaining such an order.

(e) Right to Judicial Relief. The arbitration procedures set forth in this Section 11 shall be followed with respect to all Claims arising out of or relating to any term or requirement of this Agreement. However, notwithstanding the terms of this section, the parties may seek de novo judicial relief from a court of competent jurisdiction in the State of Wisconsin with respect to an arbitration decision arising out of or relating to Section 11(a) or the arbitrability of the claim under this Lease.

SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT

By: _____
Name:
Title: School Board President

By: _____
Name:
Title: School Board Clerk

THE CITY OF WHITEWATER

By: _____
Name: Cameron Clapper
Title: City Manager

By: _____
Name: Michele R. Smith
Title: City Clerk

AUTHENTICATION

Signature of _____ and _____, the School Board President and School Board Clerk, respectively, of the Whitewater Unified School District, authenticated as of the _____ day of _____, 2015.

_____
Name: _____
Member, State Bar of Wisconsin

Document Number	LEASE AND OPERATION AGREEMENT

Recording Area

Name and Return Address

Wallace K. McDonell
Harrison, Williams & McDonell, LLP
452 W. Main Street
P.O. Box 59
Whitewater, WI 53190

LEASE AND OPERATION AGREEMENT
BETWEEN
WHITEWATER UNIFIED SCHOOL DISTRICT (the "SCHOOL DISTRICT")
THE CITY OF WHITEWATER (the "CITY")

LEASE AND OPERATION AGREEMENT

THIS LEASE AND OPERATION AGREEMENT (this "Agreement") is entered into as of the 28th day of June, 2021 (the "Effective Date"), by and among **WHITEWATER UNIFIED SCHOOL DISTRICT** (the "**SCHOOL DISTRICT**"), a Wisconsin school district and **THE CITY OF WHITEWATER**, a Wisconsin municipal corporation and political subdivision (the "**CITY**").

RECITALS

A. The School District and the City are currently parties to a Lease and Operating Agreement, dated as of January 19, 2016.

B. The terms of the Lease and Operating Agreement provide for the operation of a recreation facility constructed on land owned by the District and adjacent to Whitewater High School (the "Site"), an aquatic facility consisting of an eight lane, twenty-five yard competitive pool (the "Lap Pool"), a leisure pool (the "Leisure Pool"), a slide, a Fitness Center, and appurtenant fixtures, mechanical systems and related improvements (collectively, the "Aquatic Facility").

C. The Aquatic Facility also includes a locker room facility constructed for the sole and exclusive use of the School District (the "District Locker Room Facility"). For purposes of this Agreement, the District Locker Room Facility means the area of the Aquatic Facility bounded by the interior walls, floor and ceiling of the District Locker Room Facility, as well as any portions of the Aquatic Facility utility and mechanical systems (wherever located) serving exclusively the District Locker Room Facility.

D. The Aquatic Facility was constructed using public funds appropriated by the School District and the City which included a $2,000,000 contribution from the City of Whitewater, and private donations obtained by other sources, and is primarily intended to serve the recreational and programmatic needs of the general public. By pooling the resources of the City, the School District, and the private sector, the above needs can be met in a comprehensive and cost efficient manner for the benefit of all parties. The parties agree that the School District's contribution shall be used to enable all School District residents to use the Aquatic Facility under the same use and fee structures as City residents. In addition, and separate and apart from this Agreement, the City and School District have executed an agreement by which the School District will rent portions of the Aquatic Facility for curricular, special education, and extracurricular purposes.

E. The Aquatic Facility was operated by Whitewater Aquatic Center Inc., pursuant to a Lease and Operating Agreement dated December 15, 2001 that expired December 14, 2016, and the City and the School District have agreed that the Park and Recreation Board of the City of Whitewater (the "Park Board") assumed the responsibility for the operation and management of the Aquatic Facility. The Park Board is a governmental subdivision and agency of the City. The School District shall have the right to appoint two members of the Park Board.

F. The City and the School District are entering into this Lease and Operation Agreement to provide for the operation of the Aquatic Facility at the expiration of the prior agreement on June 30, 2021.

F. For purposes of this Agreement, the term "Leased Premises" means the Aquatic Facility and the Site, excluding the District Locker Room Facility.

G. Capitalized terms used, but not defined, in this Agreement, shall have the meaning given to them in the Cooperation Agreement. Any inconsistencies between the terms of the Cooperation Agreement and this Agreement shall be resolved in favor of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, each of which is incorporated into this Agreement by reference, and further in consideration of the rents to be paid hereunder, and subject to all of the covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I.

DEMISE OF LEASED PREMISES

I.01 **The Leased Premises**. The School District hereby leases unto the City, and the City hereby leases from the School District, the Leased Premises. The Leased Premises are depicted on the attached Exhibit A.

I.02 **Access and Parking**. In connection with its lease of the Leased Premises, the School District hereby also grants unto the City and its employees, invitees and patrons the non-exclusive right of ingress and egress to and from the Aquatic Facility over and across the driveways and walkways serving Whitewater High School, as well as the non-exclusive right to use the parking areas, all as shown on the attached Exhibit B. In order to further accommodate the parking needs of the Aquatic Facility: (a) the School District also agrees that the parking spaces in that portion of the Whitewater High School parking area designated on the attached Exhibit B as the "Aquatic Facility Designated Parking Area" shall not be used by students of Whitewater High School as are other portions of the parking area; and (b) the School District will use reasonable efforts to assure that students are not parking in the Aquatic Facility Designated Parking Area during the customary school day hours of 7:30 a.m. to 3:30 p.m. The remaining parking spaces in the Whitewater High School parking area shall be available for use by the School District, the City and the general public on a first come/first served basis. The School District shall post signs in appropriate locations of the parking area to inform the public that the parking spaces are in the "Aquatic Facility Designated Parking Area."

ARTICLE II.

TERM OF AGREEMENT

II.01 **Initial Term**. The initial term of this Agreement shall run for five (5) years commencing on July 1, 2021 (the "Commencement Date") and ending at 11:59 p.m. on June 30, 2026 (the "Expiration Date"), unless sooner terminated in accordance with this Agreement or in

furtherance of the School District's and the City's rights and remedies in the event of an uncured default.

II.02 **Rights to Extend the Term**. The parties may extend this Lease only by mutual written agreement of the City and the School District.

ARTICLE III.

RENTAL

III.01 **Annual Rent**. During the term of this Agreement, the City shall pay to the School District annual rent of One Dollar ($1.00), payable in advance on the Commencement Date and on each annual anniversary of the Commencement Date.

ARTICLE IV.

USE OF THE LEASED PREMISES

IV.01 **Permitted Use/Continuous Use**. During the entire term of this Agreement, including any extensions: (a) the City shall have the right to use the Leased Premises; and (b) the City covenants that it will continuously use the Leased Premises, solely as a public recreation facility serving public recreational needs and the reasonable programming needs of the School District. Such use shall at all times be conducted in accordance with the terms of this Agreement and with all applicable federal, state, and local laws, codes, regulations, ordinances, permits and licenses (collectively, "Laws"), including without limitation all Laws governing the use of the School District's facilities, to the extent such Laws affect the use and operation of the Leased Premises. The School District will use diligent efforts to keep the City informed regarding Laws applicable to School District facilities, including any changes in such Laws. Without limiting the generality of the foregoing, the Aquatic Facility shall at all times be a smoke-free, alcohol-free, and drug-free environment.

ARTICLE V.

OPERATION OF THE LEASED PREMISES

V.01 **Responsibility for Operation**. During the term of this Agreement, the City of Whitewater Park and Recreation Board ("Park Board") shall have primary responsibility for the management and operation of the Leased Premises. In that regard:

A. **Allocation and Use of Space**. Subject to the general restrictions set forth in Article IV above and the School District's rights and remedies as set forth in this Agreement, the Park Board will have the sole and exclusive control over and right to schedule, allocate and lease space within the Leased Premises. It is anticipated that, in connection with the operation of the Aquatic Facility, the City may enter into (a) sublease/use agreements with various individuals and user groups ("Use Agreements"); and (b) contractual arrangements with concessionaires,

management companies and other service providers (collectively, "Service Contracts"). The School District consents to such Use Agreements and Service Contracts, all of which, however, shall be expressly subject and subordinate to the terms of this Agreement.

B. **Personnel**. Except as otherwise provided for herein or by other lease agreements between the parties regarding the School District's scheduled use of the Aquatic Facility, the Park Board shall solely be responsible for staffing the Aquatic Facility(except the District Locker Room Facility), including without limitation the selection, hiring/firing, wages and benefits, workers compensation, unemployment compensation, non-discrimination requirements and all other costs and liabilities associated with all employees and volunteers, if any, necessary to operate the Aquatic Facility. Staffing needs will be determined by the Park Board and reflected in the Annual Budget (as described in Section 5.02 below). The Park Board may also retain, at its sole expense, such professional and administrative services (e.g., accounting, legal, purchasing, human resources, and so on) as it deems necessary to the operation and management of the Aquatic Facility. The Park Board may use volunteer staff in operating the Aquatic Facility, provided that all such volunteers, prior to commencing any activities within the Leased Premises, sign a waiver of liability in favor of, and in form and substance satisfactory to, the City and the School District. Notwithstanding the foregoing, in the event the Park Board fails or declines to satisfy or comply with its responsibilities under this section, then the City shall fully indemnify and hold the School District harmless from any and all claims or demands asserted by any Aquatic Facility staff member or third party, including reasonable attorney fees and costs of defense, relating to such violation of this section. The Park Board may use Aquatic Center personnel and facilities to conduct recreation registration unrelated to the Aquatic Center and other similar activities for the benefit of the general public.

C. **Special Activities/Events**. It is anticipated that the School District may request use of the Aquatic Facility for uses in addition to those uses described in Section 5.01 B. above and the City may request use of the Aquatic Facility for uses extending beyond the scope of the General Public's Recreational Needs as described in Section 5.01 B. above (all such additional uses collectively referred to herein as, the "Special Activities/Events"). It is intended that any use by the School District or the City for Special Activities/Events shall be subject to payment to Aquatic Facility of a reasonable additional fee for use of the Aquatic Facility beyond the School District's Program Needs and/or the General Public's Recreational Needs, as appropriate. Such uses shall be scheduled ~~through the Aquatic Facility manager~~ in the same manner as uses by any other party wishing to schedule an event at the Aquatic Facility, and shall be subject to availability. The School District and/or the City, as appropriate, shall be responsible for providing lifeguards and supervising all staff and other personnel necessary for any such Special Activities/Events. Subject to the approval of the Park Board, Aquatic Facility personnel may be used to assist the School District and/or the City in connection with any such Special Activities/Events so long as the City

and/or the School District remains primarily responsible for all liability associated with any such Special Activities/Events and the Aquatic Facility is reimbursed for its unusual or irregular personnel and other costs incurred as a result of such activities or events. The City and/or the School District may use volunteer staff in connection with any such Special Activities/Events provided that, prior to commencing any such volunteer activities, all such volunteers sign a waiver of liability in favor of, and in form and substance satisfactory to, the School District and the City. Also, any volunteer who will act as a lifeguard must be a certified lifeguard or be otherwise properly qualified to provide lifeguard services. The Park Board shall develop a written policy to assist WAC staff, the City, and the School District in the determination as to which types of activities/events will be considered special activities/events.

D. **Budget**. The Aquatic Facility will have a separate budget and shall maintain a separate operating account from the City and the Whitewater Park and Recreation Department. The parties will split all Aquatic Facility expenses equally to the extent that they are not covered by revenues generated by the Park Board. All revenue generated by the Aquatic Center operations will be used for Aquatic Facility expenses. The City shall contribute towards the Aquatic Facility costs in the amount of $153,000.00 for calendar year 2021 and $178,000.00 for calendar year 2022 and each remaining calendar year covered by this Agreement. The School District shall contribute towards the Aquatic Facility costs in the amount of $145,500.00 for the period July 1, 2021 through June 30, 2022 and $170,500.00 for the period July 1, 2022 through June 30, 2023 and each remaining fiscal year covered by this Agreement. These amounts contributed by each party may be subject to adjustment on an annual basis, as mutually agreed by the parties. (Exhibit C)

E. **Revenues and Fundraising**. The Park Board shall be responsible for operating the Leased Premises in such a way that attempts to generate sufficient revenues to cover all of the expenses related to the Aquatic Facility's obligations under this Agreement, including without limitation, all of the expenses of operating, maintaining, repairing, replacing and staffing the Leased Premises (except for Special Activities/Events as set forth above). Toward that end, the Park Board shall have the right to receive and/or be reimbursed for all revenues generated by the use and operation of the Leased Premises, including swimming lessons the Park Board provides and any revenues generated by the User Agreements and/or the Service Contracts and/or Special Activities/Events described above, provided, however, that the School District shall have the right to retain curriculum fees, meet entry fees, revenues from sales of School District apparel, swimming lessons the School District provides and other similar revenues (but not revenues from concessions from use of the Aquatic Facility) in connection with use of the Aquatic Facility for the School District's Program Needs. above or in connection with any Special Activities/Events above subject to the obligation to reimburse the Aquatic Facility for any use of Aquatic Facility staff and other Aquatic Facility costs as provided under Sections 5.01 B. and 5.01 C. above. The Park Board shall establish appropriate user fees for the use of the Aquatic Facility. All

such user fees received by the Aquatic Facility shall be deposited to appropriate operating accounts administered and controlled by the Park Board for use in connection with the operation and staffing of the Aquatic Facility and the maintenance, repair and replacement of the Aquatic Facility and the equipment and other assets of the Aquatic Facility.

In addition, the Park Board shall engage in appropriate fundraising activities as a means of generating operating funds for operation of the Aquatic Facility. Any directed gifts acquired through such fundraising activities shall be utilized for such charitable purposes as the donor may so direct (subject to the terms of this Agreement) and, further, shall be held in and disbursed from such segregated accounts as the Park Board deems necessary or appropriate.

Any fundraising activities conducted on the Leased Premises (including without limitation, any commercial sponsorships and/or Service Contracts requiring the use, display or recognition of commercial logos within or upon the Aquatic Facility) shall be subject to the prior approval of the School Board and the City, which approval shall not be unreasonably withheld, suspended or delayed.

F. **Request for Additional Operating or Capital Funds.** The Park Board shall obtain the consent of the City and School District prior to transferring any funds out of its capital account for operational expense use. The Park Board will make requests to the City and School District in the event it needs additional funds for operational expenses. While the City and WUSD contribute designated amounts for both operations and capital expenses, funds will be kept in a co-mingled account. The Park Board will have authority to spend all dollars ***(in a way that sustains operations)***. However, the Park Board will be accountable to both the City and WUSD for the tracking and reporting of all dollars used.

V.02 **Annual Budget**. Not later than September 1 of each calendar year during the term of this Agreement, or such other time as may be mutually agreeable to the parties, the Park Board shall deliver to the School District and the City an annual budget for the upcoming calendar year (the "Annual Budget"). The Annual Budget will show all anticipated funding and revenues of the Aquatic Facility for the upcoming year together with a schedule of the projected user fees to be charged for the upcoming year, and projected expenditures for the upcoming year together with such reserves for capital expenditures and improvements as the Park and Recreation Board deems appropriate. Within thirty (30) days after their receipt of the Annual Budget, the School District and the City shall provide the Park and Recreation Board any suggestions or comments they may have to the Annual Budget, and the Park Board shall give due consideration to the direction of the School District and the City in arriving at its final Annual Budget for the upcoming year.

V.03 **Financial Reports**. Not later than May 1st of each calendar year during the term of this Agreement, the Park Board shall submit to the School District and to the City annual financial reports regarding the operation of the Aquatic Facility during the most recent calendar year, certified as having been reviewed by a qualified representative of the Park Board. In

addition, the Park Board shall make its financial books and records available to representatives of the School District and the City during normal business hours upon request.

ARTICLE VI.

IMPROVEMENTS; ALTERATIONS: REPAIRS AND MAINTENANCE

VI.01 **Alterations and Additions**. Subject to the advance, written approval of the School District and the City, and all applicable laws, codes, regulations and ordinances, the Park Board shall have the right at any time and from time to time during the term of this Agreement, to make such changes, alterations and additions, structural or otherwise, to the Leased Premises, and the fixtures and equipment thereof now or hereafter located on the Leased Premises, as the Park Board shall deem necessary or desirable in connection with the Park Board's permitted use of the Leased Premises. Prior to the commencement of any such work, the Park Board shall submit to the School District and the City for their review and approval, the plans and specifications for such work, together with confirmation that the Park Board has on hand, or has firm written commitments for, all funds sufficient to pay the total estimated cost of such work. Any alterations to the exterior of the Leased Premises shall be compatible with the exterior design and appearance of the exterior of Whitewater High School. If the School District and the City have not approved or rejected the plans and specifications by written notice to the Park Board within sixty (60) days after submission, such plans and specifications shall be deemed to have been approved. Approval of any such plans and specifications shall not be unreasonably withheld provided, however, that unavailability of funds to pay for the proposed work and/or unreasonable interference with or limitation upon the Park Board's ability to meet the School District's Program Needs and/or the General Public's Recreational Needs shall be a proper basis for rejection. The cost of any such change, alteration or addition shall be promptly paid and discharged by the Park Board so that the Leased Premises shall at all times be free of liens for labor and materials supplied to the Leased Premises.

VI.02 **No Waste**. The Park Board shall not do or permit any waste or damage, disfigurement or injury to the Leased Premises or any building or improvement now or hereafter on the Leased Premises or the fixtures or equipment thereof.

VI.03 **Condition of Leased Premises**. The Park Board, prior to the occupancy thereof, shall fully familiarize itself with the physical condition of the Leased Premises and the improvements, fixtures and equipment thereof.

VI.04 **Maintenance and Repair Obligations**. The Park Board covenants and agrees, throughout the term of this Agreement, to maintain the Leased Premises and keep the Leased Premises in as good order and condition as they are in as of the Effective Date, reasonable use and wear thereof excepted. The Park Board shall promptly make or cause to be made all necessary repairs, interior and exterior, structural and nonstructural. When used in this Agreement, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by the Park Board shall be at least equal in quality and class to the original work. The School District and the City shall, throughout the term of this Agreement, have the right, upon reasonable notice to the Park Board, to inspect the Leased Premises to verify compliance with the terms of this Article VI. If the School District believes that the Park Board

is not properly carrying out its duties of maintenance and repair, they shall deliver to the Park Board a notice of default alleging the same, and, the Park Board shall cure such default, or if a cure within that time period is not reasonably possible, commence a cure within that time period and thereafter diligently proceed to cure such default as provided in Article VII below.

The School District shall be responsible for the cost of providing electricity to operate the emergency lighting, exit lighting, and fire alarm systems serving the Aquatic Facility and the lighting to the parking areas, and for the cost of maintenance and repair of, and snow removal from, the parking areas and sidewalks serving the School District's property, including those areas shared with the Leased Premises as described above and maintenance and repair of the parking area lighting.

ARTICLE VII.

OPERATING EXPENSES

VII.01 Park Board Obligations. Except as otherwise provided in this Agreement, the Park Board shall be solely responsible for paying, when due, any and all costs and expenses of every kind and nature required to operate, maintain, repair or replace the Leased Premises, including, without limitation, those of cleaning, lighting, maintaining, repairing and replacing the structures located thereon; the hiring of engineers, architects and other experts in connection with improving, maintaining, repairing or replacing the Leased Premises; maintaining, repairing, or replacing any of the walls, foundations or exterior structural portions of the structures located upon the Leased Premises; providing security and other special services; supplies; water and sewer charges; electricity, gas, and all other utility charges; licenses and permit fees; and any and all other expenses whatsoever of maintaining, operating, repairing and replacing the Leased Premises. The School District shall have no duty to provide any utility or other services to the Leased Premises, with the exception of the electricity (including back-up system) necessary to operate the emergency lighting, exit lighting, and fire alarm systems serving the Leased Premises, all of which shall be operated, at School District expense, as part of the systems serving Whitewater High School.

The Annual Budget prepared by the Park Board each year shall include adequate reserves for the expected future replacement of the structural, mechanical and utility systems of the Leased Premises as reasonably deemed appropriate by the Park Board.

In addition to the foregoing, beginning on the Effective Date, the Park Board shall be solely responsible for any taxes, special assessments, or other governmental assessments or exactions levied, assessed, or otherwise relating to the entire Leased Premises, including without limitation, real and personal property taxes; governmental assessments such as special assessments, or payment in lieu of taxes. If any such taxes or assessments are payable, or may at the option of the taxpayer be paid, in installments, then the Park Board shall have the right to pay the same in installments. The Park Board shall have the right to contest and review the amount or validity, in whole or in part, of any taxes, payments in lieu of taxes, or special assessments levied, imposed, assessed or payable upon, against, for or with respect to the Leased Premises. The term "legal proceedings" includes appropriate appeals of any judgments, decrees, orders and certiorari proceedings and appeals of orders therein, to and including appeals to the court of last

resort. In the event any rebate of special assessments or other charges levied, imposed, assessed or payable upon, against or with respect to the Leased Premises is made, such rebate shall be the sole property of the Park Board, provided the Park Board shall have paid such special assessment or other charge in the first instance.

ARTICLE VIII.

SIGNS

The Park Board shall have the right to erect, maintain and replace identification and directional signs on the exterior of the Leased Premises, subject the written consent of the School District, which consent shall not be unreasonably withheld or delayed.

ARTICLE IX.

INSURANCE: DESTRUCTION OF LEASED PREMISES

IX.01 **Casualty Insurance**. During the entire term of this Agreement, the Park Board shall, at its sole expense, obtain and maintain comprehensive casualty insurance with coverage limits of not less than $5,000,000 insuring the Leased Premises against all risks, both general and specific, as are customarily insured against for developments of like size and character to the Leased Premises. In that regard, the Park Board shall obtain, and provide to the School District, the written advice of a qualified risk management specialist advising the Park Board regarding such recommended coverages. The Park Board shall cause the School District and the City to be named insureds under all such policies. On or before the Effective Date, the Park Board shall provide the School District and the City with a certificate or certificates of insurance showing such coverages. As an alternative to the Park Board obtaining separate comprehensive casualty insurance as provided herein, if such is agreeable to the parties hereto, the Park Board may obtain such comprehensive casualty insurance coverage through the existing or future policies issued to the School District and/or the City so long as the Park Board reimburses the School District and/or the City, as appropriate, for the actual cost of said coverage. In any event, the School District and the City shall be named insureds on all such coverage.

IX.02 **Waiver of Claims**. The parties acknowledge that there are certain risks associated with the operation of the Aquatic Facility and related programs and activities. Each party hereby assumes all risks in connection with, and holds harmless and indemnifies the other parties hereto with respect to any damage, loss or destruction to the Leased Premises, or any part thereof, arising from or in any way attributable to the activities of each party and/or said party's directors, officers, officials, agents, employees and volunteers in, on or about the Aquatic Facility. It is agreed that all insurance proceeds available as a result of any damage, loss or destruction to the Aquatic Facility shall be applied as necessary to repair, restore, rebuild or replace the same as nearly as possible to the condition such were in immediately prior to such damage, loss or destruction.

IX.03 **Liability Insurance**. During the entire term of this Agreement, the Park Board shall obtain and maintain a policy or policies of general liability insurance, with coverage limits

of not less than $5,000,000 for any one occurrence for both injury to person and damage to property. All such policy or policies shall name the School District and the City as additional insureds as their interests may appear. On or before the Effective Date, the Park Board shall provide the School District and the City with a certificate or certificates of insurance showing such coverages. As an alternative to obtaining a separate general liability policy or policies as provided herein, if agreeable to the parties hereto, the Park Board may obtain such coverage through existing or future policies held by the School District and/or the City so long as the Park Board reimburses the School District and/or the City, as appropriate, for the actual cost of said coverage. In any event, the School District and the City shall be named insureds on said liability coverage.

IX.04 Property Insurance. The District will maintain an insurance policy which provides property insurance coverage for the Aquatic Facility.

IX.05 Other Insurance. The Park Board shall also obtain and maintain such other coverages, including without limitation, worker's compensation, unemployment compensation, automobile coverage, directors and officers liability as may be required by law.

ARTICLE X.

ASSIGNMENT AND SUBLETTING

X.01 No Assignment or Subletting. Except as permitted under Article V above regarding Use Agreements and Service Contracts, and at all times subject to the use limitations contained in Article IV above and to the terms of this Agreement generally, the Park Board may not assign this Agreement or sublet the Leased Premises except in connection with the transfer of complete responsibility for operation of the Aquatic Facility, and then only with the written consent of the School District and the City, which consent shall be within the reasonable discretion of those bodies.

X.02 Assignment Upon Expiration or Termination Uncured Default. Upon the expiration or earlier termination of this Agreement, the Park Board agrees to execute any and all assignments or other instruments necessary to convey to whomever is designated to receive them by the School District and the City, all of the Park Board's right, title and interest in and to this Agreement and all other assets, contracts, funds, permits, and personal property, and any and all other rights of the Park Board in and to the Leased Premises. This covenant shall be enforceable by specific performance.

ARTICLE XI.

NOTICES

All notices, certificates or other communications hereunder shall be given in one of the following methods, and shall be deemed received (i) when hand delivered; or (ii) two business days after deposit in the U.S. Mail, postage prepaid, by certified or registered mail; or (iii) one business day after deposit with an overnight commercial courier, addressed as follows:

To The School District:	Whitewater Unified School District 419 South Elizabeth Street Whitewater, WI 53190 Attn: Superintendent
To the City:	The City of Whitewater 312 West Whitewater Street Whitewater, WI 53190 Attn: City Manager
To the Park Board:	The City of Whitewater Park Board 312 West Whitewater Street Whitewater, WI 53190 Attn: Director

Either party may, upon prior written notice to the other, specify a different address and/or recipient for the giving of notice.

ARTICLE XII.

TERMINATION EVENTS

XII.01 Termination Events. This Agreement may only be terminated prior to the Expiration Date pursuant to subsection A or B below (a "Termination Event"):

A. **(i) Event of Default by Park Board**. If the Park Board, or its permitted successors or permitted assigns, fails to perform any material term, condition or covenant of this Agreement and if such failure continues more than ninety (90) days after the Park Board receives written notice thereof (or such longer time as reasonably necessary not to exceed one hundred fifty (150) days, except with the written consent of the School District and the City in their reasonable discretion, if such is not susceptible to cure within ninety (90) days, and the Park Board, upon receipt of such notice, promptly and diligently attempts to effect such cure and thereafter diligently and continuously pursues such cure), then either the School District or the City shall have the right to terminate this Agreement and to recover possession of the Leased Premises. Notwithstanding and in addition to the foregoing, before terminating this Agreement pursuant to this Section, the School District and/or the City must first comply with the notice and arbitration procedures set forth Article XVIII below.

(ii) Any claim to recover unpaid rents or other sums owing hereunder, including any costs, liabilities or damages incurred by the School District or the City due to the Park Board's failure to abide by its covenants and obligations hereunder, shall also be subject to the notice and arbitration procedures set forth in Article XVIII below. Any termination of this Agreement for default shall also be subject to

Article XVI below regarding transfer of management and control following such termination.

(iii) Right to Cure Defaults. In addition to any other remedies the School District may have, the School District may, but shall not be obligated to, perform any obligation which the Park Board has failed to perform after written notice and opportunity to cure as set forth above (or without notice in the event of a situation where failure to effect an immediate cure could result in substantial harm to the Leased Premises or injury to person), and all costs incurred by the School District and/or the City in doing so shall be immediately due the School District and/or the City from the Park Board, except to the extent such costs are covered by insurance and insurance proceeds are or will be made available to pay the cost thereof. The School District and the City shall have the right to enter upon the Leased Premises at all times in order to verify that the Park Board is in compliance with the terms of this Agreement and to carry out their various rights and obligations hereunder.

B. Lack of Funding.

(i) Notwithstanding any other terms of this Agreement, the School District may, at its sole discretion, terminate this Agreement at any time upon ninety (90) days' notice to the City and the Park Board if the School District is unable to fund its obligations under Section 5.01.F through its Fund 80 community service budget.

(ii) Notwithstanding any other terms of this Agreement, the City may, at its sole discretion, terminate this Agreement at any time upon ninety (90) days' notice to the School District if the City loses substantial sources of funds (for example shared revenue) such that it is no longer practical for the City to continue to fund its obligations under this Agreement.

(iii) The City and the School District agree to be equally responsible for refunding prorated membership fees if the facility closes.

ARTICLE XIII.

INDEMNIFICATION

Each party hereto and said party's permitted successors and permitted assigns, agree to indemnify, save harmless and defend all other parties hereto, and their respective directors, officers, officials, agents and employees (collectively, the "Indemnified Parties") from any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including attorney costs and fees, for claims of any character, including liability and expenses in connection with employment or personnel actions or policies of said party, the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any person, persons or property on account of or arising out of the operation, use or occupancy of all or any portion of the Leased Premises by said party, its permitted successors, permitted assigns, sublessees and other users and patrons, or

at any time occurring on, at, or in the Leased Premises. No party shall be required to so indemnify any Indemnified Party whose negligence or willful misconduct was a cause of the injury or loss that is the subject of such claim. This requirement shall also apply with equal force to all work performed by a party, its successors or permitted assigns, said party's contractor or any subcontractor or any other party directly or indirectly employed by or retained by said party to perform work relating to the operation, repair, maintenance or replacement of all or any portion of the Leased Premises or any equipment or fixtures thereon.

ARTICLE XIV.

EQUAL OPPORTUNITIES/NON-DISCRIMINATION POLICY

The Park Board for itself, its permitted successors and permitted assigns, agrees that in the operation, management and use of the Leased Premises, it and they will abide by all applicable federal, state, and local laws, codes and ordinances relating to equal opportunities and non-discrimination. Without limiting the generality of the foregoing, the Park Board covenants that it will not discriminate against any employee or applicant for employment within the Leased Premises, nor shall the Leased Premises or any portion of it be used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry. In the event of any claim asserted by any employee of the Aquatic Facility or any third party which arises from a violation of this section, the City shall fully indemnify and hold the School District harmless from any and all such claims or demands, including reasonable attorney fees and costs of defense, relating to the same.

ARTICLE XV.

TRANSFER OF MANAGEMENT AND CONTROL UPON EXPIRATION OR TERMINATION

XV.01 Upon Expiration or Termination. Upon expiration or earlier termination of this Agreement as set forth in Article XII above (collectively a "Termination Event"), management of the Leased Premises shall become the joint responsibility of the School District and the City, and all funds then existing in the operating account or any other account held by the Park Board (excluding segregated funds held for a specifically designated charitable purpose at the direction of a donor) shall be transferred to the joint control of the School District and the City. After the occurrence of a Termination Event, the School District and the City shall confer in good faith to determine whether the Leased Premises shall continue to be operated as a public aquatic center, and if so, whether such operation shall be delegated to one or more departments or subagencies of either or both of the School District and the City, or contracted to an independent third party; provided, however, that any such use must qualify as a charitable purpose under applicable laws and regulations. If a Termination Event has occurred and the School District and the City jointly and voluntarily agree, in writing, to abandon the operation of a public aquatic center at the Leased Premises, all rights of the City and any other party hereunder shall cease, and the School District shall assume full management and control of the Leased Premises, and may use it, replace it, demolish it, or otherwise dispose of it at the School District's sole discretion. All

funds then contained in the operating funds established hereunder (excluding segregated funds held for a specifically-designated charitable purpose at the direction of a donor) shall paid to the School District to be used for the costs related thereto. If a Termination Event has occurred and the School District and the City are unable to jointly agree upon a disposition or use of the Leased Premises within ninety (90) days thereafter (or such longer time as may be mutually agreeable), the matter shall be submitted to mediation or arbitration pursuant to Article XVIII. It is acknowledged that, in the event the City and the School District are not able to reach an agreement as to the future use and/or disposition of the Aquatic Facility after the occurrence of a Termination Event, neither the City nor the School District shall be deemed to have superior rights in the Leased Premises by virtue of this Agreement or otherwise unless and until a final determination is made by the court.

ARTICLE XVI.

MISCELLANEOUS

XVI.01 **Captions**. The captions or headings in this Agreement are for convenience and in no way define, limit or describe the scope or intent of the provisions of this Agreement.

XVI.02 **Terms**. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

XVI.03 **Governing Law**. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement.

XVI.04 **Successors and Assigns**. Except as limited or conditioned by the express provisions hereof, the provisions of this Agreement shall inure to the benefit of and be binding upon the permitted successors and permitted assigns of the Park Board and the successors and assigns of the School District and the City.

XVI.05 **Amendment**. This Agreement shall not be effectively amended, changed, modified, or altered without the written consent of all parties hereto (or any successor, if any), and no modification, alteration or amendment to this Agreement shall be binding upon either hereto until such modification, alteration or amendment is reduced to writing and executed by all such parties.

XVI.06 **Counterparts**. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

XVI.07 **Severability**. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other

provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Agreement contained, shall not affect the remaining portions of this Agreement, or any part thereof.

XVI.08 **No Third Party Beneficiaries**. This Agreement is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have obtain or derive from this Agreement any rights or other benefits or interests, under any laws or otherwise.

XVI.09 **Exculpatory Provision**. The parties to this Agreement expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or official (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Agreement, and no party hereto shall make any claim to the contrary.

XVI.10 **Rules of Construction/Conduct**. The parties to this Agreement further acknowledge and agree that this Agreement is a good faith attempt to memorialize the intent of the parties, that in the course of its preparation, each party has been adequately and fully represented, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in a spirit of cooperation consistent with the intent of the Cooperation Agreement and with the aim of benefitting the entire Whitewater area community.

ARTICLE XVII.

ARBITRATION

XVII.01 **Agreement to Arbitrate**. The parties to this Agreement agree that any dispute, grievance, controversy, demand, claim, counterclaim, or cause of action (all of which are referred to as a "Claim") by or between any of the parties hereto, which arises out of or relates to any term or requirement of this Agreement, shall be submitted to arbitration pursuant to the procedures set forth below, regardless of whether such Claim arises in tort, contract, or otherwise.

XVII.02 **Notice of Claim**. If and when any Claim arises, the party asserting the Claim shall provide written notice of the claim ("Notice of Claim") to the opposing party within ninety (90) days of the event or occurrence giving rise to the Claim. Upon receipt of such Notice of Claim, the party against whom the Claim is made shall have twenty (20) days to either: (a) cure or satisfy the Claim, or (b) notify the other party in writing that the Claim is disputed ("Notice of Dispute"). Failure to satisfy either of the proceeding (a) or (b) shall also be considered a Notice of Dispute. If the Claim is disputed, then within twenty (20) days of the Notice of Dispute each party involved in the Claim shall select an arbitrator, attorney, or other individual (herein an "Arbitration Representative") to represent them in the Arbitration process set forth in Section 17.03 below, and each party shall notify the other party of said Arbitration Representative.

XVII.03 **Arbitration Panel**. If a Notice of Dispute has been provided and all other requirements of Section 18.02 have been met, then:

A. The two (2) Arbitration Representatives as a body shall, as promptly as possible, select a third disinterested person to compose a panel of three to arbitrate the Claim. If a third person cannot be agreed upon by the two (2) Arbitration Representatives, the two (2) representatives shall jointly request that the Wisconsin Employment Relations Commission (WERC) submit a list of five (5) names from which the two (2) Arbitration Representatives, within three (3) days of receipt, shall each strike two (2) names. The remaining name shall be the disinterested person for the arbitration proceeding.

B. Except as provided in subsection 17.05 below, the decision of a majority of the arbitration panel shall be final and binding upon the parties and any party to the arbitration may apply to the Circuit Court in Walworth County or Jefferson County for an order confirming the award in accordance with Chapter 70 of the Wisconsin Statutes. The arbitration panel shall not, however, have the authority to add to, subtract from, or otherwise modify or change the terms of this Agreement.

C. If there is any charge for the service of the disinterested third person arbitrator, or for a transcript of the proceedings, the parties shall share the expense equally. Each party shall bear the expense of preparing and presenting its own case.

XVII.04 **Arbitration Default**. If any party fails or refuses to comply with any of the procedures or requirements of this Article 17, then the party aggrieved by such failure or refusal may petition the Circuit Court in Walworth County or Jefferson County for an order to enforce the terms of this Article 17. If such an order to enforce is entered by the Court, then the party who failed or refused to comply with this Article 17 shall be liable to the petitioning party for all costs and attorney's fees incurred in obtaining such an order.

XVII.05 **Right to Judicial Relief**. The arbitration procedures set forth in this Article XVII shall be followed with respect to all Claims arising out of or relating to any term of requirement or this Agreement. However, notwithstanding Section 17.03.B above, the parties may seek de novo judicial relief from a court of competent jurisdiction in the State of Wisconsin with respect to an arbitration decision arising out of or relating to (a) section 12.01.A(i) of this Agreement, (b) Article XV of this Agreement; or (c) the arbitrability of the Claim under this Agreement.

SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT

By: _____
Name: Carroll E. Judd, Jr.
Title: School Board President

By: _____
Name: Steven J. Ryan
Title: School Board Clerk

THE CITY OF WHITEWATER

By: _____
Name: Cameron Clapper
Title: City Manager

By: _____
Name: Michele R. Smith
Title: City Clerk

LEASE AGREEMENT BETWEEN
WHITEWATER UNIFIED SCHOOL DISTRICT
AND THE CITY OF WHITEWATER

This Lease Agreement ("this Agreement") is entered into as of the 28th day of June, 2021 ("the Effective Date"), by and among the **Whitewater Unified School District** ("the School District"), a Wisconsin school district, and the **City of Whitewater**, a Wisconsin municipal corporation and political subdivision ("the City").

RECITALS

A. The School District and the City are currently parties to a Lease and Operating Agreement, dated June 28, 2021, which provides for the operation of a recreation facility constructed on land owned by the School District and adjacent to Whitewater High School (the "Site"), an aquatic facility consisting of an eight lane, twenty-five yard competitive pool, a leisure pool, a slide, a Fitness Center, and appurtenant fixtures, mechanical systems, and related improvements (collective, the "Aquatic Facility").

B. The Lease and Operating Agreement provides for the use of the Aquatic Facility by the general public. The Aquatic Facility is primarily intended to serve the recreational and programmatic needs of the general public, but the School District also wishes to use the Aquatic Facility for curricular, special education, and extracurricular purposes.

NOW, THEREFORE, in consideration of the foregoing Recitals, and further in consideration of the rents to be paid hereunder, and subject to all of the covenants and agreements contained in this Agreement, the parties agree as follows:

1. **Use of Space**. The City agrees to rent the Aquatic Facility to the School District to be used for curricular, special education, and extracurricular purposes.

2. **Annual Rent**. The School District agrees to pay the City $7,500.00 on or about July 1 annually for its use of the Aquatic Facility for curricular, special education, and extracurricular purposes.

3. **Scheduling**.

   (a) The Park and Recreation Board of the City of Whitewater (the "Park Board") shall exercise its best efforts to schedule use of the Aquatic Facility to meet within reason the School District's Program Needs and the General Public's Recreational Needs. For purposes of this Agreement, (i) the "School District's Program Needs" shall include use of the Lap Pool, Leisure Pool, and Fitness Center, during the school year or during the summer, for health and physical education courses and related curricular activities and practice, individualized instruction for students with disabilities, training and competition for co-curricular competitive swim teams representing the School District and (ii) the "General Public's Recreational Needs shall mean use of the Lap Pool, Fitness Center, and/or the Leisure Pool for youth and adult swim

lessons and related aquatics training and instruction, parent-child recreational programs, senior citizens health and recreational programs, the publics' general recreational use and similar activities historically and/or customarily sponsored by the City.

The parties acknowledge that, in order to maximize the efficiency and fairness with which the Aquatic Facility is used, it will be essential that the parties cooperate in working out the Aquatic Facility's yearly schedule. Toward that end, the School District shall, not later than April 30 of each calendar year, provide Park Board and the City a proposed schedule of the School District's Program Needs for the period from August 1 of that year through July 31 of the following year. Similarly, a proposed schedule of the General Public's Recreational Needs shall be developed by the Park Board for the same period. If the Aquatic Facility is available on the dates and at the times selected by the School District, then the School District's use of the Aquatic Facility shall be included in the Aquatic Facility's schedule as proposed. If, on the other hand, the Aquatic Facility may be scheduled for another use at a time proposed for the School District's Program Needs, the Park Board shall notify the School District, and the parties shall meet to resolve the conflict to the reasonable satisfaction of all concerned, said resolution to be concluded within thirty (30) days after receipt of the School District's proposed schedule or June 1 of that year, whichever is later.

(b) Notwithstanding the foregoing, it is also agreed and understood that the School District shall be entitled to, at a minimum, use of the same amount of time and space in the Aquatic Facility on an annual basis as is used by the School District during the 2018-2019 school year and summer, and that the School District shall be entitled to, at a minimum, use of the same locations within the Aquatic Facility during the same, or substantially similar, dates and times as are used by the School District during the 2018-2019 school year and summer.

(c) After the scheduling for the School District's Program Needs for the coming year has been approved and adopted by the Park Board as provided herein, said schedule shall not be modified by the Park Board without the School District's prior written consent. In addition, throughout each year during the term of this Agreement, at such times as may be necessary, the staff of the Park Board will meet with representatives of the School District to go over their various scheduling needs and to resolve any scheduling conflicts. The School District shall be responsible for providing and supervising all staff and other personnel necessary for the School District's scheduled uses of the Aquatic Facility, with the exception of a lifeguard. Upon request by the School District and subject to approval of the Park Board, Aquatic Facility personnel may be used to assist the School District in connection with supervision and/or administration of the School District's Program Needs so long as the School District remains primarily responsible for all liability associated with such activities and the Park Board is reimbursed for any unusual or irregular personnel or other costs incurred as a result of such activities.

(d) In addition to incorporating the School District's scheduled dates into the Aquatic Facility schedule, the Park Board shall use diligent efforts to arrange for ongoing use of the Aquatic Facility in such manner as is reasonably necessary to maximize revenues.

4. **Summer Programs**. The School District may decide to offer aquatics instruction in the future as part of its summer school curriculum. If the School District wishes to offer such instruction at the Aquatics Facility, its summer school aquatics instruction schedule shall be included in the proposed schedule of the School District's Program Needs provided pursuant to Section 3 above.

   The School District shall be responsible for all costs associated with the School District's summer school aquatics instruction program and supervision of all personnel necessary for the organization, administration and implementation of the School District's summer school aquatics instruction program, together with all liability arising from said program. It is anticipated that, subject to the approval of the Park Board, Aquatic Facility personnel (such as lifeguards and swimming instructors) may assist the School District in connection with such program. The parties agree to establish a mutually acceptable arrangement for staffing of the School District's summer school aquatics instruction program and reimbursement of the Aquatic Facility for its costs associated therewith no later than March 15 of each year. The rate of reimbursement will be substantially similar to the rate of reimbursement for Summer 2015.

5. **The District Locker Room Facility**

   (a) The Aquatic Facility includes a locker room facility constructed for the sole and exclusive use of the School District (the "District Locker Room Facility"). For purposes of this Agreement, the District Locker Room Facility means the area of the Aquatic Facility bounded by the interior walls, floor and ceiling of the District Locker Room Facility, as well as any portions of the Aquatic Facility utility and mechanical systems (wherever located) serving exclusively the District Locker Room Facility.

   (b) Exclusive Use By School District. Unless otherwise agreed, the School District shall have the sole and exclusive right to use and control the District Locker Room Facility.

   (c) Maintenance and Repair. The School District shall, at its sole cost and expense, maintain and repair the District Locker Room Facility. In that regard, the School District shall keep and maintain the District Locker Room Facility in clean and good condition and repair, normal wear and tear excepted, and shall provide such insurance as the School District deems necessary or desirable in connection with the ownership and operation of the District Locker Room Facility.

   (d) Utilities. The School District shall be responsible for the cost of all directly-metered utilities supplied to the District Locker Room Facility (i.e., sewer and water and utilities to heat water). Electricity and HVAC utilities provided to the District Locker Room Facility shall not be separately metered, and shall be billed to and paid by the

Park Board. The School District shall be responsible for the cost of all sewer, water, electricity, HVAC and other utilities necessary for or relating to any future improvements to and/or expansion of the District Locker Room Facility made by the School District pursuant to Section 8.04 below.

(e) Alterations, Additions or Improvements. The School District shall have the full right and authority, at its sole cost and without the consent of the Park Board or the City, to make such alterations, additions and/or improvements to the District Locker Room Facility, or to Whitewater High School and its environs, as the School District deems necessary or desirable in its sole discretion. All such work shall be carried out so as to limit, to the extent reasonably possible without incurring additional costs, interruption or disruption to the operation of the Leased Premises, provided, however, that the District makes no guaranty or warranty that such interruption or disruption will not occur.

6. **Term of Agreement**. The initial term of this Agreement shall run for five (5) years commencing on July 1, 2021 (the "Commencement Date") and ending at 11:59 p.m. on June 30, 2026 (the "Expiration Date", unless sooner terminated in accordance with this Agreement. The parties may extend this Lease by mutual written agreement of the city and the School District.

7. **Waiver of Claims**. The parties acknowledge that there are certain risks associated with the operation of the Aquatic Facility and related programs and activities. Each party hereby assumes all risks in connection with, and holds harmless and indemnifies the other parties hereto with respect to any damage, loss or destruction to the Leased Premises, or any part thereof, arising from or in any way attributable to the activities of each party and/or said party's directors, officers, officials, agents, employees and volunteers in, on or about the Aquatic Facility. It is agreed that all insurance proceeds available as a result of any damage, loss or destruction to the Aquatic Facility shall be applied as necessary to repair, restore, rebuild or replace the same as nearly as possible to the condition such were in immediately prior to such damage, loss or destruction.

8. **Indemnification**. Each party hereto and said party's permitted successors and permitted assigns, agree to indemnify, save harmless and defend all other parties hereto, and their respective directors, officers, officials, agents and employees (collectively, the "Indemnified Parties") from any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including attorney costs and fees, for claims of any character, including liability and expenses in connection with employment or personnel actions or policies of said party, the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any person, persons or property on account of or arising out of the operation, use or occupancy of all or any portion of the Leased Premises by said party, its permitted successors, permitted assigns, sublessees and other users and patrons, or at any time occurring on, at, or in the Leased Premises. No party shall be required to so indemnify any Indemnified Party whose negligence or willful misconduct was a cause of the injury or loss that is the subject of such claim. This requirement shall also apply

with equal force to all work performed by a party, its successors or permitted assigns, said party's contractor or any subcontractor or any other party directly or indirectly employed by or retained by said party to perform work relating to the operation, repair, maintenance or replacement of all or any portion of the Leased Premises or any equipment or fixtures thereon.

9. **Notices.** All notices, certificates or other communications hereunder shall be given in one of the following methods, and shall be deemed received (i) when hand delivered; or (ii) two business days after deposit in the U.S. Mail, postage prepaid, by certified or registered mail; or (iii) one business day after deposit with an overnight commercial courier, addressed as follows:

To The School District:	Whitewater Unified School District 419 South Elizabeth Street Whitewater, WI 53190 Attn: Superintendent
To the City:	The City of Whitewater 312 West Whitewater Street Whitewater, WI 53190 Attn: City Manager
To the Park Board:	The City of Whitewater Park Board 312 West Whitewater Street Whitewater, WI 53190 Attn: Director

Either party may, upon prior written notice to the other, specify a different address and/or recipient for the giving of notice.

10. **Miscellaneous**.

(a) Captions. The captions or headings in this Agreement are for convenience and in no way define, limit or describe the scope or intent of the provisions of this Agreement.

(b) Governing Law. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement.

(c) **Successors and Assigns**. Except as limited or conditioned by the express provisions hereof, the provisions of this Agreement shall inure to the benefit of and be binding upon the permitted successors and permitted assigns of the Park Board and the successors and assigns of the School District and the City.

(d) **Amendment**. This Agreement shall not be effectively amended, changed, modified, or altered without the written consent of all parties hereto (or any successor, if any), and no modification, alteration or amendment to this Agreement shall be binding

upon either hereto until such modification, alteration or amendment is reduced to writing and executed by all such parties.

(e) **Counterparts**. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

(f) **Severability**. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Agreement contained, shall not affect the remaining portions of this Agreement, or any part thereof.

(g) **No Third Party Beneficiaries**. This Agreement is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have, obtain or derive from this Agreement any rights or other benefits or interests, under any laws or otherwise.

(h) **Exculpatory Provision**. The parties to this Agreement expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or official (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Agreement, and no party hereto shall make any claim to the contrary.

(i) **Rules of Construction/Conduct**. The parties to this Agreement further acknowledge and agree that this Agreement is a good faith attempt to memorialize the intent of the parties, that in the course of its preparation, each party has been adequately and fully represented, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in a spirit of cooperation consistent with the intent of the Cooperation Agreement and with the aim of benefitting the entire Whitewater area community.

11. **Arbitration.**

(a) Agreement to Arbitrate. The parties to this Agreement agree that any dispute, grievance, controversy, demand, claim, counterclaim, or cause of action (all of which are referred to as a "Claim") by or between any of the parties hereto, which arises out of or relates to any term or requirement of this Agreement, shall be submitted to arbitration pursuant to the procedures set forth below, regardless of whether such Claim arises in tort, contract, or otherwise.

(b) Notice of Claim. If and when any Claim arises, the party asserting the Claim shall provide written notice of the claim ("Notice of Claim") to the opposing party within ninety (90) days of the event or occurrence giving rise to the Claim. Upon receipt of such Notice of Claim, the party against whom the Claim is made shall have twenty (20) days to either: (a) cure or satisfy the Claim, or (b) notify the other party in writing that the Claim is disputed ("Notice of Dispute"). Failure to satisfy either of the proceeding (a) or (b) shall also be considered a Notice of Dispute. If the Claim is disputed, then within twenty (20) days of the Notice of Dispute each party involved in the Claim shall select an arbitrator, attorney, or other individual (herein an "Arbitration Representative") to represent them in the Arbitration process set forth in Section 11 below, and each party shall notify the other party of said Arbitration Representative.

(c) Arbitration Panel. If a Notice of Dispute has been provided and all other requirements of Section 11 have been met, then:

The two (2) Arbitration Representatives as a body shall, as promptly as possible, select a third disinterested person to compose a panel of three to arbitrate the Claim. If a third person cannot be agreed upon by the two (2) Arbitration Representatives, the two (2) representatives shall jointly request that the Wisconsin Employment Relations Commission (WERC) submit a list of five (5) names from which the two (2) Arbitration Representatives, within three (3) days of receipt, shall each strike two (2) names. The remaining name shall be the disinterested person for the arbitration proceeding.

Except as otherwise provided for herein, the decision of a majority of the arbitration panel shall be final and binding upon the parties and any party to the arbitration may apply to the Circuit Court in Walworth County or Jefferson County for an order confirming the award in accordance with Chapter 70 of the Wisconsin Statutes. The arbitration panel shall not, however, have the authority to add to, subtract from, or otherwise modify or change the terms of this Agreement.

If there is any charge for the service of the disinterested third person arbitrator, or for a transcript of the proceedings, the parties shall share the expense equally. Each party shall bear the expense of preparing and presenting its own case.

(d) Arbitration Default. If any party fails or refuses to comply with any of the procedures or requirements of this Section 11, then the party aggrieved by such failure or refusal may petition the Circuit Court in Walworth County or Jefferson County for an order to enforce the terms of this Section 11. If such an order to enforce is entered by the Court, then the party who failed or refused to comply with this Section 11 shall be liable to the petitioning party for all costs and attorney's fees incurred in obtaining such an order.

(e) Right to Judicial Relief. The arbitration procedures set forth in this Section 11 shall be followed with respect to all Claims arising out of or relating to any term or

requirement of this Agreement. However, notwithstanding the terms of this section, the parties may seek de novo judicial relief from a court of competent jurisdiction in the State of Wisconsin with respect to an arbitration decision arising out of or relating to Section 11(a) or the arbitrability of the claim under this Lease.

SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT	THE CITY OF WHITEWATER
By: _____	By: _____
Name: Carroll E. Judd, Jr.	Name: Cameron Clapper
Title: School Board President	Title: City Manager
By: _____	By: _____
Name: Steven J. Ryan	Name: Michele R. Smith
Title: School Board Clerk	Title: City Clerk