

**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