



WAFC Subcommittee Meeting Agenda

Tuesday, April 11, 2023

6:00 PM

City of Whitewater Municipal Building

Community Room 1st Floor

312 W. Whitewater St.

Whitewater, WI 53190

in person and Virtual

invited to a Zoom webinar.

Apr 11, 2023 06:00 PM Central Time (US and Canada)

Whitewater Aquatic and Fitness Center Subcommittee Meeting

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/87444435075?pwd=RVBCdm40V2JEOXdJRHMxeHhoOFduZz09>

Passcode: 269890

Or One tap mobile :

US: +13126266799,,87444435075#,,,,*269890# or +16469313860,,87444435075#,,,,*269890#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +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 +1 309 205 3325 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 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799

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1. Call To Order And Roll Call
2. Approval Of Agenda (Action Item)
3. City Of Whitewater And Whitewater Unified School District Statements
 - 3.a. Affirmative Statement - Common Council

Documents:

CITY POSITION ON WHITEWATER AQUATIC AND FITNESS CENTER.PDF

3.b. Affirmative Statement - Whitewater Unified School District

Documents:

[2023 0406 WUSD STATEMENT.PDF](#)

4. Hearing Of Citizen Comments

No formal action will be taken during this meeting, although issues raised may become part of a future agenda. Participants are allotted a 3 minute speaking period. Specific items listed on the agenda may not be discussed at this time; however, citizens are invited to speak to those issues as designated in the agenda.

5. Outstanding Questions Regarding Facility

6. Review Of Former Agreement

6.a. Previous WAFC Agreements

Documents:

[2021 AGREEMENT DRAFTS COMMON COUNCIL JULY 20, 2021 MEETING.PDF](#)
[2016 LEASE AND OPERATION AGREEMENT - LEASE AGREEMENT FOR USE.PDF](#)

7. Operational And Capital Financial Needs

7.a. CIP And Operational Planning

7.a.i. Cullen Report

Documents:

[CULLEN REPORT FEBRUARY 28, 2023.PDF](#)

7.b. Accumulated Deficit

7.c. Concerns On Need/Merits Of Referendum

8. Future Meetings

8.a. Discussion And Direction On Use Of Facilitator For Future Meetings

8.a.i. Facilitator Discussion Item

Documents:

[WAFC SUBCOMMITTEE AGENDA ITEM FACILITATOR.PDF](#)

8.b. Discussion Of Bi-Weekly Meetings

9. Adjourn (Action Item)

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.

To: City of Whitewater Common Council

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

Date: April 6, 2023

Re: City Position on Whitewater Aquatic and Fitness Center (WAFC)

City Council and Staff Position on WAFC

- 1) We believe in the importance of the Facility as it exists to the City, School District and Community including the Fitness Center, Lap Pool and Leisure Pool.
- 2) The facility is a value to the school, city, and surrounding region as a joint venture that is supported by the financial contributions by city and school district resources along with financial support from membership, program revenues and community contributions.
- 3) We acknowledge opportunities for continuous improvement for facility and operational needs and are committed to these improvements, including membership growth, facility updates and visibility within the region.
- 4) We are committed to communicating and partnering with the school district to provide for operational and capital financing that allows both entities to provide excellent service.
- 5) It is the goal of this body to continue our partnership and accomplish our shared goals without going to referendum.
- 6) Both the City and School District have contractual obligations under previous and ongoing agreements that must be honored to resolve the accumulated deficit.

April 6, 2023

WUSD Affirmative Statement

The Whitewater Aquatic and Fitness Center (WAFC) is an important, valued resource to our students, to the residents of the City of Whitewater (City), the Whitewater Unified School District (WUSD) and the Whitewater community. While the WAFC partnership includes significant support from both the WUSD and City, membership and program revenues are also crucial to its ongoing health. The WUSD is committed to partnering with the City to secure operational and capital financing that allows it to support the WAFC within its other budgetary obligations.



Council Agenda Item

Meeting Date: Tuesday, July 20, 2021

Agenda Item: WAFC Lease and Operations Agreement

Staff Contact (name, email, phone): Eric Boettcher 262-473-0122

BACKGROUND

(Enter the who, what when, where, why)

The Whitewater Aquatic and Fitness Center (WAFC) operates under two separate agreements between the City of Whitewater (City) and the Whitewater Unified School District (WUSD). The agreements spell out how the two entities will work together to financially support and operate the WAFC facility. The existence of two agreements came at the request of the WUSD for accounting purposes.

- The Lease & Operations Agreement is the primary operating agreement for the WAFC.
- The Lease Programming Agreement, as staff has deemed it, addresses specific elements of WAFC programming and WUSD's annual contribution.

The term for each of the previous agreements was 5 years, beginning July 1, 2016 and ending June 30, 2021. The new agreements will also expire at the end of the next 5-year period, June 30, 2026.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS

(Dates, committees, action taken)

June 9, 2021 – Park Board Approval of WAFC Operations and Lease Agreement and WAFC Lease Programming Agreement

June 28, 2021- WUSD Board Approves WAFC Operations and Lease Agreement and WAFC Lease Programming Agreement

FINANCIAL IMPACT

(If none, state N/A)

Contributions

City of Whitewater (City)

\$153,000 – 2021 Calendar Year

\$178,000 – 2022 and each remaining year of Agreement

Whitewater School District (WUSD)

\$153,000 – 2021/22 School year

\$178,000 – 2022/23 School year and each remaining year of Agreement

STAFF RECOMMENDATION

Staff recommends the approval of both WAFC Operations and Lease Agreement and WAFC Lease Agreement.

ATTACHMENT(S) INCLUDED

(If none, state N/A)

- WAFC Lease and Operations Agreement
- WAFC Lease Programming Agreement

City Common Council July 20, 2021 meeting notes recap
Eric Boettcher, Parks and Recreation Director
March 7, 2023

At the Common Council meeting the following notes detail the action taken.

Council requested: Approval pending one final review by legal council and city manager; Jim Allen moved approval (and with amendments to the motion) seconded by Greg Majkrzak. Motion passes - unanimously.

Lynn Binnie had two questions - page three of second document page 195 of council packet. The last line under summer programs - reimbursements essentially. Payments from district to aquatic center if we provide statement. "Rate of reimbursement being similar to rate of reimbursement of 2015" Antiquated potential cost for years 2015 to end of new contract through 2026. Asked to be updated to be determined in a similar manner. Sentence before mentions mutually acceptable and he wondered if that line was necessary with wages increasing the way that they are. Eric mentioned it should be 2019 not 2015. HR offered opinion. Advised locking into wages even of 2019 would be inadvisable because we are paying more already. Jim suggest that staff look at it and refer with attorney.

Lynn Binnie also mentions page four first document page 177 of council packet

paragraph C - seventh sentence from bottom. Scheduling through aquatic center manager - inaccurate title in document. New title for 2022 to be presented HR. Attorney says no need to be that specific.

These changes were listed to be made on the proposed agreement that was never signed by the entities.

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")**

- 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

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

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

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

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:

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

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 be 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

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.

**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 public's 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: _____
Name: Carroll E. Judd, Jr.
Title: School Board President

By: _____
Name: Cameron Clapper
Title: City Manager

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

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

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 ____ day of December, 2015 (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 December 15, 2001.
- 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 has been operated by Whitewater Aquatic Center Inc., pursuant to a Lease and Operating Agreement dated December 15, 2001 that will expire 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") will assume 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 December 14, 2016.
- 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

1.01 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.

1.02 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

2.01 Initial Term. 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 or in

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

2.02 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

3.01 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

4.01 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

5.01 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 \$128,000.00 towards the Aquatic Facility costs. The School District shall contribute \$70,500.00 on or about July 1 of each year and \$50,000.00 on or about January 1 of each year towards the Aquatic Facility costs. These amounts contributed by each party shall be subject to adjustment on an annual basis, as mutually agreed by the parties.
- 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. **Budget Presentation.** The Park Board will make a budget presentation to the School District on or before October 31 of each year and shall receive and consider the School District's input concerning the budget.
- G. **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.

5.02 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.

5.03 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

6.01 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.

6.02 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.

6.03 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.

6.04 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

7.01 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

9.01 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.

9.02 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.

9.03 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.

9.04 Property Insurance. The District will maintain an insurance policy which provides property insurance coverage for the Aquatic Facility. The Park Board shall make payment to the District in the amount of \$_____ [NEED FIGURE] each year as a contribution toward the premium for the policy.

9.05 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

10.01 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.

10.02 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: 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.

ARTICLE XII.

TERMINATION EVENTS

12.01 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

15.01 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 be 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

16.01 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.

16.02 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.

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

16.04 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.

16.05 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.

16.06 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.

16.07 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.

16.08 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.

16.09 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.

16.10 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

17.01 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.

17.02 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.

17.03 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.

17.04 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.

17.05 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.

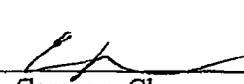
SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT

By: 
 Name:
 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

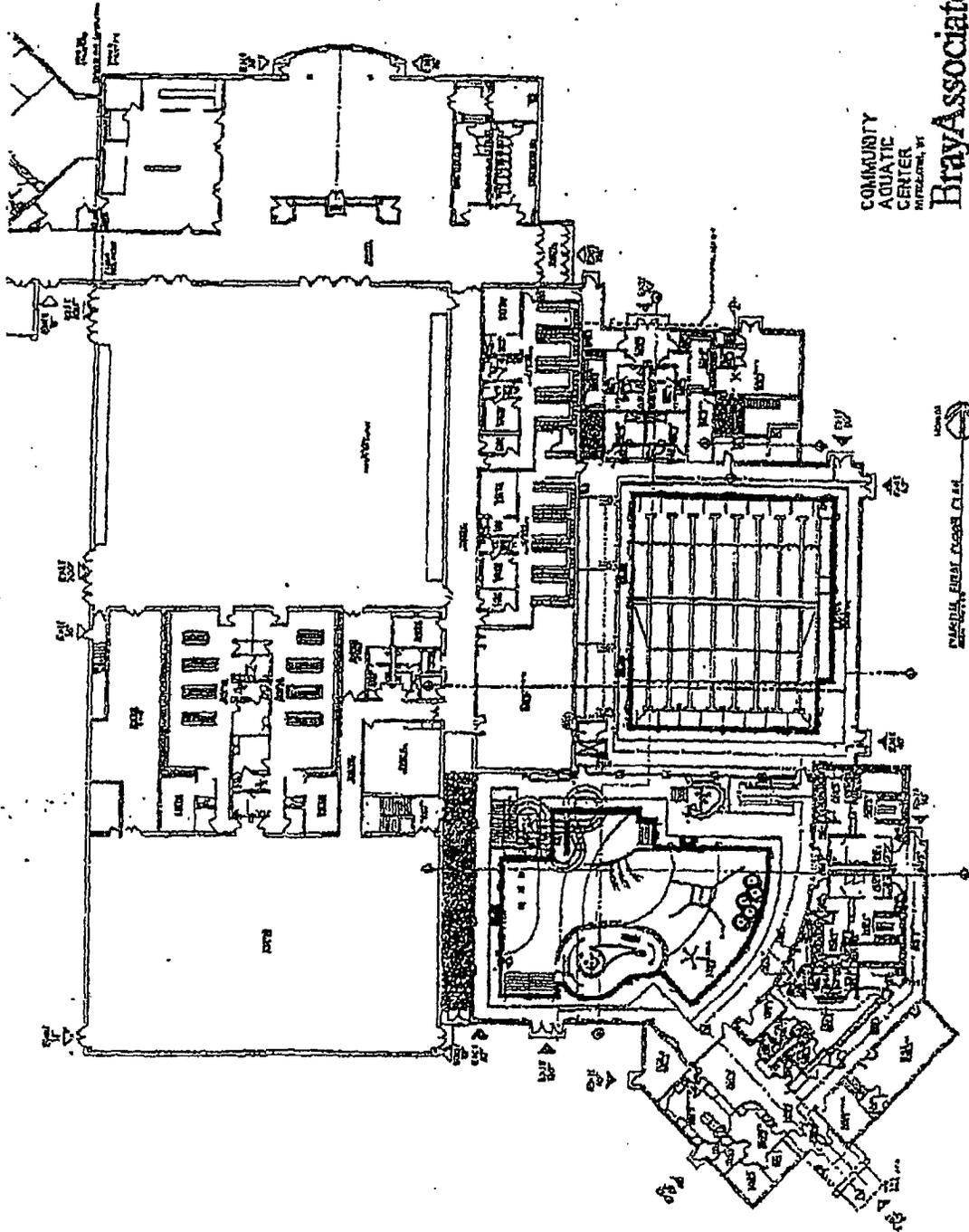
Signature of _____ and _____, the School Board President and School Board Clerk, respectively, of the Whitewater Unified School District, authenticated as of the ____ day of _____, 2015.

Name: _____
Member, State Bar of Wisconsin

Signed and sworn to before me
on _____
by _____

Notary Public, State of Wisconsin
My commission expires: _____

Drafted by: Wallace K. McDonell, Harrison, Williams & McDonell, LLP



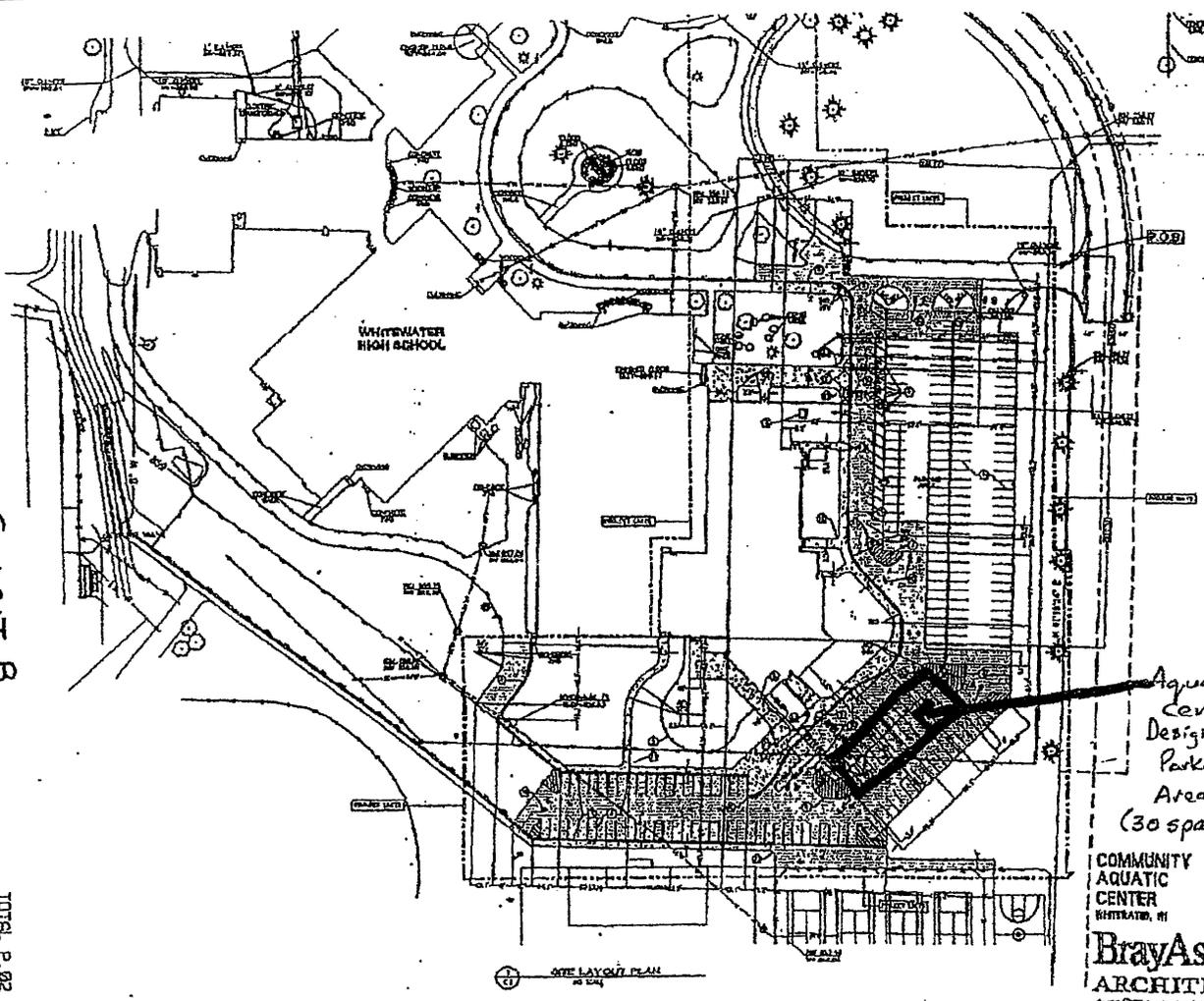
COMMUNITY
AQUATIC
CENTER,
WASHOUGA, WA
Bray Associates,
ARCHITECTS, INC.
10001 Green Hill Road, Seattle, WA

SCALE: 1/8" = 1'-0"
N

EXHIBIT A

EXHIBIT B

TOTAL P. 02



WHITEWATER SCHOOL DIST.

4144728718

P. 02/02

Aquatic Center Designated Parking Area (30 spaces)

COMMUNITY AQUATIC CENTER WHITEWATER, MI

BrayAssociate ARCHITECTS, INC

Copyright 2002 by Bray Associate, Inc.

**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 public's 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.

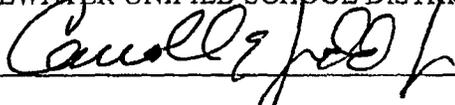
(d) Arbitration Default. If any party fails or refuses to comply with any of the procedures or requirements of this Section 11, then the party aggrieved by such failure or refusal may petition the Circuit Court in Walworth County or Jefferson County for an order to enforce the terms of this Section 11. 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.

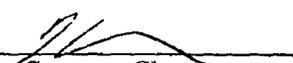
(e) Right to Judicial Relief. The arbitration procedures set forth in this Section 11 shall be followed with respect to all Claims arising out of or relating to any term or requirement of this Agreement. However, notwithstanding the terms of this section, the parties may seek de novo judicial relief 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.

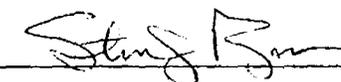
SIGNED AND SEALED as of the day, month and year first above written.

WHITEWATER UNIFIED SCHOOL DISTRICT

THE CITY OF WHITEWATER

By: 
Name: _____
Title: School Board President

By: 
Name: Cameron Clapper
Title: City Manager

By: 
Name: _____
Title: School Board Clerk

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



February 28, 2023

Dave Friend
Director of Buildings and Grounds
Whitewater Unified School District
419 S. Elizabeth St.
Whitewater, WI 53190

RE: Whitewater Aquatic Center Budget Draft – Waterpark & Lap Pool Capital Maintenance Items

We are pleased to submit our budget of **\$5,121,564** for the above-mentioned project.

A 10% contingency has been included in the above total and in the below breakouts.

A 7% allowance for architectural and engineering fees has been included in the above total and in the below breakouts.

Please note the provided breakouts are intended to be selected individually. If multiple scopes are selected together, pricing can be adjusted for shared resources.

This budget is in today's dollars. Pricing should be adjusted for inflation out to the intended date of the project.

SCOPE:

Supply all labor, material, and equipment required for the above project unless noted:

This budget is based on a site walk with the Director of Buildings and Grounds and specific trade subcontractors.

1. Lap Pool:

a. **LP01** – Replace Existing Pool Water Equipment:

Value: **\$21,885**

- Replace lap pool circulation pump.
- \$3,000 allowance for electrical related to pump replacement.

b. **LP02** – Replace Existing Roof:

Value: **\$217,238**

- Remove existing ballast.
- Remove existing membrane.
- Existing insulation to remain.
- Remove existing perimeter metal flashing.
- Install new membrane, new flashing, and new ballast.

- c. **LP03** – Exterior Building Façade Maintenance & Repairs:
Value: **\$65,525**
- Remove and replace existing caulk at all exterior windows.
 - Remove and replace existing caulk at all exterior control joints.
 - Sand and repaint all exposed steel lintels at the windows.
 - Clean all exterior brick.
 - Replace (7) damaged brick at the corner of building.
 - Clean and re-tuckpoint CMU backup on interior side of exterior walls. Approximately 180 sqft.
 - Add control joint at the interior CMU block backup, approximately 70 lineal feet.
- d. **LP04** – Exit Door Repairs & Maintenance:
Value: **\$22,758**
- Remove existing exterior door hardware and seals. (4 doors)
 - Replace with new door hardware and seals. (4 doors)
- e. **LP05** – Replace Rusted Interior Door Frames:
Value: **\$9,447**
- Remove existing wood doors and hardware. Save for reinstallation.
 - Remove existing hollow metal frames, (4) locations.
 - Grout and install new hollow metal frames.
 - Caulk & paint new door frames.
 - Reinstall original wood doors and hardware.
- f. **LP06** – Refinish Pool Floor:
Value: **\$256,490**
- Empty existing pool water. (By owner)
 - Remove existing pool floor finish and existing gutter grating.
 - Resurface pool floor.
 - Install new gutter grating.
 - Refill pool with new water. (By owner): Carrying a value of \$4,600 in the cost above.
- g. **LP07** – Replace Acoustical Ceiling:
Value: **\$364,107**
- Empty existing pool water. (By owner): Carrying a value of \$4,600 in the cost above.
 - Setup scaffolding and deck over pool.
 - Remove existing acoustic spray at ceiling.
 - New acoustic spray at ceiling.
 - Paint ceiling.
 - Note: This is assuming the discoloration is from previous lighting and not structural deterioration from behind. Further investigation should be completed before work begins.

- h. **LP08** – Repair Leaking Valves at Perimeter Walls:
Value: **\$4,751**
 - Remove existing valves. (2 locations)
 - Install new valves.
 - Touch up paint at walls around valve access panel.
- i. **LP09** – Locker Room Bench Updates:
Value: **\$10,269**
 - Provide (8) new 8' benches for the locker rooms. (Wood tops, stainless legs)
- j. **LP11** – Clean & Patch Grout at Pool Deck:
Value: **\$31,144**
 - Clean tile floor.
 - Patch grout at tile floor and reseal.
- k. **LP12** – Upgrades to Heat & Conditioning System:
Value: **\$1,024,179**
 - Upgrade Schneider Electric Eco-Structure
 - Replace Boiler
 - Replace Air Handling Units
 - o This work will require an opening in the wall of the mechanical area be demolished for access into the space. Pricing includes removal and build back.
 - Replace rusted return ductwork.
 - o This includes removal and reinstallation if the ACT ceiling in corridor A146.
 - Mechanical Room B201 exhaust system.
 - Add (8) total destratification fans.
 - Includes Electrical Allowance of \$150,000.
 - Recommission System – Test & Balance.
 - o Note: This rough breakout cost must be selected in conjunction with WP13. This breakout will have to be re-evaluated if the owner decides they only want to do updates to the HVAC system related to the Lap Pool.
- l. **LP13** – Updated Lighting:
Value: **\$178,639**
 - Replace existing lighting with updated LED lighting suited for the space.

2. Waterpark:

- a. **WP01** – Replace / Repair Existing Pool Water Equipment:
Value: **\$111,094**
 - Replace activity pool circulation pump.
 - Replace body slide pump.
 - Replace vortex pump.
 - Replace current channel pump.

- Replace feature pump.
 - \$15,000 allowance for electrical related to pump replacement.
- b. **WP02** - Replace Existing Roof:
 Value: **\$266,698**
- Remove existing ballast.
 - Remove existing membrane.
 - Existing insulation to remain.
 - Remove existing perimeter metal flashing.
 - Install new membrane, new flashing, and new ballast.
- c. **WP03** – Exterior Building Façade Maintenance & Repairs:
 Value: **\$80,703**
- Remove and replace existing caulk at all exterior windows.
 - Remove and replace existing caulk at all exterior control joints.
 - Sand and repaint all exposed steel lintels at the windows.
 - Clean all exterior brick.
 - Replace (180) cracked & damaged brick.
 - Add 3 control joints to brick veneer façade.
- d. **WP04** – Exit Door Repairs & Maintenance:
 Value: **\$27,841**
- Remove existing exterior door hardware and seals. (5 doors)
 - Replace with new door hardware and seals. (5 doors)
- e. **WP05** – Replace Rusted Interior Door Frames:
 Value: **\$29,380**
- Remove existing wood doors and hardware. Save for reinstallation.
 - Remove existing hollow metal frames, (15) locations.
 - Grout and install new hollow metal frames.
 - Caulk & paint new door frames.
 - Reinstall original wood doors and hardware.
- f. **WP06** – Replace Pool Activity Structures:
 Value: **\$434,389**
- Remove existing slide structure.
 - Remove existing spray activity structure.
 - Allowance for new water feature: \$45,000.
 - Allowance for new slide structure: \$265,000.
- g. **WP07** – Refinish Pool Floor:
 Value: **\$263,296**
- Empty existing pool water. (By owner): Carrying a value of \$1,450 in the cost above.
 - Remove existing pool floor finish and existing gutter grating.
 - Resurface pool floor.
 - Install new gutter grating.
 - Refill pool with new water. (By owner)

- h. **WP08** – Repair Concrete Stair at Slide:
Value: **\$13,853**
- Repair cracks in existing concrete stair.
- i. **WP09** – Replace Acoustical Ceiling:
Value: **\$350,774**
- Empty existing pool water. (By owner): Carrying a value of \$1,450 in the cost above.
 - Setup scaffolding and deck over pool.
 - Remove existing acoustic spray at ceiling.
 - New acoustic spray at ceiling.
 - Paint ceiling.
 - Note: This is assuming the discoloration is from previous lighting and not structural deterioration from behind. Further investigation should be completed before work begins.
- j. **WP10** – Repair Leaking Valves at Perimeter Walls:
Value: **\$2,752**
- Remove existing valves.(1 location)
 - Install new valves.
 - Touch up paint at walls around valve access panel.
- k. **WP11** – Replace Flooring Around Pool Including Underground Access Hatch:
Value: **\$131,334**
- Grind existing finish on floor around pool. Remove.
 - Remove existing underground hatches(2).
 - Install new unground access hatches(2).
 - Install new trowel down EliteCrete floor.
- l. **WP12** – Locker Room Bench Updates:
Value: **\$23,625**
- Provide (20) new 8' benches for the locker rooms. (Wood tops, stainless legs)
- m. **WP13** – Upgrades to Heat & Conditioning System:
Value: **\$1,026,472**
- Upgrade Schneider Electric Eco-Structure
 - Replace Boiler
 - Replace Air Handling Units
 - o This work will require an opening in the wall of the mechanical area be demolished for access into the space. Pricing includes removal and build back.
 - Replace rusted return ductwork.
 - o This includes removal and reinstallation if the ACT ceiling in corridor A146.
 - Mechanical Room B201 exhaust system.
 - Replace 96" x 80" return grille.
 - Add (6) total destratification fans.
 - Includes Electrical Allowance of \$150,000.

- Recommission System – Test & Balance.
 - o Note: This rough breakout cost must be selected in conjunction with WP13. This breakout will have to be re-evaluated if the owner decides they only want to do updates to the HVAC system related to the Lap Pool.
 - Per discussion on site, the existing Air Curtains over emergency exit doors will not be replaced and be left as is for this exercise.
- n. **WP14** – Updated Lighting:
Value: **\$152,919**
- Replace existing lighting with updated LED lighting suited for the space.

CLARIFICATIONS:

1. All work is assumed to be completed during normal business hours.
2. Electrical utility consumption costs are not included.
3. All furniture, systems furniture, and décor are by others.
4. Contractor's bond is not included.
5. Builder's Risk insurance is not included.

We appreciate the opportunity to work with you on this and all future projects. If you should have any questions or require additional information, I may be reached at (608)466-4750.

Sincerely,



JAMES WINTER

ESTIMATOR | **JP CULLEN**

p : 608.757.6774
330 E Delavan Drive | Janesville, WI 53546
Janesville | Madison | Milwaukee | jpcullen.com



WAFC Subcommittee Agenda Item

Meeting Date: April 11, 2023

Agenda Item: Discussion and direction on use of facilitator for future meetings

Staff Contact (name, email, phone): Eric Boettcher, eboettcher@whitewater-wi.gov – 262-903-9512

BACKGROUND

(Enter the who, what when, where, why)

To enable both City of Whitewater and Whitewater Unified School District the use of a third-party facilitator would be beneficial to help both parties navigate through these negotiations. The City of Whitewater has been able to contact an interested party to serve as a facilitator. Attorney Patrick J. Fiedler has offered to attend the next subcommittee meeting and offered a free consultation to the subcommittee.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS

(Dates, committees, action taken)

NA

FINANCIAL IMPACT

(If none, state N/A)

- Free Consultation
- \$3,000 should move forward with consultation

STAFF RECOMMENDATION

Staff recommends to have a consultation with Attorney Patrick J. Fiedler at next WAFC Subcommittee Meeting

ATTACHMENT(S) INCLUDED

(If none, state N/A)