

**CITY OF WHITEWATER  
COMMON COUNCIL AGENDA**  
Common Council Meeting  
Tuesday, March 2, 2010 – 6:30 p.m.  
City of Whitewater Municipal Building Community Room  
312 W. Whitewater Street Whitewater, Wisconsin

**CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE.**

**CONSENT AGENDA:**

CA-A	Approval of Council minutes of January 19, 2010, February 2, 2010 and February 16, 2010.
CA-B	Acknowledgment of Receipt and Filing of : *Plan Commission Minutes of 5/14/2007, 09/10/2007, 11/12/2007. *CDA Minutes of 1/25/2010.
CA-C	Approval of Payment of Invoices processed through February 25, 2010.
CA-D	Expedited approval of the following items, per city staff recommendation: None.

**REPORTS:**

City Manager	1) 2009 Performance Report; 2) Energy Independence Council Report; 3) Proclamation recognizing 90 <sup>th</sup> Anniversary of League of Women Voters organization; 4) Proposed Intergovernmental Agreement with WUSD for school district interim financing.
Whitewater Unified School District	1) Dr. Suzanne Zentner Report on Diversity Task Force.

**HEARING OF CITIZEN COMMENTS.** No formal Common Council Action will be taken during this meeting although issues raised may become a part of a future agenda. Participants are allotted a 3-5 minute speaking period. Specific items listed on the agenda may not be discussed at this time; however citizens are invited to speak to those specific issues at the time the Council discusses that particular item.

**COMMON COUNCIL ANNOUNCEMENTS.**

**RESOLUTIONS:**

R-1	Authorizing the City to enter into an agreement for the payment of funds to Whitewater Fire Department and Rescue Squad for Starin Road extension right-of-way.
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**ORDINANCES: First Reading – None.**

**ORDINANCES: Second Reading - None.**

**CONSIDERATIONS:**

C-1	Approval of Construction Contact with JP Cullen of Janesville, Wisconsin, for Whitewater Innovation Center. (City Manager Request).
C-2	Adoption of Amendments to Personnel Manual relating to Nepotism Policy (Human Resources Request).
C-3	Discussion regarding University Polling Place and possible direction regarding same. (Councilmember Stewart Request).
C-4	Councilmember Requests for Future Agenda Items.
C-5	ADJOURN.

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk at least 72 hours prior to the meeting.

- Items denoted with asterisks will be approved on the Consent Agenda unless any council member requests that it be removed for individual discussion.

## MEMORANDUM

**TO:** Common Council  
**FROM:** Kevin Brunner, City Manager  
**DATE:** February 25, 2010  
**RE:** **Comments on March 2, 2010 Agenda Items**

Following are my comments regarding the various items on the March 2, 2010 Council meeting.

1. **Approval of Construction Contract with JP Cullen of Janesville, Wisconsin, for Whitewater Innovation Center.** Recommend Construction Management contract with JP Cullen and Sons for Whitewater Innovation Center project. Last summer the Whitewater University Technology Park Board of Directors solicited proposals from qualified contractors to provide construction management services for the Whitewater Innovation Center. Ten proposals were received by the Board and JP Cullen and Sons of Janesville was selected to provide these services for this particular building project.

Since their selection last summer, JP Cullen has been providing valuable engineering services free of charge to the Tech Park Board and our consulting architects, Eppstein Uhen of Madison, on this project. The fee that was quoted for this competitive process for construction management by JP Cullen is 1.75% or at this point in time, \$96,664. This management fee will be paid to JP Cullen for services rendered with some additional out of pocket expenses to be reimbursed to them as well. These out of pocket expenses are identified in the contract for services.

Because this building will be publically owned by the Community Development Authority, we are subject to the Public Works bidding laws of the State of Wisconsin, and all packages will be subject to the public bidding laws. It is anticipated that there will be 4 or 5 separate bidding packets that will be solicited and JP Cullen will be given the opportunity to compete on a sealed bid basis for the general construction portion of this project. The other bid packages are expected to be HVAC, plumbing/higher protection structural steel and electrical.

Plans called for the bid specifications for the building to be completed by late next week and then we need to present them to the US EDA for approval in March. Following anticipated EDA approval, the bid packages will be accepted during the period of April 1<sup>st</sup> to April 15<sup>th</sup> with recommendations to the City Council to follow at its April 20<sup>th</sup> meeting. The CDA will also review the bids and make a recommendation to the Council at its April 19<sup>th</sup> meeting.

Also I want to make sure the Council members have April 27<sup>th</sup> at 4 p.m. on their calendars. That is the planned ground breaking for the Whitewater Innovation Center project. Chancellor Telfer is in the process of inviting Governor Doyle to attend that ground breaking ceremony.

If you have any questions regarding this proposed project for General Construction Management Services please do not hesitate to contact me.

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## **ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER, WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

January 19, 2010.

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Taylor (by phone until 7:50 pm), Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: McDonell.

**APPROVAL OF MINUTES.** It was moved by Olsen and seconded by Winship to acknowledge receipt and filing of the following: Landmarks Commission minutes of 8/29/09, 11/4/09, 12/2/09; Indian Mounds Park Committee minutes of 12/1/09; Downtown Whitewater, Inc. Board of Directors minutes of 12/1/09; Seniors in the Park Senior Forum minutes of 11/9/09 & 12/7/09; Report of Manually-issued Checks for December, 2009; Park & Recreation Board minutes of 12/7/09; Irvin L. Young Memorial Library minutes of 11/9/09 & 12/14/09; Police and Fire Commission meeting minutes of 5/20/09; Plan and Architectural Review Commission minutes of 12/14/09; and corrected November 2009 Whitewater Police Department Monthly Report. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**REPORTS.** City Manager Brunner stated that he has been working with the Department of Transportation and affected property owners regarding the extension of Starin Road. Approvals for the extension will be brought to the Council in February or March. Brunner stated that the first major tenant of the Innovation Center has been secured. CESA II of Milton will be entering into a 10-year lease for office space. CDA coordinator Nimm gave her quarterly report.

**CITIZEN COMMENTS.**: None.

**COMMON COUNCIL ANNOUNCEMENTS.** None.

**PUBLIC HEARING FOR COMPREHENSIVE PLAN 2030 ADOPTION.** The public hearing regarding adoption of the Comprehensive Plan was opened by Council President Singer. Planner Mark Roffers indicated that the plan was informed by results of the community-wide survey. The Plan Commission also held a Public Hearing on the plan. Roffers stated that there is a great deal of flexibility in the plan, and that amendments to the proposed plan can be considered as times change and circumstances warrant. Resident Tom Hinspater stated that he is a resident of the Mound Park Acres Subdivision and that he has concerns about the proposed zoning for the property across from Indian Mound Parkway. Hinspater indicated that any commercial zoning in that area will be anti-productive to redevelopment of the downtown. Hinspater also stated that the City is poised for growth on the east side of town. Hinspater stated that he is aware of several options presented to Council, but he is disappointed to see that all three options still have some commercial use listed for the Hoffmann property. Hinspater encouraged Council to propose residential use for that parcel. Jo Coulthart of 1680 Turtle Mound Lane expressed a desire that the Hoffmann property remain residential. She stated that

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the downtown area will not become vibrant by putting commercial areas on the west side of the City. She asked that Council not spread commercial areas all around the City. Terri Parenteau of Ventura Lane indicated that commercial use of the property would destroy the flavor of the neighborhood. The neighborhood's proximity to schools brings people to the area. The area is currently a well-maintained neighborhood that will lose some appeal if the use is changed to commercial. Jim Allen of 215 E. Clay stated that the City developed Mound Park Acres and it is a great neighborhood. Allen stated that the Hoffmann land was always planned for residential development until it was recently changed through the South Side Neighborhood plan. Allen stated that until recently, he was not aware that the proposed use had ever changed from residential use. Eydie Strand, owner of Strand's on the Floor, stated that adding to the mix already existing on the west side would leave the east side infrastructure isolated again. She pointed out the large investment on the east side of town. Dave Saalsa of The Quiet Hut stated that planning for commercial development on the Hoffmann property is short sighted when the east side of town is all ready for development. He noted there are empty buildings downtown and that commercial development on the southwest portion of the City does not take care of the problems on the east side of the City or the downtown area. Jim Rodgers of Turtle Mound Lane indicated that he had always thought the Hoffmann property would be developed for residential use. He questioned why commercial development would occur in this area when there is already land available for commercial development.

Attorney Mitch Simon, who represents the owner of the property in question (John Hoffmann), indicated that in the early 1990s, when alignment of the bypass was orchestrated, Hoffmann was approached by the City and asked to cooperate in forcing the bypass farther to the south. As requested, Hoffmanns annexed their property to the City and donated land for a well site in an effort to get a decision to be one parcel. Their efforts were not successful. The Department of Transportation ("DOT") took Hoffmann's 300 acre parcel of land and divided it. The DOT documents identify the area as a "high noise impact" corridor. Simon continued by stating that Hoffmanns donated land for the City's well and for the Indian Mound Parkway extension. Simon explained that as a result of the bypass construction and alteration of the land due to the construction of the Indian Mound Parkway extension, a change in the drainage pattern has occurred, and the property owner now has drainage issues. Simon stated that if the drainage issues had not developed, the Technology Park would be located on the Hoffmann land. After the drainage issues were discovered, the City adopted the South Neighborhood Plan, which allowed some commercial use of the Hoffmann property. The area has developed into a high traffic area, allowing commercial development. After the DOT roadway dispute, the Hoffmanns entertained an offer from a developer to use the northwest quadrant area for a grocery store. The developers spoke to the City Manager about the store development, and the City Manager encouraged the developers to proceed. Simon noted that there was a perfectly fine support for commercial development at that time. Simon stated that the area the grocery store was considering was the area that ended up being recommended for commercial development through the Neighborhood Plan. Simon indicated that the area has bypass noise and plans for a future connector street to Highway 59. Simon argued that this is not a quiet, residential Street. Simon also stated that the commercial use designation in the Neighborhood Plan passed the Plan Commission last November and was certified to by the Common Council. Simon argued that the proposal has been going on for a year. Simon indicated that the commercial zoning designation for the parcel was less important to the City once they decided to

place the Technology Park in a different part of the City. Councilmember Winship stated that Simon's five-minute speaking time was up. Simon requested time to speak on his own behalf in addition to his client's, but was denied the opportunity.

Property owner David Kachel requested that the Council put their emphasis on helping the downtown merchants. He cited two offices he has had for rent in the downtown area that have been available for three years with no success in recruiting tenants. Kachel also stated that the merchants downtown are in need of support. West side resident Denae Trankowski agrees with her west-side neighbors; please develop the downtown area and east sides of town. She questioned what the purpose of Smart Growth is if it does not include an awareness of environmental concerns. The Public Hearing closed at 7:07 p.m.

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF \$1,240,000 SEWER SYSTEM REVENUE REFUNDING BONDS, SERIES 2010.**

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$1,240,000 SEWER SYSTEM REVENUE REFUNDING BONDS, SERIES 2010,  
OF THE CITY OF WHITEWATER, WALWORTH AND JEFFERSON COUNTIES,  
WISCONSIN,  
AND PROVIDING FOR THE PAYMENT OF THE BONDS AND  
OTHER DETAILS WITH RESPECT TO THE BONDS

WHEREAS, the City of Whitewater, Walworth and Jefferson Counties, Wisconsin ("City") now owns and operates and has for many years owned and operated its Sewer System, a public utility (the Sewer System and all properties of every nature in connection with such System now or hereafter owned by the City, including all improvements and extensions thereto, all real and personal property of every nature comprising part of and used or useful in connection therewith, and all appurtenances, contracts, leases, franchises and other intangibles, are hereinafter referred to collectively as the "System"); and

WHEREAS, under the provisions of Chapter 66, Wis. Stats., any municipality in the State of Wisconsin may, by action of its governing body, provide funds for extending, adding to and improving a public utility or to refund obligations issued to finance extensions, additions and improvements from the proceeds of bonds, which bonds are to be payable only from the income and revenues derived from the operation of such utility and are to be secured by a pledge of the revenues of the utility; and

WHEREAS, pursuant to a resolution adopted on July 16, 1996 (the "1996 Resolution"), the City issued its Sewer System Revenue Bonds, Series 1996, dated July 24, 1996 (the "1996 Bonds"), which bonds are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on April 18, 2000 (the "2000 Resolution"), the City issued its Sewer System Revenue Refunding Bonds, Series 2000, dated May 1, 2000 (the "2000 Bonds"), which bonds are payable from the income and revenues of the System and are on a parity with the 1996 Bonds; and

WHEREAS, pursuant to a resolution adopted on November 17, 2009 (the "2009 Resolution"), the City issued its Sewer System Revenue Bonds, Series 2009, dated December 9, 2009 (the

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"2009 Bonds"), which bonds are payable from the income and revenues of the System and are on a parity with the 1996 Bonds and the 2000 Bonds; and

WHEREAS, the City has determined that it is necessary and desirable to refund the outstanding 2000 Bonds (the "Refunded Obligations"); and

WHEREAS, it is desired to authorize and sell revenue bonds for such purpose payable solely from the revenues to be derived from the operation of the System, which bonds are to be authorized and issued pursuant to the provisions of Section 66.0621, Wis. Stats.; and

WHEREAS, other than the 1996 Bonds, the 2000 Bonds being refunded, and the 2009 Bonds, the City has no bonds or obligations outstanding which are payable from the income and revenues of the System; and

WHEREAS, the 1996 Resolution and the 2009 Resolution permit the issuance of bonds payable from revenues of the System on a parity with the 1996 Bonds and the 2009 Bonds upon certain conditions, and those conditions have been met; and

WHEREAS, the City has directed its financial advisor, Robert W. Baird & Co. Incorporated, Milwaukee, Wisconsin ("Baird") to take the steps necessary to sell its Sewer System Revenue Refunding Bonds, Series 2010 (the "Bonds"); and

WHEREAS, Baird, in consultation with the officials of the City, prepared an Official Notice of Sale (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) setting forth the details of and the bid requirements for the Bonds and indicating that the Bonds would be offered for public sale on January 19, 2010; and

WHEREAS, the City Clerk (in consultation with Baird) caused notice of the sale of the Bonds to be published and/or announced and caused the Official Notice of Sale to be distributed to potential bidders offering the Bonds for public sale; and

WHEREAS, the City has duly received bids for the Bonds as described on the Bid Tabulation attached hereto as Exhibit B and incorporated herein by this reference (the "Bid Tabulation"); and

WHEREAS, it has been determined that the bid proposal (the "Proposal") submitted by the financial institution listed first on the Bid Tabulation fully complies with the bid requirements set forth in the Official Notice of Sale and is deemed to be the most advantageous to the City. Baird has recommended that the City accept the Proposal. A copy of said Proposal submitted by such institution (the "Purchaser") is attached hereto as Exhibit C and incorporated herein by this reference;

NOW, THEREFORE, the City Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do resolve that:

Section 1A. Ratification of the Official Notice of Sale and Offering Materials. The City Council of the City hereby ratifies and approves the details of the Bonds set forth in Exhibit A attached hereto as and for the details of the Bonds. The Official Notice of Sale and any other offering materials prepared and circulated by Baird are hereby ratified and approved in all respects. All actions taken by officers of the City and Baird in connection with the preparation

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and distribution of the Official Notice of Sale and any other offering materials are hereby ratified and approved in all respects.

Section 1B. Authorization of Bonds. For the purpose above stated, the City shall borrow on the credit of the income and revenue of the System the sum of \$1,240,000. Negotiable, fully-registered bonds of the City, in the denomination of \$5,000, or any whole multiple thereof, shall be issued in evidence thereof. The Bonds shall be designated "Sewer System Revenue Refunding Bonds, Series 2010", shall be numbered from R-1 upward and shall be dated February 9, 2010. The Bonds shall bear interest at the rates per annum set forth in the Proposal and shall mature on May 1 of each year, in the years and principal amounts set forth in the Proposal and the debt service schedule attached hereto as Exhibit D and incorporated herein by this reference (the "Schedule").

Interest on the Bonds shall be payable on May 1 and November 1 of each year, commencing November 1, 2010. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board.

The Bonds shall not be subject to optional redemption.

The schedule of maturities is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

The City Council hereby determines that the refunding of the Refunded Obligations is advantageous and necessary to the City.

The Bonds shall be signed by the manual or facsimile signatures of the City Manager and City Clerk of the City (provided that, unless the City has contracted with a fiscal agent to authenticate the Bonds, at least one of such signatures shall be manual), and sealed with the corporate seal of the City.

The Bonds, together with interest thereon, shall be payable only out of the Special Redemption Fund hereinafter provided, and shall be a valid claim of the owner thereof only against the Special Redemption Fund and the revenues pledged to such Fund, and sufficient revenues are pledged to the Special Redemption Fund, and shall be used for no other purpose than to pay the principal of and interest on the outstanding 1996 Bonds and 2009 Bonds (collectively referred to herein as the "Prior Issues"), the Bonds and Parity Bonds as the same fall due.

Section 2. Form of Bonds. The Bonds shall be in substantially the form attached hereto as Exhibit E and incorporated herein by this reference.

Section 3. Definitions. In addition to the words defined elsewhere in this Resolution, the following words shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Annual Debt Service Requirement" means the total amount of principal and interest due in any Fiscal Year on the Prior Issues, the Bonds and Parity Bonds.

"Bond Year" means the one-year period ending on a principal payment date or mandatory redemption date for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended.

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"Current Expenses" or "Operation and Maintenance Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but excluding depreciation, debt service, tax equivalents and capital expenditures.

"DTC" means The Depository Trust Company, New York, New York, or any successor securities depository for the City with respect to the Bonds.

"Fiscal Year" means the fiscal year adopted by the City for the System, which is currently the calendar year.

"Gross Earnings" or "Revenues" means the gross earnings of the System, including earnings of the System derived from sewerage charges imposed by the City, all payments to the City under any wastewater treatment service agreements between the City and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with extension or improvement of the System.

"Net Revenues" means the Gross Earnings minus all Current Expenses of the System.

"Parity Bonds" means additional bonds issued on a parity as to pledge and lien with the Bonds in accordance with the provisions of Section 9 of this Resolution.

"Reserve Requirement" means an amount equal to the least of (a) 10% of the proceeds of the Bonds, (b) maximum annual debt service on the Bonds in any Bond Year and (c) 125% of average annual debt service on the Bonds. If Parity Bonds which are to be secured by the Reserve Account are issued, the Reserve Requirement shall mean the amount on deposit in the Reserve Account prior to the issuance of such Parity Bonds plus the amount permitted to be deposited therein from proceeds of the Parity Bonds pursuant to Section 148(d)(1) of the Code, but shall not exceed the lesser of (a) the maximum amount of principal and interest due in any Bond Year on the outstanding Bonds and Parity Bonds which are to be secured by the Reserve Account and (b) 125% of average annual debt service on such outstanding Bonds and Parity Bonds.

Section 4. Income and Revenue Funds. When the Bonds shall have been delivered in whole or in part, the Gross Earnings shall be set aside into the "Sewer System Revenue Fund" which shall be divided into the following separate and special funds, which were created and established by Resolution No. 90-3 adopted on November 20, 1990 (the "1990 Resolution") and are hereby continued and shall be used and applied as described below:

- Gross Earnings in amounts sufficient to provide for the reasonable and proper operation and maintenance of the System through the payment of Current Expenses shall be set aside into the Sewer System Operation and Maintenance Fund (the "Operation and Maintenance Fund").

- Gross Earnings in amounts sufficient to pay the principal of and interest on the Prior Issues, the Bonds and Parity Bonds and to meet the Reserve Requirement shall be set aside into the Sewer System Revenue Bond and Interest Special Redemption Fund (the "Special Redemption Fund"), to be applied to the payment of the principal of and interest on the Prior Issues, the Bonds and Parity Bonds and to meet the Reserve Requirement. The monies standing in the Special Redemption Fund are irrevocably pledged to the payment of principal of and interest on the Prior Issues, the Bonds and Parity Bonds; provided, however, that the Reserve Account

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established within the Special Redemption Fund is not pledged to the payment of principal of or interest on the 1996 Bonds or the 2009 Bonds.

- Gross Earnings in amounts sufficient to provide a proper and adequate depreciation account for the System shall be set aside into the Sewer System Depreciation Fund (the "Depreciation Fund").

The Operation and Maintenance Fund and Depreciation Fund shall be deposited as received in public depositories to be selected by the City Council in the manner required by Chapter 34 of the Wisconsin Statutes and may be invested in legal investments subject to the provisions of Section 66.0603(1m), Wis. Stats.

Money in the Operation and Maintenance Fund shall be used to pay Current Expenses as the same come due; money not immediately required for Current Expenses shall be used to accumulate a reserve in the Operation and Maintenance Fund equal to estimated Current Expenses for one month. Any money then available and remaining in the Operation and Maintenance Fund may be transferred to the Surplus Fund, which fund is hereby continued.

Gross Earnings shall be deposited in the Depreciation Fund each month until such amount as the City Council may from time to time determine to constitute an adequate and reasonable depreciation account for the System (the "Depreciation Requirement") is accumulated therein. Money in the Depreciation Fund shall be available and shall be used, whenever necessary, to restore any deficiency in the Special Redemption Fund and for the maintenance of the Reserve Account therein. When the Special Redemption Fund is sufficient for its purpose, funds in the Depreciation Fund may be expended for repairs, replacements, new construction, extensions or additions to the System. Any money on deposit in the Depreciation Fund in excess of the Depreciation Requirement which is not required during the current Fiscal Year for the purposes of the Depreciation Fund, may be transferred to the Surplus Fund.

It is the express intent and determination of the City Council that the amount of Gross Earnings to be set aside and paid into the Special Redemption Fund (including the Reserve Account) shall in any event be sufficient to pay principal of and interest on the Prior Issues, the Bonds and Parity Bonds and to meet the Reserve Requirement, and the City Treasurer shall each Fiscal Year deposit at least sufficient Gross Earnings in the Special Redemption Fund to pay promptly all principal and interest falling due on the Prior Issues, the Bonds and Parity Bonds and to meet the Reserve Requirement.

The Gross Earnings so set aside for payment of the principal of and interest on the Prior Issues, the Bonds and Parity Bonds shall be set apart and shall be paid into the Special Redemption Fund not later than the 10th day of each month. The amount deposited each month shall be not less than one-sixth of the interest next coming due, plus one-twelfth of the principal next maturing.

The minimum amounts to be so deposited for debt service on the Bonds, in addition to all amounts to be deposited to pay debt service on the Prior Issues, are set forth on the Schedule.

The Special Redemption Fund shall be used for no purpose other than the payment of interest upon and principal of the Prior Issues, the Bonds and Parity Bonds promptly as the same become due and payable or to pay redemption premiums. All money in the Special Redemption Fund shall be deposited in a special account and invested in legal investments subject to Section

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66.0603(1m), Wis. Stats., and the monthly payments required to be made to the Special Redemption Fund shall be made directly to such account.

The Reserve Account established by Section 4 of the 1990 Resolution shall be continued to secure the payment of principal of and interest on the Bonds. The Reserve Account is not pledged to the payment of the principal of and interest on the 1996 Bonds or the 2009 Bonds. The City covenants and agrees that upon the issuance of the Bonds an amount sufficient to make the amount on deposit in the Reserve Account equal to the Reserve Requirement shall be on deposit in the Reserve Account and shall be maintained therein. The amount on deposit in the Reserve Account shall be reduced from time to time to an amount equal to the Reserve Requirement at that time. Any amount withdrawn from the Reserve Account shall be transferred to the Special Redemption Fund and used to pay principal and interest on the Bonds.

The City covenants and agrees that at any time that the amount in the Reserve Account shall be less than the Reserve Requirement, those funds in the Special Redemption Fund, the Operation and Maintenance Fund, the Depreciation Fund and the Surplus Fund which are in excess of the minimum amounts required by the preceding paragraphs to be paid therein will be paid into the Reserve Account each month until the Reserve Requirement will again have accumulated in the Reserve Account. If for any reason there shall be insufficient funds on hand in the Special Redemption Fund to meet principal or interest becoming due on the Bonds or Parity Bonds secured by the Reserve Account, then all sums then held in the Reserve Account shall be used to pay the portion of interest or principal on such outstanding Bonds or Parity Bonds becoming due as to which there would otherwise be default, and thereupon the payments required by this paragraph shall again be made into the Reserve Account until an amount equal to the Reserve Requirement is on deposit in the Reserve Account.

Funds in the Special Redemption Fund in excess of the minimum amounts required to be paid therein plus reserve requirements may be transferred to the Surplus Fund.

Money in the Surplus Fund shall first be used when necessary to meet requirements of the Operation and Maintenance Fund including the one month reserve, the Special Redemption Fund including the Reserve Account, and the Depreciation Fund. Any money then remaining in the Surplus Fund at the end of any Fiscal Year may be used only as permitted and in the order specified in Section 66.0811(2), Wis. Stats. Money thereafter remaining in the Surplus Fund may be transferred to any of the funds or accounts provided for in this section.

Section 5. Service to the City. The reasonable cost and value of any service rendered to the City by the System, including reasonable health protection charges, shall be charged against the City and shall be paid by it in monthly installments as the service accrues, out of the current revenues of the City collected or in the process of collection, exclusive of the revenues derived from the System, to wit: out of the tax levy of the City made by it to raise money to meet its necessary current expenses. It is hereby found and determined that the amount of such reasonable cost and value shall be equal to the lesser of the maximum Annual Debt Service Requirement or such part thereof as may be necessary from year to year to pay the balance of an amount which, together with other Gross Earnings of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than 1.20 times the Annual Debt Service Requirement. Such compensation for such service rendered to the City shall, in the manner provided hereinabove, be paid into the separate and special funds described in Section 4 of this Resolution. However, such payment is subject to (a) annual appropriation by the City Council,

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(b) approval of the Wisconsin Public Service Commission, if necessary, and (c) applicable levy limits, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the City to make any such appropriation over and above the reasonable cost and value of services rendered to the City or to make any subsequent payment over and above such reasonable cost and value.

Section 6. Operation of System; City Covenants. It is covenanted and agreed by the City with the owner or owners of the Bonds, and each of them, that:

It will faithfully and punctually perform all duties with reference to the System required by the Constitution and Statutes of the State of Wisconsin, including the making and collecting of reasonable and sufficient rates lawfully established for services rendered by the System, and will segregate the Gross Earnings of the System and apply them to the respective funds and accounts described hereinabove;

It will not sell, lease, or in any manner dispose of the System, including any part thereof or any additions, extensions, or improvements that may be made part thereto, except that the City shall have the right to sell, lease or otherwise dispose of any property of the System found by the City to be neither necessary nor useful in the operation of the System, provided the proceeds received from such sale, lease or disposal shall be paid into the Special Redemption Fund or applied to the acquisition or construction of capital facilities for use in the normal operation of the System, and such payment shall not reduce the amounts otherwise required to be paid into the Special Redemption Fund;

It will pay or cause to be paid all lawful taxes, assessments, governmental charges, and claims for labor, materials or supplies which if unpaid could become a lien upon the System or its Gross Earnings or could impair the security of the Bonds;

It will maintain in reasonably good condition and operate the System, and will establish, charge and collect such lawfully established rates and charges for the service rendered by the System, so that in each Fiscal Year Net Revenues shall not be less than 120% of the Annual Debt Service Requirement, and so that the Gross Earnings of the System herein agreed to be set aside to provide for the payment of the Prior Issues, the Bonds and Parity Bonds and the interest thereon as the same becomes due and payable, and to meet the Reserve Requirement, will be sufficient for those purposes; and

It will prepare a budget not less than sixty days prior to the end of each Fiscal Year and, in the event such budget indicates that the Net Revenues for each Fiscal Year will not exceed the Annual Debt Service Requirement for each corresponding Fiscal Year by the proportion stated hereunder, will take any and all steps permitted by law to increase rates so that the aforementioned proportion of Net Revenues to the Annual Debt Service Requirement shall be accomplished as promptly as possible.

Section 7. Books and Accounts; Inspection. The City will keep proper books and accounts relative to the System separate from all other records of the City and will cause such books and accounts to be audited annually by a recognized independent firm of certified public accountants including a balance sheet and a profit and loss statement of the System as certified by such accountants. Each such audit, in addition to whatever matters may be thought proper by the

accountants to be included therein shall include the following: (1) a statement in detail of the income and expenditures of the System for the Fiscal Year; (2) a balance sheet as of the end of such Fiscal Year; (3) the accountants' comment regarding the manner in which the City has carried out the requirements of this Resolution and the accountants' recommendations for any changes or improvements in the operation of the System; (4) the number of connections to the System at the end of the Fiscal Year, for each user classification (i.e., residential, commercial, public and industrial); (5) a list of the insurance policies in force at the end of the Fiscal Year setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy; and (6) the volume of water used in computing the sewer service charge.

The owners of any of the Bonds shall have at all reasonable times the right to inspect the System and the records, accounts and data of the City relating thereto.

Section 8. Insurance. So long as any of the Bonds are outstanding the City will carry for the benefit of the owners of the Bonds: (a) adequate fire, lightning, vandalism, riot, strike, explosion, civil commotion, malicious damage, tornado and windstorm insurances on all portions of the System which are subject to loss through such casualties; (b) adequate insurance against loss of use and occupancy resulting from such casualties; (c) adequate public liability insurance and (d) insurance of the kinds and in the amounts normally carried by private companies engaged in the operation of similar systems. All money received for loss of use and occupancy shall be considered Gross Earnings of the System payable into the separate funds and accounts named in Section 4 of this Resolution. All money received for losses under any of such casualty policies, except those specified in (b) above, shall be used in repairing the damage or in replacing the property destroyed provided that if the City Council shall find it is inadvisable to repair such damage or replace such property and that the operation of the System has not been impaired thereby, such money, including proceeds from insurance under (b) above, shall be deposited in the Special Redemption Fund, but in that event such payments shall not reduce the amounts otherwise required to be paid into the Special Redemption Fund.

Section 9. Additional Bonds. The Bonds are issued on a parity with the Prior Issues. No bonds or obligations payable out of the Gross Earnings of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if their lien and pledge is junior and subordinate to that of the Bonds. Additional obligations may be issued on a parity with the Bonds as to the pledge of Gross Earnings of the System ("Parity Bonds") only if all of the following conditions are met:

a. The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been equal to at least 1.20 times the highest annual principal and interest requirements on all bonds outstanding payable from Gross Earnings of the System and on the Bonds then to be issued in any Fiscal Year. Should an increase in permanent rates and charges, including those made to the City, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during that part of the Fiscal Year of issuance prior to such issuance, then Gross Earnings for purposes of such computation shall include such additional Gross Earnings as an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

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b. The payments required to be made into the funds enumerated in Section 4 of this Resolution (including the Reserve Account, but not the Surplus Fund) must have been made in full.

c. The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

d. If the Parity Bonds are to be secured by the Reserve Account, the amount on deposit in the Reserve Account must be increased to an amount equal to the Reserve Requirement applicable upon the issuance of Parity Bonds as defined in Section 3 of this Resolution.

e. The proceeds of the additional bonds must be used only for the purpose of providing additions, extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 10. Sale of Bonds. The bid of the Purchaser for the purchase price set forth in the Proposal be and it hereby is accepted and the City Manager and City Clerk are authorized and directed to execute an acceptance of the offer of said successful bidder on behalf of the City. The good faith deposit of the Purchaser shall be retained by the City Treasurer until the closing of the bond issue, and any good faith deposits submitted by unsuccessful bidders shall be promptly returned. The officers of the City are authorized and directed to do any and all acts necessary to conclude delivery of the Bonds to the Purchaser, upon receipt of the purchase price, as soon after adoption of this Resolution as is convenient.

Section 11. Application of Bond Proceeds. All accrued interest received from the sale of the Bonds shall be deposited into the Special Redemption Fund. The amount, if any, necessary to make the amount currently on deposit in the Reserve Account equal to the Reserve Requirement shall be deposited in the Reserve Account. The balance of the proceeds shall be deposited into a special fund and used to refund the Refunded Obligations and pay the expenses incurred in authorizing, issuing and delivering the Bonds. Any balance remaining after paying said costs shall be transferred to the Special Redemption Fund for use in payment of principal of and interest on the Bonds.

Section 12. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except:

a. The City may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and

b. This Resolution may be amended, in any respect, with the written consent of the owners of not less than two-thirds of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the City; provided, however, that no amendment shall permit any change in the pledge of Gross Earnings derived from the System, or in the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any

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other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.

Section 13. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The City may discharge all Bonds due on any date by depositing into a special account on or before that date a sum sufficient to pay the same in full; or if any Bonds should not be paid when due, it may nevertheless be discharged by depositing into a special account a sum sufficient to pay it in full with interest accrued from the due date to the date of such deposit. The City, at its option, may also discharge all Bonds called for redemption on any date when they are prepayable according to their terms, by depositing into a special account on or before that date a sum sufficient to pay them in full, with the required redemption premium, if any, provided that notice of redemption has been duly given as required by this Resolution. The City, at its option, may also discharge all Bonds of said issue at any time by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the City's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the City's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 14. Investments and Arbitrage. Monies accumulated in any of the funds and accounts referred to in Sections 4 and 11 hereof which are not immediately needed for the respective purposes thereof, may be invested in legal investments subject to the provisions of Sec. 66.0603(1m), Wis. Stats., until needed. All income derived from such investments shall be credited to the fund or account from which the investment was made; provided, however, that at any time that the Reserve Requirement is on deposit in the Reserve Account, any income derived from investment of the Reserve Account shall be deposited into the Special Redemption Fund and used to pay principal and interest on the Bonds. A separate banking account is not required for each of the funds and accounts established under this Resolution; however, the monies in each fund or account shall be accounted for separately by the City and used only for the respective purposes thereof. The proceeds of the Bonds shall be used solely for the purposes for which they are issued but may be temporarily invested until needed in legal investments. No such investment shall be made in such a manner as would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations of the Commissioner of Internal Revenue thereunder (the "Regulations").

An officer of the City, charged with the responsibility for issuing the Bonds, shall, on the basis of the facts, estimates and circumstances in existence on the date of closing, make such certifications as are necessary to permit the conclusion that the Bonds are not "arbitrage bonds" under Section 148 of the Code or the Regulations.

Section 15. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the City and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made,

except as provided in Section 12, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the City, the governing body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the City, its governing body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 16. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York, the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 17. Persons Treated as Owners; Transfer of Bonds. The City Clerk shall keep books for the registration and for the transfer of the Bonds. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Bond shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Any Bond may be transferred by the registered owner thereof by surrender of the Bond at the office of the City Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the City Manager and City Clerk shall execute and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount, series and maturity, and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk shall cancel any Bond surrendered for transfer.

The City shall cooperate in any such transfer, and the City Manager and City Clerk are authorized to execute any new Bond or Bonds necessary to effect any such transfer.

The fifteenth day of each calendar month next preceding each interest payment date shall be the record dates for the Bonds. Payment of interest on the Bonds on any interest payment date shall be made to the registered owners of the Bonds as they appear on the registration book of the City at the close of business on the corresponding record date.

Section 18. Compliance with Federal Tax Laws. (a) The City represents and covenants that the projects financed by the Bonds and the Refunded Obligations and their ownership, management and use will not cause the Bonds or the Refunded Obligations to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the Bonds including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Bonds to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Bonds shall provide an

appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(b) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Bonds provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Bonds and the laws of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

The foregoing covenants shall remain in full force and effect, notwithstanding the defeasance of the Bonds, until the date on which all of the Bonds have been paid in full.

Section 19. Designation as Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" pursuant to Section 265 of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 20. Call of Refunded Obligations. The Refunded Obligations maturing in the years 2011 through 2016 are called for prior payment on May 1, 2010 at the price of par plus accrued interest to the date of redemption.

The City hereby directs the City Clerk to work with Baird to cause timely notice of redemption, in substantially the form attached hereto as Exhibit F and incorporated herein by this reference (the "Notice"), to be provided at the times, to the parties and in the manner set forth on the Notice. All actions heretofore taken by the officers and agents of the City to effectuate the redemption of the Refunded Obligations are hereby ratified and approved.

Section 21. Official Statement. The City Council hereby approves the Preliminary Official Statement with respect to the Bonds and deems the Preliminary Official Statement as "final" for purposes of SEC Rule 15c2-12. All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the closing for the Bonds, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser of the Bonds.

Section 22. Undertaking to Provide Continuing Disclosure. The City covenants and agrees, for the benefit of the holders of the Bonds, to enter into a written undertaking (the "Undertaking") required by SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule") to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. The Undertaking shall be enforceable by the holders of the Bonds or by the original purchaser(s) of the Bonds on behalf of such holders (provided that the rights of the holders and the purchaser(s) to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations thereunder and any failure by the City to comply with the provisions of the Undertaking shall not be an event of default with respect to the Bonds).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Bonds, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 23. Records. The City Clerk shall provide and keep a separate record book and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Bonds.

Section 24. Bond Insurance. If the Purchaser of the Bonds determines to obtain municipal bond insurance with respect to the Bonds, the officers of the City are authorized to take all actions necessary to obtain such municipal bond insurance. The City Manager and City Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the City Manager and City Clerk including provisions regarding restrictions on investment of Bond proceeds, the payment procedure under the municipal bond insurance policy, the rights of the bond insurer in the event of default and payment of the Bonds by the bond insurer and notices to be given to the bond insurer. In addition, appropriate reference to the municipal bond insurance policy shall be made in the form of Bond provided herein.

Section 25. Closing. The City Manager and City Clerk are hereby authorized and directed to execute and deliver the Bonds to the Purchaser thereof upon receipt of the purchase price. The City Manager and City Clerk may execute the Bonds by manual or facsimile signature, but, unless the City has contracted with the Fiscal Agent to authenticate the Bonds, at least one of said officers shall sign the Bonds manually.

The officers of the City hereby are directed and authorized to take all necessary steps to close the bond issue as soon as practicable hereafter, in accordance with the terms of sale thereof, and said officers are hereby authorized and directed to execute and deliver such documents, certificates and acknowledgments as may be necessary or convenient in accordance therewith.

Section 26. Conflicting Ordinances or Resolutions. All ordinances and resolutions (other than the 1996 Resolution and the 2009 Resolution) or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the 1996 Resolution or the 2009 Resolution, the 1996 Resolution or the 2009 Resolution shall control so long as any bonds of the Prior Issue authorized by such resolution are outstanding.

Resolution introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**RESOLUTION AWARDING THE SALE OF \$3,290,000 TAXABLE GENERAL OBLIGATION COMMUNITY DEVELOPMENT BONDS (BUILD AMERICA BONDS-DIRECT PAYMENT).**

RESOLUTION AWARDING THE SALE OF  
\$3,290,000 TAXABLE GENERAL OBLIGATION COMMUNITY DEVELOPMENT BONDS  
(BUILD AMERICA BONDS - DIRECT PAYMENT)

WHEREAS, on December 15, 2009, the City Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin (the "City") adopted an initial resolution (the "Initial Resolution") authorizing the issuance of general obligation bonds in an amount not to exceed \$3,290,000 for the public purpose of providing financial assistance to community development projects under Section 66.1105, Wisconsin Statutes, by paying the cost of the construction of public infrastructure improvements in the City's Tax Incremental District No. 4 and paying other project costs included in the project plan for the District (the "Project");

WHEREAS, pursuant to the provisions of Section 67.05, Wisconsin Statutes, within 15 days following the adoption of the Initial Resolution, the City Clerk caused a notice to electors to be published in the Whitewater Register, stating the purpose and maximum principal amount of the bond issue authorized by the Initial Resolution and describing the opportunity and procedure for submitting a petition requesting a referendum on the bond issue authorized by the Initial Resolution;

WHEREAS, no petition for referendum was filed with the City Clerk, and the time to file such a petition has expired;

WHEREAS, on December 15, 2009, the City Council of the City also adopted a resolution entitled: "Resolution Providing for the Sale of Not to Exceed \$3,290,000 Taxable General Obligation Community Development Bonds (Build America Bonds - Direct Payment)" providing, among other things, for the sale of not to exceed \$3,290,000 Taxable General Obligation Community Development Bonds (Build America Bonds - Direct Payment) (the "Bonds") to pay costs of the Project;

WHEREAS, pursuant to such resolution, the City has directed its financial advisor, Robert W. Baird & Co. Incorporated ("Baird") to take the steps necessary to sell the Bonds;

WHEREAS, Baird, in consultation with the officials of the City, prepared an Official Notice of Sale (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) setting forth the details of and the bid requirements for the Bonds and indicating that the Bonds would be offered for public sale on January 19, 2010;

WHEREAS, the City Clerk (in consultation with Baird) caused notice of the sale of the Bonds to be published and/or announced and caused the Official Notice of Sale to be distributed to potential bidders offering the Bonds for public sale;

WHEREAS, the City has duly received bids for the Bonds as described on the Bid Tabulation attached hereto as Exhibit B and incorporated herein by this reference (the "Bid Tabulation"); and

WHEREAS, it has been determined that the bid proposal (the "Proposal") submitted by the financial institution listed first on the Bid Tabulation fully complies with the bid requirements set forth in the Official Notice of Sale and is deemed to be the most advantageous

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to the City. Baird has recommended that the City accept the Proposal. A copy of said Proposal submitted by such institution (the "Purchaser") is attached hereto as Exhibit C and incorporated herein by this reference;

WHEREAS, it is the finding of the City Council that it is desirable and in the best interest of the City to take the steps necessary to irrevocably designate the Bonds to be qualified "Build America Bonds" within the meaning of Subsection 54AA(g) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder by the U.S. Department of Treasury (the "Regulations") so that the City may claim refundable credits with respect to each interest payment on the Bonds, payable to the City by the Secretary of the United States Department of the Treasury ("Treasury"); and

WHEREAS, because the City Council will designate the Bonds to be qualified Build America Bonds, the interest on the Bonds will be includible in gross income for federal income tax purposes under Subsection 54AA(f)(1) of the Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City that:

Section 1A. Ratification of the Official Notice of Sale and Offering Materials. The City Council of the City hereby ratifies and approves the details of the Bonds set forth in Exhibit A attached hereto as and for the details of the Bonds. The Official Notice of Sale and any other offering materials prepared and circulated by Baird are hereby ratified and approved in all respects. All actions taken by officers of the City and Baird in connection with the preparation and distribution of the Official Notice of Sale and any other offering materials are hereby ratified and approved in all respects.

Section 1B. Award of the Bonds. The Proposal of the Purchaser offering to purchase the Bonds for the sum set forth on the Proposal, plus accrued interest to the date of delivery, is hereby accepted. The City Manager and City Clerk or other appropriate officers of the City are authorized and directed to execute an acceptance of the Proposal on behalf of the City. The good faith deposit of the Purchaser shall be retained by the City Treasurer and applied in accordance with the Official Notice of Sale. The Bonds bear interest at the rates set forth on the Proposal.

Section 2. Terms of the Bonds. The Bonds shall be designated "Taxable General Obligation Community Development Bonds (Build America Bonds - Direct Payment)"; shall be issued in the aggregate principal amount of \$3,290,000; shall be dated February 9, 2010; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be numbered R-1 and upward; and shall bear interest at the rates per annum; and mature on December 1 of each year, in the years and principal amounts as set forth on the Pricing Summary attached hereto as Exhibit D-1 and incorporated herein by this reference. Interest is payable semi-annually on June 1 and December 1 of each year commencing on June 1, 2010. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The schedule of principal and interest payments due on the Bonds is set forth on the Debt Service Schedule attached hereto as Exhibit D-2 and incorporated herein by this reference (the "Schedule").

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Section 3. Redemption Provisions. The Bonds maturing on December 1, 2021 and thereafter shall be subject to redemption prior to maturity, at the option of the City, on December 1, 2020 or on any date thereafter. Said Bonds shall be redeemable as a whole or in part, and if in part, from maturities selected by the City and within each maturity, by lot, at the principal amount thereof, plus accrued interest to the date of redemption. If the Proposal specifies that any of the Bonds are subject to mandatory redemption, the terms of such mandatory redemption are set forth on an attachment hereto as Exhibit MRP and incorporated herein by this reference.

Section 4. Form of the Bonds. The Bonds shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit E and incorporated herein by this reference.

## Section 5. Tax Provisions.

(A) Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Bonds as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the years 2010 through 2028 for the payments due in the years 2010 through 2029 in the amounts set forth on the Schedule. The amount of tax levied for the year 2010 shall be the total amount of debt service due on the Bonds in the years 2010 and 2011; provided that the amount of such tax carried onto the tax rolls shall be abated by any amounts appropriated pursuant to subsection (D) below which are applied to payment of principal of or interest on the Bonds in the year 2010.

(B) Tax Collection. So long as any part of the principal of or interest on the Bonds remains unpaid, the City shall be and continue without power to repeal such levy or obstruct the collection of said tax until all such payments have been made or provided for. After the issuance of the Bonds, said tax shall be, from year to year, carried onto the tax roll of the City and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected, except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus money in the Debt Service Fund Account created below.

(C) Additional Funds. If at any time there shall be on hand insufficient funds from the aforesaid tax levy to meet principal and/or interest payments on said Bonds when due, the requisite amounts shall be paid from other funds of the City then available, which sums shall be replaced upon the collection of the taxes herein levied.

(D) Appropriation. The City hereby appropriates from proceeds of the Bonds or other funds of the City on hand a sum sufficient to be irrevocably deposited in the segregated Debt Service Fund Account created below and used to pay the interest on the Bonds coming due on June 1, 2010 and December 1, 2010 as set forth on the Schedule.

## Section 6. Segregated Debt Service Fund Account.

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(A) Creation and Deposits. There be and there hereby is established in the treasury of the City, if one has not already been created, a debt service fund, separate and distinct from every other fund, which shall be maintained in accordance with generally accepted accounting principles. Debt service or sinking funds established for obligations previously issued by the City may be considered as separate and distinct accounts within the debt service fund.

Within the debt service fund, there hereby is established a separate and distinct account designated as the "Debt Service Fund Account for \$3,290,000 Taxable General Obligation Community Development Bonds (Build America Bonds - Direct Payment), dated February 9, 2010" (the "Debt Service Fund Account") and such account shall be maintained until the indebtedness evidenced by the Bonds is fully paid or otherwise extinguished. The City Treasurer shall deposit in the Debt Service Fund Account (i) all accrued interest received by the City at the time of delivery of and payment for the Bonds; (ii) any premium which may be received by the City above the par value of the Bonds and accrued interest thereon; (iii) all money raised by the taxes herein levied and any amounts appropriated for the specific purpose of meeting principal of and interest on the Bonds when due; (iv) such other sums as may be necessary at any time to pay principal of and interest on the Bonds when due; (v) surplus monies in the Borrowed Money Fund as specified below; (vi) all Direct Payments (defined below) received by the City; and (vii) such further deposits as may be required by Section 67.11, Wisconsin Statutes.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund Account and appropriated for any purpose other than the payment of principal of and interest on the Bonds until all such principal and interest has been paid in full and the Bonds canceled; provided (i) the funds to provide for each payment of principal of and interest on the Bonds prior to the scheduled receipt of taxes from the next succeeding tax collection may be invested in direct obligations of the United States of America maturing in time to make such payments when they are due or in other investments permitted by law; and (ii) any funds over and above the amount of such principal and interest payments on the Bonds may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested by purchasing the Bonds as permitted by and subject to Section 67.11(2)(a), Wisconsin Statutes, or in permitted municipal investments under the pertinent provisions of the Wisconsin Statutes ("Permitted Investments"), which investments shall continue to be a part of the Debt Service Fund Account. Any investment of the Debt Service Fund Account shall at all times conform with the provisions of the Code and any applicable Regulations.

(C) Remaining Monies. When all of the Bonds have been paid in full and canceled, and all Permitted Investments disposed of, any money remaining in the Debt Service Fund Account shall be transferred and deposited in the general fund of the City, unless the City Council directs otherwise.

Section 7. Proceeds of the Bonds; Segregated Borrowed Money Fund. The proceeds of the Bonds (the "Bond Proceeds") (other than any premium and accrued interest which must be paid at the time of the delivery of the Bonds into the Debt Service Fund Account created above) shall be deposited into a special fund separate and distinct from all other funds of the City and disbursed solely for the purposes for which borrowed or for the payment of the principal of and the interest on the Bonds. Monies in the Borrowed Money Fund may be temporarily invested in

Permitted Investments. Any monies, including any income from Permitted Investments, remaining in the Borrowed Money Fund after the purposes for which the Bonds have been issued have been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purposes shall be deposited in the Debt Service Fund Account.

Section 8. Qualified Build America Bond Designation; Irrevocable Election; Compliance with Federal Tax Laws. (a) The Bonds are hereby irrevocably designated qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code, and the City hereby irrevocably elects to apply Subsection 54AA(g) of the Code to the Bonds. The City represents that all Bond Proceeds, less costs of issuance financed with such Bond Proceeds (which costs shall be in an amount not to exceed 2% of such Bond Proceeds) plus all income from temporary Permitted Investments with respect to such Bond Proceeds ("Available Project Proceeds") shall be used only for capital expenditures. The City acknowledges that among the requirements for the Bonds to qualify and continue to qualify as qualified Build America Bonds is that the Bonds, but for their qualified Build America Bond designation, would be tax-exempt for federal income tax purposes, and hence that the requirements of the Code and Regulations regarding tax-exempt obligations apply to the Bonds. The City hereby covenants to comply with such requirements.

(b) The City thus further represents and covenants that the projects financed by the Bonds and their ownership, management and use will not cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the qualified Build America Bond status of the Bonds including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause the Bonds to lose their status as qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code and the Regulations. The City Clerk or other officer of the City charged with the responsibility of issuing the Bonds shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(c) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Bonds provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Bonds and the laws of the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

(d) All investments made pursuant to this Resolution shall be Permitted Investments, but no such investment shall be made in such a manner as would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations and an officer of the City, charged with the responsibility for issuing the Bonds, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Bonds to the Purchaser which will permit the conclusion that the Bonds are not "arbitrage bonds," within the meaning of the Code or Regulations.

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Section 9. Qualified Build America Bonds - Application for Direct Payments to the City. The City shall claim available refundable credits from the Treasury with respect to each interest payment on the Bonds as provided under Subsection 54AA(g)(1) of the Code ("Direct Payments"). The Fiscal Agent (defined below) is hereby authorized and directed to take all necessary actions on behalf of the City to apply for the receipt by the City of such Direct Payments, including the timely filing of necessary Internal Revenue Service forms and information returns for that purpose and/or submitting requests electronically if and as the Treasury establishes an electronic platform in connection with its direct payment procedures. All Direct Payments received by the City shall be promptly deposited in the Debt Service Fund Account and used for no other purpose than as provided in Section 6 of this Resolution.

Section 10. Execution of the Bonds; Closing; Professional Services. The Bonds shall be issued in printed form, executed on behalf of the City by the manual or facsimile signatures of the City Manager and City Clerk, authenticated, if required, by the Fiscal Agent (defined below), sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Bonds may be imprinted on the Bonds in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Bonds, at least one of the signatures appearing on each Bond shall be a manual signature. In the event that either of the officers whose signatures appear on the Bonds shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby authorized and directed to do all acts and execute and deliver the Bonds and all such documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing. The City hereby authorizes the officers and agents of the City to enter into, on its behalf, agreements and contracts in conjunction with the Bonds, including but not limited to agreements and contracts for legal, trust, fiscal agency, disclosure and continuing disclosure, and rebate calculation services. Any such contract heretofore entered into in conjunction with the issuance of the Bonds is hereby ratified and approved in all respects.

Section 11. Payment of the Bonds; Fiscal Agent. The principal of and interest on the Bonds shall be paid by Associated Trust Company, National Association, Green Bay, Wisconsin, which is hereby appointed as the City's registrar and fiscal agent pursuant to the provisions of Section 67.10(2), Wisconsin Statutes (the "Fiscal Agent"). The Fiscal Agency Agreement between the City and the Fiscal Agent shall be substantially in the form attached hereto as Exhibit F and incorporated herein by this reference.

Section 12. Persons Treated as Owners; Transfer of Bonds. The City shall cause books for the registration and for the transfer of the Bonds to be kept by the Fiscal Agent. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Bond shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Any Bond may be transferred by the registered owner thereof by surrender of the Bond at the office of the Fiscal Agent, duly endorsed for the transfer or accompanied by an assignment

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duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the City Manager and City Clerk shall execute and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount, series and maturity and the Fiscal Agent shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Fiscal Agent shall cancel any Bond surrendered for transfer.

The City shall cooperate in any such transfer, and the City Manager and City Clerk are authorized to execute any new Bond or Bonds necessary to effect any such transfer.

Section 13. Record Date. The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Bonds (the "Record Date"). Payment of interest on the Bonds on any interest payment date shall be made to the registered owners of the Bonds as they appear on the registration book of the City at the close of business on the Record Date.

Section 14. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 15. Official Statement. The City Council hereby approves the Preliminary Official Statement with respect to the Bonds and deems the Preliminary Official Statement as "final" as of its date for purposes of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule"). All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the Closing, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 16. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the owners of the Bonds, to enter into a written undertaking (the "Undertaking") required by the Rule to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. The Undertaking shall be enforceable by the owners of the Bonds or by the Purchaser on behalf of such owners (provided that the rights of the owners and the Purchaser to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations thereunder and any failure by the City to comply with the provisions of the Undertaking shall not be an event of default with respect to the Bonds).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Bonds, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 17. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "Record Book") and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Bonds in the Record Book.

Section 18. Bond Insurance. If the Purchaser of the Bonds determines to obtain municipal bond insurance with respect to the Bonds, the officers of the City are authorized to take all actions necessary to obtain such municipal bond insurance. The City Manager and City Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the City Manager and City Clerk including provisions regarding restrictions on investment of Bond proceeds, the payment procedure under the municipal bond insurance policy, the rights of the bond insurer in the event of default and payment of the Bonds by the bond insurer and notices to be given to the bond insurer. In addition, any reference required by the bond insurer to the municipal bond insurance policy shall be made in the form of Bond provided herein.

Section 19. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the City Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Adopted, approved and recorded January 19, 2010.

Resolution introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF \$2,140,000 GENERAL OBLIGATION REFUNDING BONDS.**

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$2,135,000 GENERAL OBLIGATION REFUNDING BONDS**

WHEREAS, the City Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin (the "City") hereby finds and determines that it is necessary, desirable and in the best interest of the City to raise funds for the purpose of paying the cost of refunding obligations of the City, including interest on them, specifically; State Trust Fund Loans dated December 5, 2005, November 8, 2006 and February 7, 2008 and Promissory Notes dated August 1, 2006 and November 3, 2008 (collectively, the "Refunded Obligations") (hereinafter the refinancing of the Refunded Obligations shall be referred to as the "Refunding"), and there are insufficient funds on hand to pay said cost;

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WHEREAS, the City Council deems it to be necessary, desirable and in the best interest of the City to refund the Refunded Obligations for the purpose of achieving debt service cost savings;

WHEREAS, cities are authorized by the provisions of Section 67.04, Wisconsin Statutes, to borrow money and issue general obligation refunding bonds to refinance their outstanding obligations;

WHEREAS, the City has directed its financial advisor, Robert W. Baird & Co. Incorporated ("Baird") to take the steps necessary to sell its General Obligation Refunding Bonds (the "Bonds");

WHEREAS, Baird, in consultation with the officials of the City, prepared an Official Notice of Sale (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) setting forth the details of and the bid requirements for the Bonds and indicating that the Bonds would be offered for public sale on January 19, 2010;

WHEREAS, the City Clerk (in consultation with Baird) caused notice of the sale of the Bonds to be published and/or announced and caused the Official Notice of Sale to be distributed to potential bidders offering the Bonds for public sale;

WHEREAS, the City has duly received bids for the Bonds as described on the Bid Tabulation attached hereto as Exhibit B and incorporated herein by this reference (the "Bid Tabulation"); and

WHEREAS, it has been determined that the bid proposal (the "Proposal") submitted by the financial institution listed first on the Bid Tabulation fully complies with the bid requirements set forth in the Official Notice of Sale and is deemed to be the most advantageous to the City. Baird has recommended that the City accept the Proposal. A copy of said Proposal submitted by such institution (the "Purchaser") is attached hereto as Exhibit C and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City that:

Section 1A. Ratification of the Official Notice of Sale and Offering Materials. The City Council of the City hereby ratifies and approves the details of the Bonds set forth in Exhibit A attached hereto as and for the details of the Bonds. The Official Notice of Sale and any other offering materials prepared and circulated by Baird are hereby ratified and approved in all respects. All actions taken by officers of the City and Baird in connection with the preparation and distribution of the Official Notice of Sale, and any other offering materials are hereby ratified and approved in all respects.

Section 1B. Authorization of the Bonds. For the purpose of paying the cost of the Refunding, there shall be borrowed, pursuant to Section 67.04, Wisconsin Statutes, through the issuance of the Bonds, the sum of TWO MILLION ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$2,135,000).

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Section 1C. Award of the Bonds. The Proposal of the Purchaser offering to purchase the Bonds for the sum set forth on the Proposal, plus accrued interest to the date of delivery, is hereby accepted. The City Manager and City Clerk or other appropriate officers of the City are authorized and directed to execute an acceptance of the Proposal on behalf of the City. The good faith deposit of the Purchaser shall be retained by the City Treasurer and applied in accordance with the Official Notice of Sale. The Bonds bear interest at the rates set forth on the Proposal.

Section 2. Terms of the Bonds. The Bonds shall be designated "General Obligation Refunding Bonds"; shall be issued in the aggregate principal amount of \$2,135,000; shall be dated February 9, 2010; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be numbered R-1 and upward; and shall bear interest at the rates per annum; and mature on December 1 of each year, in the years and principal amounts as set forth on the Pricing Summary attached hereto as Exhibit D-1 and incorporated herein by this reference. Interest is payable semi-annually on June 1 and December 1 of each year commencing on June 1, 2010. Interest shall be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The schedule of principal and interest payments due on the Bonds is set forth on the Debt Service Schedule attached hereto as Exhibit D-2 and incorporated herein by this reference (the "Schedule").

Section 3. Redemption Provisions. The Bonds shall not be subject to optional redemption.

Section 4. Form of the Bonds. The Bonds shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit E and incorporated herein by this reference.

## Section 5. Tax Provisions.

(A) Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Bonds as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the years 2010 through 2016 for the payments due in the years 2010 through 2017 in the amounts set forth on the Schedule. The amount of tax levied for the year 2010 shall be the total amount of debt service due on the Bonds in the years 2010 and 2011; provided that the amount of such tax carried onto the tax rolls shall be abated by any amounts appropriated pursuant to subsection (D) below which are applied to payment of principal of or interest on the Bonds in the year 2010.

(B) Tax Collection. So long as any part of the principal of or interest on the Bonds remains unpaid, the City shall be and continue without power to repeal such levy or obstruct the collection of said tax until all such payments have been made or provided for. After the issuance of the Bonds, said tax shall be, from year to year, carried onto the tax roll of the City and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected, except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus money in the Debt Service Fund Account created below.

(C) Additional Funds. If at any time there shall be on hand insufficient funds from the aforesaid tax levy to meet principal and/or interest payments on said Bonds when due, the requisite amounts shall be paid from other funds of the City then available, which sums shall be replaced upon the collection of the taxes herein levied.

(D) Appropriation. The City hereby appropriates from amounts levied to pay debt service on the Refunded Obligations or other funds of the City on hand a sum sufficient to be irrevocably deposited in the segregated Debt Service Fund Account created below and used to pay the debt service on the Bonds coming due on June 1, 2010 and December 1, 2010 as set forth on the Schedule.

## Section 6. Segregated Debt Service Fund Account.

(A) Creation and Deposits. There be and there hereby is established in the treasury of the City, if one has not already been created, a debt service fund, separate and distinct from every other fund, which shall be maintained in accordance with generally accepted accounting principles. Debt service or sinking funds established for obligations previously issued by the City may be considered as separate and distinct accounts within the debt service fund.

Within the debt service fund, there hereby is established a separate and distinct account designated as the "Debt Service Fund Account for \$2,135,000 General Obligation Refunding Bonds, dated February 9, 2010" (the "Debt Service Fund Account") and such account shall be maintained until the indebtedness evidenced by the Bonds is fully paid or otherwise extinguished. The City Treasurer shall deposit in the Debt Service Fund Account (i) all accrued interest received by the City at the time of delivery of and payment for the Bonds; (ii) any excess premium not used for the Refunding which may be received by the City above the par value of the Bonds and accrued interest thereon; (iii) all money raised by the taxes herein levied and any amounts appropriated for the specific purpose of meeting principal of and interest on the Bonds when due; (iv) such other sums as may be necessary at any time to pay principal of and interest on the Bonds when due; (v) surplus monies in the Borrowed Money Fund as specified below; and (vi) such further deposits as may be required by Section 67.11, Wisconsin Statutes.

(B) Use and Investment. No money shall be withdrawn from the Debt Service Fund Account and appropriated for any purpose other than the payment of principal of and interest on the Bonds until all such principal and interest has been paid in full and the Bonds canceled; provided (i) the funds to provide for each payment of principal of and interest on the Bonds prior to the scheduled receipt of taxes from the next succeeding tax collection may be invested in direct obligations of the United States of America maturing in time to make such payments when they are due or in other investments permitted by law; and (ii) any funds over and above the amount of such principal and interest payments on the Bonds may be used to reduce the next succeeding tax levy, or may, at the option of the City, be invested by purchasing the Bonds as permitted by and subject to Section 67.11(2)(a), Wisconsin Statutes, or in permitted municipal investments under the pertinent provisions of the Wisconsin Statutes ("Permitted Investments"), which investments shall continue to be a part of the Debt Service Fund Account. Any investment of the Debt Service Fund Account shall at all times conform with the provisions

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of the Internal Revenue Code of 1986, as amended (the "Code") and any applicable Treasury Regulations (the "Regulations").

(C) Remaining Monies. When all of the Bonds have been paid in full and canceled, and all Permitted Investments disposed of, any money remaining in the Debt Service Fund Account shall be transferred and deposited in the general fund of the City, unless the City Council directs otherwise.

Section 7. Proceeds of the Bonds; Segregated Borrowed Money Fund. The proceeds of the Bonds (the "Bond Proceeds") (other than any excess premium not used for the Refunding and accrued interest which must be paid at the time of the delivery of the Bonds into the Debt Service Fund Account created above) shall be deposited into a special fund separate and distinct from all other funds of the City and disbursed solely for the purpose for which borrowed or for the payment of the principal of and the interest on the Bonds. Monies in the Borrowed Money Fund may be temporarily invested in Permitted Investments. Any monies, including any income from Permitted Investments, remaining in the Borrowed Money Fund after the purpose for which the Bonds have been issued has been accomplished, and, at any time, any monies as are not needed and which obviously thereafter cannot be needed for such purpose shall be deposited in the Debt Service Fund Account.

Section 8. No Arbitrage. All investments made pursuant to this Resolution shall be Permitted Investments, but no such investment shall be made in such a manner as would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations and an officer of the City, charged with the responsibility for issuing the Bonds, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Bonds to the Purchaser which will permit the conclusion that the Bonds are not "arbitrage bonds," within the meaning of the Code or Regulations.

Section 9. Compliance with Federal Tax Laws. (a) The City represents and covenants that the projects financed by the Bonds and by the Refunded Obligations and their ownership, management and use will not cause the Bonds or the Refunded Obligations to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the tax-exempt status of the interest on the Bonds including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Bonds to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Bonds shall provide an appropriate certificate of the City certifying that the City can and covenanting that it will comply with the provisions of the Code and Regulations.

(b) The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Bonds provided that in meeting such requirements the City will do so only to the extent

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consistent with the proceedings authorizing the Bonds and the laws of the State of Wisconsin and to the extent that there is a reasonable period of time in which to comply.

Section 10. Designation as Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265 of the Code, relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Section 11. Execution of the Bonds; Closing; Professional Services. The Bonds shall be issued in printed form, executed on behalf of the City by the manual or facsimile signatures of the City Manager and City Clerk, authenticated, if required, by the Fiscal Agent (defined below), sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery (the "Closing"). The facsimile signature of either of the officers executing the Bonds may be imprinted on the Bonds in lieu of the manual signature of the officer but, unless the City has contracted with a fiscal agent to authenticate the Bonds, at least one of the signatures appearing on each Bond shall be a manual signature. In the event that either of the officers whose signatures appear on the Bonds shall cease to be such officers before the Closing, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the Closing. The aforesaid officers are hereby authorized and directed to do all acts and execute and deliver the Bonds and all such documents, certificates and acknowledgements as may be necessary and convenient to effectuate the Closing. The City hereby authorizes the officers and agents of the City to enter into, on its behalf, agreements and contracts in conjunction with the Bonds, including but not limited to agreements and contracts for legal, trust, fiscal agency, disclosure and continuing disclosure, and rebate calculation services. Any such contract heretofore entered into in conjunction with the issuance of the Bonds is hereby ratified and approved in all respects.

Section 12. Payment of the Bonds; Fiscal Agent. The principal of and interest on the Bonds shall be paid by the City Clerk or City Treasurer (the "Fiscal Agent").

Section 13. Persons Treated as Owners; Transfer of Bonds. The City shall cause books for the registration and for the transfer of the Bonds to be kept by the Fiscal Agent. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Bond shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Any Bond may be transferred by the registered owner thereof by surrender of the Bond at the office of the Fiscal Agent, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the City Manager and City Clerk shall execute and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount, series and maturity and the Fiscal Agent shall record the name of each transferee in the registration book. No registration shall be made to bearer. The Fiscal Agent shall cancel any Bond surrendered for transfer.

The City shall cooperate in any such transfer, and the City Manager and City Clerk are authorized to execute any new Bond or Bonds necessary to effect any such transfer.

Section 14. Record Date. The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Bonds (the "Record Date"). Payment of interest on the Bonds on any interest payment date shall be made to the registered owners of the Bonds as they appear on the registration book of the City at the close of business on the Record Date.

Section 15. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 16. Official Statement. The City Council hereby approves the Preliminary Official Statement with respect to the Bonds and deems the Preliminary Official Statement as "final" as of its date for purposes of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule"). All actions taken by officers of the City in connection with the preparation of such Preliminary Official Statement and any addenda to it or Final Official Statement are hereby ratified and approved. In connection with the Closing, the appropriate City official shall certify the Preliminary Official Statement and any addenda or Final Official Statement. The City Clerk shall cause copies of the Preliminary Official Statement and any addenda or Final Official Statement to be distributed to the Purchaser.

Section 17. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the owners of the Bonds, to enter into a written undertaking (the "Undertaking") required by the Rule to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. The Undertaking shall be enforceable by the owners of the Bonds or by the Purchaser on behalf of such owners (provided that the rights of the owners and the Purchaser to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations thereunder and any failure by the City to comply with the provisions of the Undertaking shall not be an event of default with respect to the Bonds).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Bonds, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 18. Prepayment of the Refunded Obligations. The Refunded Obligations shall be prepaid on February 19, 2010 at the principal amount thereof plus accrued interest to the prepayment date.

The City hereby directs the City Clerk to take all actions necessary for the prepayment of the Refunded Obligations on their prepayment date. All actions heretofore taken by the officers

and agents of the City to effectuate the prepayment of the Refunded Obligations are hereby ratified and approved.

Section 19. Record Book. The City Clerk shall provide and keep the transcript of proceedings as a separate record book (the "Record Book") and shall record a full and correct statement of every step or proceeding had or taken in the course of authorizing and issuing the Bonds in the Record Book.

Section 20. Bond Insurance. If the Purchaser of the Bonds determines to obtain municipal bond insurance with respect to the Bonds, the officers of the City are authorized to take all actions necessary to obtain such municipal bond insurance. The City Manager and City Clerk are authorized to agree to such additional provisions as the bond insurer may reasonably request and which are acceptable to the City Manager and City Clerk including provisions regarding restrictions on investment of Bond proceeds, the payment procedure under the municipal bond insurance policy, the rights of the bond insurer in the event of default and payment of the Bonds by the bond insurer and notices to be given to the bond insurer. In addition, any reference required by the bond insurer to the municipal bond insurance policy shall be made in the form of Bond provided herein.

Section 21. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the City Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Adopted, approved and recorded January 19, 2010.

Resolution introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE ADOPTING CITY OF WHITEWATER  
COMPREHENSIVE PLAN 2030.**

Roffers indicated that several options to the plan relating to the Southwest corner of the City were placed on councilmembers' desks earlier in the evening. Councilmember Binnie indicated that he serves as the Plan Commission representative. He stated that the Plan Commission heard some concerns about the commercial designation of the Hoffmann property at the public hearing. However, due to the time pressure to adopt the Comprehensive Plan, he felt that the Commission may not have thoroughly considered those concerns. Binnie expressed the opinion that there have been a couple of major changes in the landscape since the South Neighborhood Plan was developed. For one, the Technology Park location changed, and a primary reason for commercial having been slated for the property in question was that consultants had advised that it was important to have some services adjacent to a tech park. In addition, economic changes have influenced decisions and required that the City

be more realistic about their expectations. Binnie indicated that development on the east side is important in light of our investment in infrastructure. Binnie stated that the reality is that our community is small, and that projections do not show us growing dramatically over the next several years. Binnie suggested that the Elkhorn Road area needs to be our focus, as was supported through the citizen survey recently completed. Councilmember Kienbaum reminded Council that a proposal for development of the Hoffmann property would have to be brought before Council prior to being rezoned. City Planning consultant Mark Roffers indicated that the single family residential would not allow commercial usage of the property. Roffers agreed that any proposed zoning changes would have to come before the Common Council prior to development. Roffers stated that Option C, "Future Neighborhood," would allow for businesses such as a dental office. Roffers explained that descriptions are purposely written broad. Councilmember Taylor requested the definition of the largest possible business that could be developed in the "future neighborhood" zone.

It was moved by Olsen and seconded by Winship to approve the Ordinance adopting the Comprehensive Plan as proposed.

It was then moved by Olsen and seconded by Winship to amend the approval to propose the Southwest quadrant between Walworth Avenue and the bypass as "future neighborhood" (the same designation as it was prior to adoption of the Neighborhood Plan, and as identified in Option "C" presented to the Council at their meeting.

It was then moved by Stewart and seconded by Olsen to amend the proposed plan to redesignate the former Middle School property at the corner of Center and Summit Streets as "future neighborhood." VOTE ON AMENDMENT: AYES: Olsen, Taylor, Kienbaum, Stewart. NOES: Winship, Binnie, Singer. Amendment carries (and designation for former Franklin Middle School property is changed to "future neighborhood.") AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

A vote was taken on the final now-amended motion, to approve the comprehensive plan with changes as follows: Redesignate the property known as the former Franklin Middle School site at the intersection of Center and Summit Streets as "future neighborhood" and redesignate the Hoffmann property near Walworth Ave. and Indian Mound Parkway as "future neighborhood", as identified in Option "C" of the options presented. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

## **AN ORDINANCE CREATING CHAPTER 1.31, ADOPTING THE COMPREHENSIVE PLAN OF THE CITY OF WHITEWATER, WISCONSIN.**

The Common Council of the City of Whitewater, Wisconsin, do ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 1.31 is hereby created to read as follows:

1.31.010 General Provisions.

# CA-A

- (1) Pursuant to sections 62.23(21) and (3) and 66.1001 of Wisconsin Statutes, the City of Whitewater, is authorized to prepare and adopt a comprehensive plan as defined in sections 66.1001(1)(a) and 66.1001(2) of Wisconsin Statutes.
- (2) The Common Council of the City of Whitewater has adopted and followed written procedures designed to foster public participation in every stage of the preparation of its comprehensive plan as required by section 66.1001(4)(a) of Wisconsin Statutes.
- (3) The Plan and Architectural Review Commission of the City of Whitewater, by a majority vote of the entire Commission recorded in its official minutes, has adopted a resolution recommending to the Common Council the adoption of the document entitled "CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN," containing all of the elements specified in section 66.1001(2) of the Wisconsin Statutes.
- (4) The City of Whitewater has held at least one public hearing on this ordinance, in compliance with the requirements of section 66.1001(4)(d) of Wisconsin Statutes and provided other opportunities for public involvement per its adopted public participation strategy and procedures.

## 1.31.020 Adoption of Comprehensive Plan.

- (1) The Common Council of the City of Whitewater, Wisconsin, do, by enactment of this ordinance, formally adopt the document entitled "CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN," pursuant to section 66.1001(4)(c) of Wisconsin Statutes.

Ordinance introduced by Councilmember Olsen who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None. FIRST READING APPROVED: January 19, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

## **SECOND READING OF AMENDMENT TO OPEN BURNING ORDINANCE.**

### **AN ORDINANCE AMENDING SUBSECTION 8.32.010 CONCERNING BURNING REGULATIONS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Chapter 8.32, Subsection 8.32.010 (b) is hereby amended to read as follows:

(b) A substance that is burned outdoors for any purpose including outdoor recreation or for cooking in a grill, broiler, rotisserie, or any other appliance shall be attended to at all times.

(1) All outdoor fires shall be no closer than fifteen feet from any structure or side lot line and ten feet from any rear lot line. There shall be no outdoor fires in front yards or street yards.

(2) All open flame devices, cooking appliances, including grills, or decorative fireplaces shall be placed on a noncombustible surface and no closer than five feet to any building structure when in use.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship.  
AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor (by phone). NOES: None.  
ABSENT: None. SECOND READING APPROVED: January 19, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF ORDINANCE AUTHORIZING VEHICLE ACCIDENT SITE RESPONSE CHARGES.**

**ORDINANCE CREATING SECTION 2.24.096 AUTHORIZING VEHICLE ACCIDENT SITE RESPONSE CHARGES**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

Section 1: Whitewater Municipal Code, Section 2.24.096, is hereby created to read as follows:

2.24.096

(a) Purpose of Section. This section is enacted because the City of Whitewater Fire Department responds to the scene of motor vehicle accidents and provides services at the scene in addition to emergency medical services, to preserve the health and property of persons and the public. In order for the Fire Department to provide such services, it is necessary to charge the owners of the vehicles involved in the accident, and their insurance companies, for the services provided.

(b) Charges Authorized. The City of Whitewater Fire Department is hereby authorized to charge fees to the owner and/or operator of a motor vehicle (and their insurance companies) when the City of Whitewater Fire Department provides services to their vehicle, or to the accident scene, as a direct result of their vehicle's involvement. This may include but is not limited to: car fires, disconnecting the battery, fluid clean-ups, flush-downs, stabilization, site clean-up and extractions. This fee shall be charged in addition to the emergency medical services charges that are incurred.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship.  
AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor (by phone). NOES: None.  
ABSENT: None. SECOND READING APPROVED: January 19, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

# CA-A

## SECOND READING OF ORDINANCE AMENDING CHAPTER 11 RELATING TO PARKING RESTRICTIONS ON NORTH STREET.

### **ORDINANCE AMENDING CHAPTER 11.16.150 OF THE CITY OF WHITEWATER MUNICIPAL CODE ENTITLED "STREET INDEX OF PARKING RESTRICTIONS.**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, does hereby ordain as follows:

SECTION 1: Chapter 11.16.150 entitled "Street Index of Parking Restrictions" shall be amended as follows:

The following is hereby *deleted* from the Street Index of Parking Restrictions:

North Street	South side; from east curblane of First Street; east 125 feet	11.16.070	Two-hour parking
North Street	South side; from west curblane of N. First Street, west 140 feet	11.16.070	Two-hour parking
North Street	South side; from N. First, east to N. Jefferson	11.16.090	No parking from 2:00 a.m. – 5:00 a.m.

The following is hereby *added* to the chart entitled Street Index of Parking Restrictions:

North Street	Both sides; from George Street to Jefferson Street	11.16.090	No parking from 2:00 a.m. – 5:00 a.m.
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SECTION 2: This ordinance shall take effect upon passage and publication as provided by law.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship.  
AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor (by phone). NOES: None.  
ABSENT: None. SECOND READING APPROVED: January 19, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPROVAL OF POLICE DEPARTMENT ELECTRONIC RECORD SHARING AGREEMENT WITH UWW CAMPUS POLICE.** Police Chief Coan requested approval of an Agreement between the University and the City relating to sharing of Police-related records.

It was moved by Councilmember Olsen to approve the Agreement between the City and the UWW Police regarding electronic record sharing. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**APPROVAL OF AMENDMENT TO MEMORANDUM OF UNDERSTANDING WITH UW-WHITEWATER REGARDING EMERGENCY COMMUNICATION SERVICES.** In light of the fact that the State's Payment for Municipal Services amount has fallen below 80% of the cost of the services for 2010, the University has agreed to make a separate payment to subsidize the costs. The University will continue to make such payment based on a formula noted in the Agreement. It was moved by Olsen and seconded by Winship to approve the Amendment to the Memorandum of Understanding for provision of Emergency dispatch and communication services between the City the Whitewater Police Department and the UW-Whitewater Police Department. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**APPROVAL OF PURCHASE OF 2010 SQUAD CAR.** It was moved by Olsen and seconded by Winship to approve the purchase of a new Ford Crown Victoria for use by the Police Department. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor (by phone). NOES: None. ABSENT: None.

**APPROVAL OF CHANGE OF AGENT FOR "CLASS C" WINE LICENSE FOR THE CRAZY LEUCA CHICKS,LLC (THE GUILD ON THE TRIANGLE).** The Guild on the Triangle business has requested a change of alcohol license agent for their business. It was moved by Olsen and seconded by Winship to approve a change of agent (to Jennifer Preiss) for the Class C Wine License for the Crazy Leuca Chicks, LLC.for a "Class C" wine license of Crazy Leuca Chicks, LLC. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor (by phone). NOES: None. ABSENT: None.

**APPROVAL OF PURCHASE OF PLAYGROUND EQUIPMENT FOR EAST GATE PARK PLAYGROUND FROM LEE RECREATION LLC.** It was moved by Olsen and seconded by Stewart to approve the purchase of playground equipment for East Gate Park playground from Lee Recreation LLC of Cambridge, Wisconsin, in the sum of \$19,527. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN CITY AND DOWNTOWN WHITEWATER, INC.** City Manager Brunner and the Downtown Whitewater ("DTWW") Board have drafted a Memorandum of Understanding between the City and DTWW. The agreement sets forth expectations the City has of the organization, as well as requiring that DTWW raise sufficient funds each year to at least double the amount of public funds contributed by the City. The DTWW Director will be required to submit quarterly reports to the Common Council, as well as supply an annual Financial Report. It was moved by Binnie and seconded by Winship to approve the Memorandum of Understanding between the City of Whitewater and Downtown Whitewater, Inc. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

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It was moved by Councilmember Binnie to make the City's contribution contingent upon a report being given to the Common Council relating to fundraising prior to the payment scheduled for 2010. Seconded by Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**DISCUSSION AND POSSIBLE DIRECTION REGARDING CITY RESIDENCY AS A CONDITION OF EMPLOYMENT FOR CERTAIN POSITIONS.** Councilmember Olsen requested that the employee handbook be amended to require certain management positions to live within the City limits. City Manager Brunner stated that the requirement would assist in preservation of neighborhoods, an issue very important to many of the citizenry. Brunner agreed that it was a good public policy. Further information will be forthcoming.

**REQUEST FOR EXEMPTION FROM HAVING TO USE CITY OF WHITEWATER E-MAIL ADDRESS.** Councilmember Stewart requested exemption from the requirement to have his e-mail sent to his City e-mail address. Stewart feels it is much more convenient to use his personal e-mail address, agrees that he will respond to e-mails from the City account, thereby creating a record on the City server. Several councilmembers expressed disagreement with the request. It was moved by Taylor and seconded by Olsen to allow Councilmember Stewart to use his personal e-mail address on the City's website, instead of the City's e-mail address. . AYES: Olsen, Taylor, Kienbaum, Stewart. NOES: Winship, Binnie, Singer. ABSENT: None.

**REVIEW AND APPROVAL OF ASSISTANT TO CITY MANAGER POSITION AND HIRING PROCESS.** City Manager Brunner stated that hiring of the Assistant to the City Manager position will commence January 25<sup>th</sup>, with the posting of the job announcement with various governmental publications. Applications are due to the City by February 19<sup>th</sup>, with interviews to be conducted the week of March 8. Employment for the successful candidate will begin in early April. Based on this schedule, the current Human Resources/Special Projects manager position would end on Friday, April 2, with the Assistant to the City Manager position starting shortly thereafter. It was moved by Singer and seconded by Binnie to approve the hiring process for the position of Assistant to the City Manager. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**APPROVAL OF CONTRACT WITH STRAND ASSOCIATES FOR ENGINEERING SERVICES FOR STARIN ROAD EXTENSION AND TECHNOLOGY PARK IMPROVEMENT PROJECTS.** Presented for approval was a contract with Strand Associates for engineering services necessary for development of the Technology Park. It was moved by Winship and seconded by Stewart to approve a contract with Strand for engineering services for the Starin Road extension project and Technology Park improvement projects. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: Taylor.

**COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS.** None.

**ADJOURN.** It was moved by Olsen and seconded by Winship to adjourn the meeting at 8:52 pm. AYES: Olsen, Stewart, Winship, Binnie, Singer, Kienbaum. NOES: None. ABSENT: Taylor.

Respectfully Submitted,

Michele R. Smith, City Clerk

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,  
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

February 2, 2010.

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: McDonell.

**APPROVAL OF MINUTES.** It was moved by Olsen and seconded by Winship to acknowledge receipt and filing of the following: Preliminary Financials for December, 2009; CDA minutes of 12/14/09; and Whitewater Police Department Consolidated Monthly Report for December, 2009. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Winship to approve payment of city invoices in the total sum of \$238,689.37. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**REPORTS.** City Manager Brunner and Councilmember Taylor presented a Proclamation to the UW-Whitewater Football team in recognition of their National Championship. Library Director Stacey Lunsford informed the Council that their fundraising consultant has advised them that in these economic times, it would be difficult to fundraise the amount of money needed to build the desired addition to the Library. The Library Board will be reviewing their plans.

**CITIZEN COMMENTS** None.

**COMMON COUNCIL ANNOUNCEMENTS.** None.

**RESOLUTION PURSUANT TO WISCONSIN STATUTE 74.33(1)(c) RESCINDING REAL ESTATE TAX CONCERNING /WUP-0334- REAL ESTATE TAX, CITY OF WHITEWATER, WALWORTH COUNTY.** City Attorney McDonell stated that the property owner is being improperly assessed due to legal description errors. Richard Rozelle of Delta Electric was taxed for property owned by the City. In order to cancel this tax, a Resolution rescinding the tax is needed.

**RESOLUTION PURSUANT TO WISCONSIN STATUTE 74.33(1)(c)  
RESCINDING REAL ESTATE TAX CONCERNING /WUP-0334 -  
REAL ESTATE TAX, CITY OF WHITEWATER, WALWORTH COUNTY**

WHEREAS, real estate tax was assessed to Rozelle Investments, LLC, under Account # /WUP-0334, and

WHEREAS, the real estate described in the real estate tax bill for /WUP-0334 was not owned by Rozelle Investments, LLC, on January 1, 2009, and

WHEREAS, said real estate was owned by the City of Whitewater on January 1, 2009, and therefore was exempt by law from taxation.

WHEREAS, it is appropriate to correct said error under the procedures set forth in Wisconsin Statute 74.33(1)(c).

Now, therefore, BE IT RESOLVED that the City of Whitewater hereby rescinds the real estate tax assessed to Rozelle Investments, LLC, under Account No. /WUP-00334 for the year 2009.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE CORRECTING SECTION NUMBERS IN CHAPTER 16.14, SEWER USE CHARGES.** An ordinance correcting reference numbers in the Sewer Use Charges ordinance was presented.

### **ORDINANCE CORRECTING SECTION NUMBERS IN CHAPTER 16.14 - SEWER USE CHARGES**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows: ~

**SECTION 1:** Whitewater Municipal Code, Section 16.14.56, **Amalgam Separators – General Conditions**, passed on September 15, 2009, incorrectly used the section number 16.14.56. The section should have been numbered 16.14.576. Section 16.14.576 is hereby substituted as the section number for **Amalgam Separators – General Conditions**.

**SECTION 2:** Whitewater Municipal Code, Section 16.14.57, **Amalgam Separators – Maintenance**, passed on September 15, 2009, incorrectly used the section number 16.14.57. The section should have been numbered 16.14.577. Section 16.14.577 is hereby substituted as the section number for **Amalgam Separators – Maintenance**.

**SECTION 3:** Whitewater Municipal Code, Section 16.14.046, **Amalgam Separator**, passed on September 15, 2009, incorrectly used the section number 16.14.046. The section should have been numbered 16.14.046. Section 16.14.046 is hereby substituted as the section number for **Amalgam Separator**.

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SECTION 4: Whitewater Municipal Code, Section 161.14.309, **Sand Interceptor**, passed on September 15, 2009, incorrectly used the section number 161.14.309. The section should have been numbered 16.14.309. Section 16.14.309 is hereby substituted as the section number for **Sand Interceptor**.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship.  
AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT:  
None. FIRST READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE AMENDING CHAPTER 12.08.010 STREET OBSTRUCTIONS.** DPW Director Fischer stated that the proposed ordinance would clarify language relating to the prohibition of mowing any grass towards the Street. Fischer explained that this is a Department of Natural Resources requirement. Grass in the sewer system results in phosphorous going into the sewers.

## **AN ORDINANCE AMENDING CHAPTER 12.08 STREET OBSTRUCTIONS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, do hereby ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 12.08, Section 12.08.010, is hereby amended to read as follows:

12.08.010 Prohibited.

- (a) No person, except as provided in Section 12.08.020, shall place, deposit, keep, or cause to be placed, deposited or kept in or upon any street, alley, gutter, sidewalk or public ground within the limits of this city any stone, brick, timber, lumber, iron, wood or other material for building, or any wood, snow, rubbish, earth, grass clippings or lawn debris, or any thing or substance whatever; nor shall any person burn or cause to be burned any such substance in any public street or alley; nor shall any person leave any automobile, truck, trailer, equipment or other vehicle standing or parked in or upon any street, alley, sidewalk, or public ground so as to encumber the same, or so as to obstruct, impede, or hinder travel thereon; nor shall any person leave, or cause to suffer any box, barrel, crate, cask, bale, package, merchandise, or other thing to stand, be or remain upon any street, alley, sidewalk, gutter, or public ground longer than may be actually necessary for the act of delivering or receiving the same.
- (b) Any person violating any of the provisions of this section shall forfeit and pay a penalty of not less than twenty-five dollars nor more than two hundred fifty dollars, together with the costs of prosecution.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Binnie. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None. FIRST READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF ORDINANCE ADOPTING CITY OF WHITEWATER COMPREHENSIVE PLAN 2030.**

Councilmember Olsen indicated that after the Public Hearing held on January 19<sup>th</sup>, he had been contacted regarding the revision to the comprehensive plan relating to the Hoffmann property (Walworth Ave. near Indian Mound Pkwy). Olsen stated that the property was once approved for commercial use in light of the fact that the Technology Park was going to be located there. Olsen stated that an inquiry to develop a grocery store on that location was put forth, and city representatives expressed interest. The developer chose not to pursue the matter at that time due to the poor economy, but left on good terms and would possibly be back when the economic outlook improved. Olsen was disappointed that the store would be out of the question now based on the new comprehensive plan. Olsen expressed displeasure with the manner in which the comprehensive plan was handled.

In response to the question of whether, under the current proposed use, a grocery store could be developed at that location, Neighborhood Services Director Parker stated that if the specific plans for the grocery store fit in with the neighborhood, that it could be developed.

City Manager Brunner explained that the document is a planning tool for future growth and development; a *suggestion* that certain areas should be developed in a certain manner. The Comprehensive Plan document is shared with developers. At their last meeting, the Council changed the designation for the Hoffmann property to “future neighborhood.” The property is currently zoned “AT”, “agricultural transition”. If there is a desire to rezone the parcel, an application process is necessary and Plan Commission and Council would be required to approve the rezoning ordinance. Olsen disapproved of the process, stating that the Comprehensive Plan is often presented as a firm plan, and that to change the plan would result in one extra hoop to go through. Councilmember Kienbaum expressed that the Plan is not set in stone, and that if it were, she would not be willing to vote for it.

Jeff Knight, member of CDA and Technology Park Board, said he has had strong concerns from the beginning. He stated there are issues with high traffic volumes at the Indian Mound Parkway intersection now, and that the area would not be able to handle the traffic that a larger business would generate. Knight said he had raised his concerns from the beginning and did express them to the City Manager. City Manager Brunner agreed that commercial development of the parcel had been discussed during the sessions held for adoption of the South Side Neighborhood Plan.

Tom Hinspater, resident of Panther Court is disappointed in how the dialogue has changed. Hinspater stated that initially a Doctor’s or Dentist’s office was discussed, but now a larger business such as a grocery store is being mentioned. He questioned where that came from. He indicated he does not understand the change from the last Council meeting. Hinspater stated that

the discussion is contrary to what was discussed at the January 19<sup>th</sup> meeting and it is now a whole different program.

City Attorney McDonell confirmed that the Comprehensive Plan is a general plan. The Hoffmann property was previously proposed to be designated as a “community business” area, but is now proposed to be designated as a “future neighborhood.” McDonell stated that both designations are somewhat general and that from McDonnell’s perspective, a grocery store would likely fit into the “community business” designation but not into the “future neighborhood” designation. McDonell stated that it must be understood that projects will be reviewed at the Plan Commission level prior to being developed.

Councilmember Binnie stated that it is clearly the preference at this time that major commercial projects develop in other areas; however, there is nothing the Council could do to prevent any developer from attempting to develop a certain property. The Comprehensive Plan is not set in stone. It is intended to provide guidelines as to what the preference is at this time.

## **AN ORDINANCE CREATING CHAPTER 1.31, ADOPTING THE COMPREHENSIVE PLAN OF THE CITY OF WHITEWATER, WISCONSIN.**

The Common Council of the City of Whitewater, Wisconsin, do ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 1.31 is hereby created to read as follows:

### 1.31.010 General Provisions.

- (1) Pursuant to sections 62.23(21) and (3) and 66.1001 of Wisconsin Statutes, the City of Whitewater, is authorized to prepare and adopt a comprehensive plan as defined in sections 66.1001(1)(a) and 66.1001(2) of Wisconsin Statutes.
- (2) The Common Council of the City of Whitewater has adopted and followed written procedures designed to foster public participation in every stage of the preparation of its comprehensive plan as required by section 66.1001(4)(a) of Wisconsin Statutes.
- (3) The Plan and Architectural Review Commission of the City of whitewater, by a majority vote of the entire Commission recorded in its official minutes, has adopted a resolution recommending to the Common Council the adoption of the document entitled “CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN,” containing all of the elements specified in section 66.1001(2) of the Wisconsin Statutes.
- (4) The City of Whitewater has held at least one public hearing on this ordinance, in compliance with the requirements of section 66.1001(4)(d) of Wisconsin Statutes and provided other opportunities for public involvement per its adopted public participation strategy and procedures.

### 1.31.020 Adoption of Comprehensive Plan.

- (1) The Common Council of the City of Whitewater, Wisconsin, do, by enactment of this ordinance, formally adopt the document entitled “CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN,” pursuant to section 66.1001(4)(c) of Wisconsin Statutes.

SECTION 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the Common Council and publication/posting as required by law.

Ordinance introduced by Councilmember Taylor. Seconded by Councilmember Winship. AYES: Winship, Binnie, Singer, Stewart, Taylor. NOES: Olsen, Kienbaum. ABSENT: None. SECOND READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPOINTMENT OF CITIZEN MEMBERS TO URBAN FORESTRY COMMISSION AND BIRGE FOUNTAIN COMMITTEE.**

City Manager Brunner and Council President Singer have met, and have recommended the following appointments to the newly-created Urban Forestry Commission: Richard Ehrenberg, Tiu Gray-Fow, Peter Disley, Wyatt Welter and Beverly Stone. Also recommended is appointment of Alan Lockett to the Birge Fountain Committee. Councilmember Olsen said that he had a problem with the appointment of Richard Ehrenberg to the Urban Forestry Committee. Olsen stated that Ehrenberg was one of the individuals who created problems with the prior Tree Commission, and that his actions contributed to the dissolution of that Committee. Councilmember Singer indicated that Mr. Ehrenberg had been interviewed and was very supportive of the process. Previous issues were discussed and the hierarchy was explained to him. Councilmember Taylor stated that misconduct with Tree Commission matters were predominantly with one person. Olsen stated that he was on the Tree Commission and he had an opportunity to view the problems. Councilmember Binnie indicated that Olsen had attended only one meeting. Binnie indicated that Ehrenberg is the person with extensive experience as it relates to the Commission and that there were many dysfunctions. Binnie believes they came from both staff members and commission members. He stated it is time for a fresh start and he is hoping that everyone can act effectively and professionally.

It was moved by Councilmember Singer to appoint Alan Lockett as a member to the Birge Fountain Committee. Seconded by Councilmember Olsen. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Singer to approve appointment of the following members to the Urban Forestry Commission; Tiu Gray-Fow, Peter Disley, Beverly Stone, Wyatt Welter, and Richard Ehrenberg. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Olsen to remove Ehrenberg from the list of appointees to the Urban Forestry Commission. Seconded by Kienbaum. AYES: Olsen, Kienbaum. NOES: Taylor, Winship, Binnie, Singer, Stewart. ABSENT: None. MOTION FAILS.

It was moved by Councilmember Winship to amend the appointments as follows: Disley and Gray-Fow to serve two-year terms, Stone and Welter to serve three-year terms, and Ehrenberg to serve a one-year term. Seconded by Binnie. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

**CONCEPTUAL REVIEW OF A ZONING ORDINANCE AMENDMENT WHICH PROVIDES STANDARDS AND REQUIREMENTS FOR RETAIL BUSINESSES THAT VACATE LARGE RETAIL BUILDINGS. ALSO, A DISCUSSION BY THE COUNCIL REGARDING WHETHER THEY WOULD PREFER TO CONSIDER PASSING A COMPREHENSIVE ORDINANCE THAT REGULATES BOTH THE DEVELOPMENT OF LARGE RETAIL BUSINESS BUILDINGS AS WELL AS THE DISCONTINUANCE OF USE OF SUCH BUILDINGS AND REFERRAL TO PLAN COMMISSION FOR PUBLIC HEARING.**

Councilmember Binnie indicated that he does not like to impose stipulations on businesses, but that it is clear that there are many cities where big box businesses have moved and left scars. In some instances, a building has been vacated and replaced with another large building, creating a real blight for a community. Binnie indicated that he wouldn't want to negatively impact the owner of a building if they are simply leasing space. City Attorney McDonell stated that the process would be to go before the Plan Commission, where a Public Hearing would be held. Councilmember Kienbaum does not support rules that make it harder for a business to come to Whitewater. She indicated that one of the biggest complaints she receives relates to people saying Whitewater has too many rules in comparison with neighboring communities. Councilmember Winship would like to explore rules and conditions businesses have to comply with to develop a "big box" store. It was suggested that a model ordinance be developed, then taken to Plan Commission. City Manager Brunner stated that in communities he has previously worked in, handling of these matters was dealt with via Development Agreement. Kienbaum and Olsen supported that method. Councilmember Binnie would like to see a plan that works for the future. It was moved by Councilmember Binnie to support further development of a possible comprehensive big box ordinance, referring the issue to the Plan and Architectural Review Commission. Seconded by Councilmember Winship. AYES: Taylor, Winship, Binnie, Singer, Stewart. NOES: Olsen, Kienbaum. ABSENT: None.

**ADOPTION OF AMENDMENT TO PERSONNEL MANUAL, RELATING TO EMPLOYEE RESIDENCY REQUIREMENT.**

Councilmember Olsen had brought forth a request to require that employees holding certain positions within the City be required to live within the city limits. The proposal brought forth listed certain management positions that would be required to live in the City. The proposal allows those employees currently living out of the City limits the ability to continue to do so, even if they move from where they currently reside. The change would not affect any included position that currently exists. However, should an individual move to another position within the City, the residency requirement would be in effect. DPW Director Fischer stated that the residency-required positions in the proposal were not across the Board. He noted that Police Lieutenants were not included in the requirement. Fischer also stated that the pool of good applicants will be reduced if we require City residency. Police Chief Coan argued that the Lieutenant positions should not have residency requirements; that these positions are normally filled on an internal promotion basis, and that an outstanding applicant might be passed by because they are not willing to move into the City. Councilmember Taylor suggested that the Downtown Whitewater Director be added to the list. City Manager Brunner stated that the City does not supervise that position, and therefore cannot require residency. It was requested that the Community Development Director and Coordinator positions be added to the list where residency is required. Singer stated that the CDA is "selling" Whitewater and it would be advantageous if those employees lived here. City Manager Brunner

agreed with Singer's proposal and indicated that the current employee has been working toward certification to become the CDA Director, and is aware that city residency would be required upon appointment to that position.

It was moved by Councilmember Olsen to approve the amendment to the Personnel Manual relating to employee residency requirement with the addition of Chief Information Officer to the list of employees that would be required to reside in the city. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Binnie to include all non-exempt staff in the amendment to require employee residency. Seconded by Councilmember Singer. AYES: Binnie, Singer, Kienbaum. NOES: Olsen, Taylor, Winship, Stewart. ABSENT: None. MOTION FAILS.

It was moved by Councilmember Binnie to add the CDA Coordinator to the list of employees that would be required to reside in the City. Seconded by Councilmember Singer. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum. NOES: Stewart. ABSENT: None.

It was moved by Councilmember Binnie to drop the final sentence: "The Common Council may consider offering financial incentives to affected employees when implementing this policy." Seconded by Stewart. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

**ACTION ON APPLICATION FOR CLASS "A" BEER LICENSE FOR WALGREEN'S, 1041 W. MAIN STREET, KATHY SCHULTZ, AGENT.** The alcohol licensing committee met prior to the Council meeting and has recommended approval of a license that would allow Walgreen's to sell packaged beer. It was moved by Binnie and seconded by Olsen to approve a Class "A" Beer license for Walgreen's, Kathy Schultz, Agent, 1041 W. Main Street, Whitewater. AYES: Olsen, Taylor, Winship, Binnie, Stewart, Kienbaum, Singer. NOES: None. ABSENT: None.

**ACTION ON APPLICATION FOR "CLASS B' (BEER & LIQUOR) LICENSE FOR 214 WHITEWATER ST. LLC (HAWK'S NEST BAR), PATRICK J. DUFER, AGENT, 214 WHITEWATER STREET.** Dan Caravette of 214 Whitewater Street LLC is in the process of purchasing the Hawk's Nest Bar at 214 Whitewater Street. The Alcohol Licensing Committee met prior to the Council meeting and recommended approval of the transfer of the license. It was moved by Binnie and seconded by Olsen to approve a Class "A" Beer License for 214 Whitewater St., LLC, Patrick Dufer, Agent. AYES: Olsen, Taylor, Winship, Binnie, Stewart, Kienbaum, Singer. NOES: None. ABSENT: None

**COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS.** Councilmember Winship requested that a proposed ordinance be discussed regarding overlay zoning limiting the number of unrelated residents in R-1 zoning to two (for rental purposes). Councilmember Kienbaum asked to discuss what can be done to encourage retail businesses to come to Whitewater and for information as to what is being done to encourage them. Councilmember

# CA-A

Olsen requested that an ordinance prohibiting “all you can drink” alcohol specials be brought to Council. Olsen also requested that a closed session be held to discuss a personnel matter.

**ADJOURN.** It was moved by Olsen and seconded by Kienbaum to adjourn the meeting at 8:10 p.m. AYES: Olsen, Taylor, Stewart, Winship, Binnie, Singer, Kienbaum. NOES: None. ABSENT: None.

Respectfully Submitted,

Michele R. Smith  
City Clerk

# CA-A

## **ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER, WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

February 16, 2010.

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: McDonell.

**APPROVAL OF MINUTES.** It was moved by Olsen and seconded by Winship to acknowledge receipt and filing of the following: Whitewater University Technology Park Board Minutes of 1/19/10, Seniors in the Park Senior Forum Minutes of 1/4/10, Irvin L. Young Memorial Library Minutes of 1/11/10, Park and Recreation Board Minutes of 1/4/10, Cable T.V. Committee Minutes of 9/28/09, Plan Commission Minutes of 4/23/07, 8/13/07, 8/27/07, 1/11/10, Report of Manually Produced Checks for January 2010, and Financial Statements for January 2010. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Winship to approve payment of city invoices processed through February 11, 2010 in the total sum of \$233,596.55. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**REPORTS.** City Manager Brunner reported that the City, along with the Whitewater Unified School District, has received a \$45,000 Energy Independence 2025 Plan Grant to accomplish a 25% reduction in fossil fuel use. The first Whitewater Energy Independence Council meeting will be held on February 23<sup>rd</sup>. Brunner also reported that there will be a presentation by Strand relating to the Main-Whiton Street signals on February 23. Tami Brodnicki, Executive Director of Downtown Whitewater, Inc. presented her quarterly report. Copies were distributed to Councilmembers.

**CITIZEN COMMENTS.** None.

**COMMON COUNCIL ANNOUNCEMENTS.** None.

**RESOLUTION AUTHORIZING RELOCATION OF POLLING PLACE FOR WARD 10 TO UWW CAMPUS.** Councilmember Singer indicated that the student organizations had come up with the funding to purchase the voting machines necessary for an additional polling station. It was agreed that more parking should be available at the site than the amount designated when only one polling station was on campus.

**RESOLUTION RELOCATING THE POLLING PLACE FOR  
WARD 10 OF DISTRICT NO. 5 TO THE HAMILTON CENTER  
ON THE UW-WHITEWATER CAMPUS**

# CA-A

**WHEREAS**, the Common Council of the City of Whitewater, Walworth and Jefferson Counties finds that, if the below contingencies are met, it is in the citizens of the City of Whitewater's best interest to move the polling place for Ward 10 of Aldermanic District No. 5 to the Hamilton Center on the University of Wisconsin-Whitewater campus.

Now, therefore, **BE IT RESOLVED** that, if the below contingencies are met, the polling place for elections in the City of Whitewater for Ward 10 of Aldermanic District No. 5 shall be changed beginning on September 10, 2010, to the Hamilton Center on the University of Wisconsin-Whitewater campus.

This action is contingent upon:

1. The University of Wisconsin-Whitewater Student Government paying \$12,155.00 to the City of Whitewater by May 1, 2010, as a contribution to the costs of purchasing polling place machines and accessories for the polling place to be established at the Hamilton Center on the University of Wisconsin-Whitewater campus for Ward 10, Aldermanic District No. 5.

2. The City of Whitewater and the University of Wisconsin-Whitewater entering into an agreement modifying the Memorandum of Understanding dated July 11, 2008, concerning voting at the Hamilton Center, to include provisions for this new polling place.

Now, therefore, **BE IT FURTHER RESOLVED**, that the Common Council of the City of Whitewater hereby reserves the right to move the voting location for Ward 10, Aldermanic District No. 5, for specific elections. However, if no action is taken changing the location of the polling place for Ward 10 of Aldermanic District No. 5 for an election, the polling place shall be at the Hamilton Center on the University of Wisconsin-Whitewater campus.

Resolution introduced by Councilmember Singer, who moved its adoption. Seconded by Councilmember Taylor. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE PROHIBITING "ALL YOU CAN DRINK" SPECIALS**. After some discussion, it was agreed that the proposed ordinance as written is not comprehensive enough to discourage binge drinking. It was moved by Olsen and seconded by Winship to adopt an ordinance prohibiting "All You Can Drink" specials at beer and liquor establishments. There was no vote. The issue was referred back to the Alcohol Licensing Committee for further study.

**FIRST READING OF ORDINANCE AMENDING SCHEDULE OF DEPOSITS.**

It was moved by Olsen and seconded by Winship to amend Section 1.21.010, Schedule of Deposits, which would create fines for violation of an ordinance prohibiting "All You Can Drink" specials at beer and liquor establishments. There was no vote. The issue was referred back to the Alcohol Licensing Committee for further study.

## SECOND READING OF ORDINANCE CORRECTING SECTION NUMBERS IN CHAPTER 16.14, SEWER USE CHARGES.

### SECOND READING OF AN ORDINANCE CORRECTING SECTION NUMBERS IN CHAPTER 16.14 - SEWER USE CHARGES

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

SECTION 1: Whitewater Municipal Code, Section 16.14.56, **Amalgam Separators – General Conditions**, passed on September 15, 2009, incorrectly used the section number 16.14.56. The section should have been numbered 16.14.576. Section 16.14.576 is hereby substituted as the section number for **Amalgam Separators – General Conditions**.

SECTION 2: Whitewater Municipal Code, Section 16.14.57, **Amalgam Separators – Maintenance**, passed on September 15, 2009, incorrectly used the section number 16.14.57. The section should have been numbered 16.14.577. Section 16.14.577 is hereby substituted as the section number for **Amalgam Separators – Maintenance**.

SECTION 3: Whitewater Municipal Code, Section 16.14.046, **Amalgam Separator**, passed on September 15, 2009, incorrectly used the section number 16.14.046. The section should have been numbered 16.14.046. Section 16.14.046 is hereby substituted as the section number for **Amalgam Separator**.

SECTION 4: Whitewater Municipal Code, Section 16.14.309, **Sand Interceptor**, passed on September 15, 2009, incorrectly used the section number 16.14.309. The section should have been numbered 16.14.309. Section 16.14.309 is hereby substituted as the section number for **Sand Interceptor**.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship. AYES: Winship, Binnie, Singer, Stewart, Taylor, Olsen, Kienbaum. NOES: None. ABSENT: None. SECOND READING APPROVED: February 16, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

## SECOND READING OF AMENDMENT TO CHAPTER 12.08.010 STREET OBSTRUCTIONS.

### AN ORDINANCE AMENDING CHAPTER 12.08 STREET OBSTRUCTIONS

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, do hereby ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 12.08, Section 12.08.010, is hereby amended to read as follows:

## 12.08.010 Prohibited.

- (a) No person, except as provided in Section 12.08.020, shall place, deposit, keep, or cause to be placed, deposited or kept in or upon any street, alley, gutter, sidewalk or public ground within the limits of this city any stone, brick, timber, lumber, iron, wood or other material for building, or any wood, snow, rubbish, earth, grass clippings or lawn debris, or any thing or substance whatever; nor shall any person burn or cause to be burned any such substance in any public street or alley; nor shall any person leave any automobile, truck, trailer, equipment or other vehicle standing or parked in or upon any street, alley, sidewalk, or public ground so as to encumber the same, or so as to obstruct, impede, or hinder travel thereon; nor shall any person leave, or cause to suffer any box, barrel, crate, cask, bale, package, merchandise, or other thing to stand, be or remain upon any street, alley, sidewalk, gutter, or public ground longer than may be actually necessary for the act of delivering or receiving the same.
- (b) Any person violating any of the provisions of this section shall forfeit and pay a penalty of not less than twenty-five dollars nor more than two hundred fifty dollars, together with the costs of prosecution.

Ordinance amending Chapter 12.08.010, Street Obstructions introduced by Councilmember Olsen. Seconded by Councilmember Winship. AYES: Winship, Binnie, Singer, Stewart, Taylor, Olsen, Kienbaum. NOES: None. ABSENT: None. SECOND READING APPROVED: February 16, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

### **AUTHORIZING CLOSURE OF CENTER STREET FOR CINCO DE MAYO EVENT.**

The proposed event is being organized by members of UW Leadership Development, Downtown Whitewater, Inc., and Latinos Unido. In addition, the event will incorporate the Library's Big Read program. Modification of the location and street closing hours was discussed. It was moved by Councilmember Winship and seconded by Councilmember Olsen to authorize closure of Center Street, from Whitewater to First Street, and allow use of Parking Lot C ("Mural Park lot") from 1:30 pm to 8:00 pm for the purpose of holding a family-oriented Cinco de Mayo event. AYES: Winship, Binnie, Singer, Stewart, Taylor, Olsen, Kienbaum. NOES: None. ABSENT: None.

### **PROPOSED CHANGES TO DOWNTOWN PARKING.**

Director of Public Works Fischer presented a proposal for changes to downtown parking. He indicated that demand for parking permits is down this year. One of his main points was enhanced use of 24-hour parking stalls so that they are used during the day when the permit holder is not parking there. The concept of "pay and display" parking was presented. A solar powered vending machine takes cash or credit cards, then prints a receipt which is displayed on the dashboard of the car. It was noted that parking lots cost the City \$4,000 per stall, and those who park regularly in the downtown area should be charged to recover costs. It was moved by Taylor and seconded by Olsen to

investigate the concept of “Pay and Display” and expansion of parking downtown using existing spaces. City staff was directed to further study options presented. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF CONTRACT WITH STRAND ASSOCIATES FOR CLAY STREET PROJECT.** It was moved by Councilmember Olsen and seconded by Councilmember Taylor to approve an Engineering Services Contract with Strand Associates, for a cost not to exceed \$22,000, for engineering services relating to the Clay Street Project. AYES: Winship, Binnie, Singer, Stewart, Taylor, Olsen, Kienbaum. NOES: None. ABSENT: None.

**APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH UW-WHITEWATER RELATING TO RELOCATION OF WARD 10 POLLING PLACE.** Councilmember Stewart suggested that a date be set for whether this second polling site will be used in any given election. After discussion a notification date of 90 days before the election was selected. It was moved by Councilmember Olsen and seconded by Councilmember Taylor to approve the Memorandum of Understanding with inclusion of the sentence “This decision will be made at least 90 days before the election” and including language encouraging the University to increase parking near the polling place. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS.** None.

**ADJOURN.** It was moved by Olsen and seconded by Winship to adjourn the meeting at 8:05 pm. AYES: Olsen, Taylor, Stewart, Winship, Binnie, Singer, Kienbaum. NOES: None. ABSENT: None.

Respectfully Submitted,

Nancy Stanford  
Administrative Assistant

CITY OF WHITEWATER  
PLAN AND ARCHITECTURAL REVIEW COMMISSION  
Whitewater Municipal Building Community Room  
May 14, 2007

## **ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF THE PLAN AND ARCHITECTURAL REVIEW COMMISSION**

PRESENT: Gilpatrick, Kienbaum, Wiedenhoeft, Miller, Zaballos, Kaluva, Knaflie. ABSENT: Stone. OTHERS: Wallace McDonnell/City Attorney, Mark Roffers/City Planner, Bruce Parker/Zoning Administrator, Wegner.

**ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON; AND APPOINTMENTS OF PLAN COMMISSION REPRESENTATIVE TO THE CDA, AND PLAN COMMISSION REPRESENTATIVE TO THE TREE COMMISSION.** It was moved by Zaballos and seconded by Knaflie to nominate Wiedenhoeft to be chairman of the committee. It was moved by Gilpatrick and seconded by Miller to nominate Gilpatrick for the position of chairman. Wiedenhoeft was selected as the new Chairman by secret ballot and took the position at the conclusion of the election process. It was moved by Zaballos and seconded by Knaflie to nominate Gilpatrick to serve as Vice Chair. Miller moved to approve Gilpatrick as Vice Chair, Zaballos seconded, and the board approved the nomination unanimously. It was moved by Zaballos and seconded by Wiedenhoeft to nominate Miller as Plan Commission representative to the CDA. The board approved Miller's nomination unanimously. It was moved by Wiedenhoeft and seconded by Zaballos to nominate Kaluva as Plan Commission representative to the Tree Commission. It was moved by Miller and seconded by Kienbaum to approve the nomination. The board unanimously approved Kaluva's appointment.

**HEARING OF CITIZEN COMMENTS.** This is a time in the agenda where citizens can voice their concerns. They are given three minutes to talk. No formal Plan Commission Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.

City Manager Kevin Brunner announced that Ryan Garcia, the City's first planner would be starting work the following week. He is leaving a job as an Associate Planner for Rock County and is in the process of finishing his master's degree. He will be the City's lead person on planning and development issues.

**MINUTES.** Moved by Zaballos and Miller to approve the minutes of the April 9, 2007 Plan Commission Meeting. Motion approved by unanimous roll call vote.

**CONTINUATION OF THE PUBLIC HEARING AND RECOMMENDATION TO THE CITY COUNCIL FOR CONSIDERATION OF A CONDITIONAL USE PERMIT FOR A CLASS B BEER AND LIQUOR LICENSE FOR ROBIN HANTROPP TO SERVE BEER AND LIQUOR BY THE BOTTLE OR GLASS AT 158 AND 162 W. WHITEWATER STREET (PUMPING STATION AND MITCHELL'S).** Chairperson Wiedenhoeft explained

that this was a continuation of the public hearing started at the last meeting and that the public would be able to voice their concerns.

Zoning Administrator Bruce Parker explained that he and Joe Lawniczak had met with Robin and Stephen Hantropp after a Downtown Whitewater meeting and talked about ideas, such as removing the canopy, which would reveal the arches on the first floor windows. The first floor windows will be solid glass, inoperable windows. Parker described the design as it appeared with revisions. The windows on the second floor will be double hung windows, with glass in the arches above the windows. The middle window on the second floor (a fake window) will be painted to replicate the rest of the windows. When it is remodeled glass will be put in it. The old double door on the Second Street side of the building will be a stationary window (not used as a door). They plan to have a projecting sign for the business. The back of the building will be re-bricked where needed. Painting would be acceptable if the paint on the existing bricks cannot be removed. There was discussion on the design, ideas for keeping use of the patio safe and clean, and supervision of the customers. Stephen Hantropp stated that either he or his wife would always be present while the bar is open.

City Planner Mark Roffers recommended that the Plan Commission approve the conditional use permit for two related establishments selling alcohol by the bottle or drink, under new ownership, at 158-162 Whitewater Street, subject to the following conditions as amended at the meeting:

1. The project shall be developed in accordance with the applicants' plans dated May 1, 2007, except as those plans may be modified and refined in accordance with the approval conditions that follow, and verbal statements offered by the applicants and the Zoning Administrator in accordance with the minutes of May 14, 2007.
2. Prior to installation of the associated building improvements, the applicant shall submit for Zoning Administrator approval detailed plans or catalog pages for the following features, showing all colors and materials: replacement windows, replacement doors, stoop railings, lighting, repainted Mitchell's sign with new brackets, plan for final restoration of rear façade including possible addition of stucco.
3. As part of the required building improvements, all current upper story windows shall be replaced with new windows, with the final window selection/trim colors approved by the Zoning Administrator. Instead of the proposed brick or stucco, all arched areas above these spaces shall be restored with arched windows. Temporary treatment of the largest second story window space facing Second Street and the largest second story window on the Whitewater Street frontage of the Mitchell's building are allowed, but shall be replaced by actual windows when second story remodeling occurs.
4. The dumpster and outdoor patio area enclosures shall be opaque and shall be designed and installed in such a manner to not allow the passage of materials through them.
5. Neither business address shall be able to obtain an occupancy permit or otherwise be open

for operation until and unless (a) all exterior remodeling/upgrade changes indicated on the applicants' May 1, 2007 plans are completed, including those proposed for the outdoor patio area enclosure space, and (b) critical indoor remodeling changes, as determined by the Zoning Administrator, are also completed.

6. Upon granting of an occupancy permit for the first tavern to re-open, the applicants shall submit to the Zoning Administrator a site/building improvement deposit of \$500 to guarantee the completion of the remaining improvements indicated on the May 1, 2007 plans. This deposit shall be refunded upon the successful completion of the remaining improvements indicated on such plans.
7. The businesses shall be operated in accordance with the "Business Plan," submitted by the applicants as part of the May 1, 2007 submittal packet, except as changes or additions to that plan are required as part of the liquor license review process or by the Chief of Police.
8. There shall be no outside service or patron use of the outdoor patio area (beer garden) until and unless (a) upgrades to the space in accordance with the applicants' May 1, 2007 plans are made and (b) the applicants obtain the written approval of the Chief of Police. If (a) and (b) are accomplished, the operations of the outdoor patio shall be limited as follows, unless this conditional use permit is subsequently amended:
  - a. There shall be no amplified music played on or directed to the outdoor patio.
  - b. The outdoor patio area shall be closed by 10 p.m., and shall not open again until 10 a.m.
  - c. No glass containers shall be allowed.
  - d. During all hours it is open, the patio area shall be controlled with at least one security personnel and with functional security cameras.
  - e. At close of business each day, the business owner shall clean the patio, sidewalks, terrace areas, and alley of all debris.
  - f. All lighting in or directed towards the patio shall be 150 watts or less.
9. The use shall at all times comply with the City's noise ordinance, and may be inspected by the City at any time to ensure such compliance.
10. Prior to commencement of second story apartment remodeling, the applicants shall bring the floor plan for remodeling/restoration of the second story spaces to apartments to the Zoning Administrator for approval, and pay appropriate fees.

The conditional use permit shall run with the business owner and not the land. Any change in ownership will first require approval of a conditional use permit amendment.

Chairperson Wiedenhoft closed the public hearing.

Moved by Miller and Gilpatrick to approve the conditional use permit for a Class B Beer and Liquor License for Robin Hantropp to serve beer and liquor by the bottle or glass at 158 and 162 W. Whitewater Street subject to the City Planner Mark Roffers' conditions of approval as amended at the meeting. Motion approved by unanimous roll call vote.

# CA-B

**REVIEW PROPOSED LOCATION AND RECONSTRUCTION OF THE STONE STABLE BUILDING TO BE LOCATED ON CITY PROPERTY WEST OF THE DEPOT PARKING LOT ON WEST WHITEWATER STREET.** Plan Commission Member Zaballos excused herself from the discussion as she is a member of the Stone Stable Committee and wrote the application being reviewed.

Zoning Administrator Parker gave a brief history of the building. The reconstruction will be financed with donations from the public. Ross Walton will be providing labor and Old World Wisconsin will be consulting on the project. The building will be ten feet off the railroad right of way and be 28' X 28'. It will be just west of the current parking lot. There will be an expansion of the parking lot around the building as well as another building to the west. This is located in the B-2 (Central Business) Zoning District.

Chairperson Wiedenhoefft recommended that the Plan Board approve the concept and site plan. He stated that the planned uses for the building are up to the Historical Society.

Carol Cartwright, curator of the Whitewater Museum at the Train Depot, stated that the building would not officially be run by the Whitewater Historical Society, but would be owned by the City. Old World Wisconsin encourages the City to open up the building regularly for events.

Plan Commission Member Gilpatrick asked if there would be electrical power at the building and a plaque at the site.

Zoning Administrator Parker replied that there would be electric conduit in the walls and exterior lighting. There will be a free standing or monument signage and the service meter will be remote from the building.

Moved by Gilpatrick and seconded by Kaluva to approve relocation of the Stone Stable to city property. Motion approved by unanimous roll call vote.

**REVIEW PROPOSED MEAT AND CHEESE MARKET TO BE LOCATED AT 206/210 W. WHITEWATER STREET FOR DAN MALONE.** Zoning Administrator Bruce Parker stated that this meat and cheese market business will be located (where the former bakery was at 210 W. Whitewater Street) in the recently restored Ryan Hughes Building. The business will include a smoking meat process at the back of the store with a power vented smokehouse. There will be a projecting sign under the second floor.

Dan Malone added that the beef would be from his own animals and the cheeses for sale would be from two outlets in northern Wisconsin. The smokehouse will emit 1% of what a fireplace does and will vent seven feet up past the second floor of the building. He will be using the smokehouse between 9:00 am and 6:00 pm. The sign will be 12 square feet and made of polymer that will look like wood. It will not be a lighted sign. Malone stated that he didn't

foresee selling prepared foods, but would supply products to local restaurants.

City Planner Mark Roffers stated that if the sign would be lighted the only requirement would be that the lighting be pointed downward and shielded.

Moved by Wiedenhoeft and seconded by Zaballos to approve the plans as submitted for the proposed meat and cheese market to be located at 210 W. Whitewater Street. Motion approved by unanimous roll call vote.

**Public hearing and recommendation to the City Council for consideration of a change in the District Zoning Map for the following area to be rezoned from B-3 (Highway Commercial and Light Industrial) Zoning District to PCD (Planned Community Development) Zoning District, under Chapter 19.39 of the Zoning Ordinance of the City of Whitewater:**

**Six parcels located on the southeast corner of the intersection of E. Milwaukee Street and Elkhorn Road/Bluff Road (Tax Parcel Numbers /WUP 00005A, 5A1, 5B, 5C, 5E, and /A2599 00001).**

**And**

**Review and make recommendation to the City Council for the proposed certified survey map for the division of the land being rezoned (item #6) into 4 lots for Elkhorn Road Venture LLC.** Chairperson Wiedenhoeft opened the public hearing.

The applicants are asking for a rezone of these parcels from a B-3 (Highway Commercial and Light Industrial) Zoning District to a PCD (Planned Community Development) Zoning District and approval of a 4 lot certified map. The proposal is for a grocery store, other professional buildings, and future gas station/convenience store. Phase 1 will be the grocery store and access, the detention pond and the big condo storage units. There will be a realignment of Bluff Road.

Representatives of Elkhorn Road Ventures, Attorney Mitch Simon and Rick and Kathy Vultaggio were present at the meeting. They had reviewed the City Planners report. Mitch Simon explained that they finally got consensus on the Bluff Road alignment and the round-a-bout and approval from the DOT. The overall parcel will be four lots. Lot 1 will be phase 1. They needed to get an easement from the Kowalski's (neighboring property owner to the north) in order to get to the storm sewer on their property. The application for this project was prepared to be flexible as to what goes where. The rezone petition allows for flexibility. The uses on Lots 2 through 4 are shown on the General Development Plan as conceptual only. The site and building designs depicted are not binding on either the developer or the City.

City Planner Mark Roffers recommended approval of the Planned Community Development (PCD) Zoning, the General Development Plan (GDP) and the Certified Survey Map (CSM). He stated that the PCD and the GDP are one in the same.

There was discussion of the City Planner recommendations; the proposed placement of buildings, building materials, sidewalks, landscaping, and signage.

Ed Kowalski would like to see the color of the building softened (natural colors to blend in with their complex), and sidewalks to connect the properties.

City Manager Kevin Brunner complimented the developers on this project. He also wanted to make sure that the buildings would be truly decorative per the City Planner Mark Roffers' recommendation #3. He did not want that recommendation diluted. There were a lot of public dollars invested. The quality of the building should be commensurate with the public expenditure.

There was also a discussion of the certified survey map.

The next step is the Specific Implementation Plan which will have more specific details of the project.

Chairperson Wiedenhoef closed the public hearing. There would be two separate motions. One for the recommendation to the City Council for the change in zoning and GDP; and the other for the recommendation to the City Council for the approval of the CSM.

City Planner Mark Roffers recommended that the Plan Commission recommend Common Council approval of the rezoning of the subject site to PCD Planned Community Development, and the associated General Development Plan submittal, subject to the following conditions as amended at the meeting:

1. The site shall be developed in general accordance with the following submitted plans, except as changes are required through the conditions that follow or through the subsequent Specific Implementation Plan approval(s):
  - a. Site Improvement Plans (dated 5/3/07)
  - b. East Towne Market General Development Plan sheet (dated 5/2/07)
  - c. East Towne Market Specific Development Plan sheet (dated 5/3/07)
  - d. Landscape Plan sheet, with attached prairie planting detail sheet (dated 4/30/07)
  - e. Certified survey map (dated 5/8/07)
  - f. Grocery/retail building elevations sheet (dated 5/7/07—please note condition below regarding building materials)
  - g. Storage building elevations sheet (dated 4/27/07)
  - h. Primary group sign/low profile monument sign concepts (no date)
  - i. Proposed East Towne Market General Development Plan Standards dated 5/14/07.
2. GDP plans shall be revised as appropriate to respond to the conditions of approval and to the e-mail of May 3, 2007 from Mark Fisher of Strand Associates. Prior to the submittal of an SIP for this site, the applicant shall submit to the City three copies of a binder including 11"x17" and smaller versions of all of the latest and approved versions of all GDP plans and

documents associated with this project. The binders shall also include a copy of the approval conditions for this GDP.

3. With the SIP submittal for the phase that includes the grocery store/multi-tenant retail center, the building elevations for that building(s) shall include the upgrading of material selections. The recommended direction is to remove the use of metal siding or reduce and/or upgrade it to become truly a decorative (as opposed to a primary) building element. In any respect, the use of metal on the building elevations included with the approved GDP shall not bind the Plan Commission to approve an SIP with the metal materials in the quantities, locations, or styles shown on the GDP plan sheets.
4. With the SIP submittal for the phase which includes the storage buildings, architectural and landscaping upgrades shall be incorporated, including color selections that are more compatible with the grocery building colors, consideration of an architectural design that is more compatible with the design of the grocery/retail building(s), and placement of evergreen trees within the triangular shaped piece of land west of the west storage building.
5. The SIP plans that follow shall incorporate features that respond to the design recommendations of the May 10, 2007 report of the City's Planning Consultant, and shall specifically include the following:
  - j. Efforts to treat the stormwater basin areas as a site amenity as well as water storage areas; for example, through more natural shapes and landscaping to help better frame the driveway entryways.
  - k. Incorporation of more trees into landscaped islands. With the correct selections and placements, trees and light poles can share the same islands.
  - l. The dumpster location near the northeast corner of the multitenant center should be reconsidered. Placement of a larger dumpster area directly south of the west storage building may be more accessible.
6. Prior to submittal of the first SIP for this project, the applicant shall arrange a meeting with City planning, zoning, and engineering staff and consultants to review SIP submittal expectations. With the Specific Implementation Plan submittal(s), all PCD ordinance requirements shall be met and the site and other plans shall be (re)submitted addressing comments contained in the May 10, 2007 memo of the City's Planning Consultant, and including the following submittals:
  - m. Detailed/revised site plan.
  - n. Detailed/revised landscape plan.
  - o. Detailed site lighting plan, including locations, fixture types, and photometric plan.
  - p. Detailed building elevations and floor plans.
  - q. Detailed signage plan for all signs related to that SIP phase (materials, colors, size, lighting).
  - r. Complete erosion control, grading, and stormwater management plans and calculations.
  - s. Full coordination of all plans with one another to remove all inconsistencies.
7. Except as approved with subsequent SIP submittals, the range of allowable land uses and the

signage requirements of this PCD area shall be the same as those allowed under the City's B-1 zoning district. Uses normally requiring a conditional use permit in the B-1 district shall only require a conditional use permit in this PCD area if an SIP submittal is not also required for their establishment.

8. The then-current owner of the Lot 1 of the associated CSM shall be responsible for installing driveway and sidewalk connections to the property to the south, in one of the two locations shown on the GDP plan maps, at such time as the site to the south develops and the City requires such connection.
9. Uses on Lots 2-4 are submitted on the General Development Plans as conceptual only. Site and building designs depicted are not binding on either the developer or the City.

He further recommended approval of the four-lot CSM associated with the East Towne Market project, subject to the following conditions:

1. Prior to the City signing the CSM and it being recorded:
  - a. The "Surveyor's Certificate" and "Corporate Ownership" sections on Sheet 6 should be rechecked for accuracy and modified as appropriate. For example, the legal description currently includes references to "U.S.H 12" even though Elkhorn Road is no longer designated as Highway 12 and the word "statutes" is misspelled. Also, the Owner's Certificate section refers to a "plat" when a CSM is the actual tool that is being used to divide the land. There are references to "plat" elsewhere in the CSM document that should also be changed.
  - b. The Drainage Easements shall be specifically denoted in the CSM as to remain in private ownership, and to be maintained to allow their continued functionality by the owner of the lot on which each lies.
  - c. A cross-access easement equaling the width of the proposed driveway shall be provided along the east lines of Lots 3 and 4 and the west line of Lot 1. An agreement specifying maintenance responsibilities within such easement areas shall be prepared, submitted to City staff, and recorded, following City staff approval.
  - d. The right-of-way dedications for Bluff and Elkhorn Roads shall be coordinated with Strand Associates' engineering plans for those road projects and shown accurately on the CSM.
2. The applicant and City shall cooperate on the vacation or relocation of the existing Bluff Road right-of-way north of Lot 2 in such a way that ensures proper access to lands to the north of the CSM area.
3. Prior to occupancy of the building on Lot 1, easements for sanitary sewer and water services of sizes and locations approved by the City Director of Public Works shall be recorded by the Developer.

Moved by Kienbaum and Miller to recommend to the City Council to approve the change in the

District Zoning Map for the six parcels located on the southwest corner of the intersection of E. Milwaukee Street and Elkhorn Road/Bluff Road (Tax Parcel Numbers /WUP 00005A, 5A1, 5B, 5C, 5E, and /A2599 00001) to be rezoned from B-3 (Highway Commercial and Light Industrial) Zoning District to PCD (Planned Community Development) Zoning District, under Chapter 19.39 of the Zoning Ordinance of the City of Whitewater and to approve the General Development Plan with the City Planner Mark Roffers' conditions as amended at the meeting. Motion approved by unanimous roll call vote.

Moved by Gilpatrick and Kaluva to recommend to the City Council to approve the Certified Survey Map for the division of land being rezoned to a PCD into 4 lots for Elkhorn Road Venture LLC. Motion approved by unanimous roll call vote.

**REVIEW PROPOSED EXTERIOR ALTERATIONS AND SECOND FLOOR APARTMENTS TO BE LOCATED AT 147 W. WHITEWATER STREET FOR DLK ENTERPRISES INC.** Zoning Administrator Bruce Parker stated that the property is in the B-2 (Central Business) Zoning District and will have both interior and exterior alterations. There will be four apartments on the second floor and the staircase up to them will be covered. There will be new windows in the building to the east side and on both the northeast and southwest ends of the building there will be vents for air conditioning similar to those at Brookdale Manor. Jeff Hazekamp, Architect of Angus Young, was available for questions.

Plan Commission Member Kienbaum stated that this is one of the oldest buildings left in town and it is good to see it preserved.

Plan Commission Member Zaballos gave the opinion that the shutters do not match the style of the building. The Plan Commission members agreed that the shutters should be deleted from the plan. It was also agreed that the grates for the air conditioning should match the siding color.

Linda Loomer (726 E Cravath Street) questioned whether there should only be one access stairway to the second floor.

Zoning Administrator Bruce Parker replied that plans have been approved by the State of Wisconsin.

City Planner Mark Roffers' recommendations for this project as amended at the meeting include:

1. One of the 1 bedroom units (Apartment #4) is smaller than the minimum 500 square feet in area for 1 bedroom apartments, as required under Section 19.57.130 of the Zoning Ordinance. Either this apartment will need to be increased in area or converted to an efficiency apartment.
2. Before being issued a building permit, the applicant will need to pay to the City sewer connection fees, fees in-lieu-of parkland dedication, and park improvement fees.
3. He did not notice on the plans how/where trash collection will be handled. If outdoors, a plan for screened dumpsters should be provided. –**satisfied**
4. Approvals for recent downtown housing projects have concerned themselves with placement of air conditioner units and satellite dishes. I suggest that only roof-mounted

satellite dishes be allowed and any window air conditioner units be directed away from the Whitewater Street frontage.

5. Remove shutters from the plans.
6. Air conditioning vents to be colored in the same manner similar to the building siding.

Moved by Gilpatrick and seconded by Kaluva to approve the plan with City Planner Mark Roffers' conditions 2, 4, 5 and 6. Motion approved by unanimous roll call vote.

**REVIEW PROPOSED WAREHOUSE BUILDING TO BE LOCATED AT 1116**

**UNIVERSAL BLVD. FOR HUSCO.** Zoning Administrator Bruce Parker stated that the covenants of the Business Park require Plan Commission approval for this building. This will be a pole building off the rear of the building by the loading dock for storage of pallets, forklifts and other equipment. The building is planned to be a temporary one as a permanent addition to the main building is planned at some time in the future. One requirement would be that there would be asphalt covered access to the structure.

Moved by Kienbaum and seconded by Miller to approve the proposed warehouse building construction to be located at 1116 N. Universal Blvd. for Husco with the condition of a paved access to each of the three doors of the building. Motion approved by unanimous roll call vote.

**REVIEW PROPOSED EXTRA-TERRITORIAL CERTIFIED SURVEY MAP TO**

**DIVIDE THE HOME SITE AT W9699 HIGHWAY S INTO TWO LOTS FOR RALPH**

**AND ROBIN GOESSLING.** Zoning Administrator Bruce Parker explained that the Goesslings want to create an additional lot for their son to build a home. They do have private sewer and water. There is an existing 50 foot access easement.

City Planner Mark Roffers recommended that the Plan Commission first waive the normal City subdivision ordinance requirement that all lots front on a public street, then approve the two-lot CSM for Ralph and Robin Goessling, subject to the following conditions as amended at the meeting and being met before the City signature is added to the CSM and the CSM is recorded:

1. The CSM shall be amended as follows:
  - a. Per the City's subdivision ordinance, add the following note: "Notice of Possible Limitation of Public Services: This CSM is adjacent to and relies on access from a private road, and, as a result, certain public services may be limited. As long as the private road adjacent to the CSM area remains privately held, the owners of the lots in the development shall be jointly and severally responsible for any required maintenance, repair, upgrading, cleaning, and plowing of the road, unless otherwise agreed to by the unit of government with jurisdiction over the lands occupied by the private road."
  - b. Correct the discrepancy between the dimension of the west line of the CSM between the map on Sheet 1 and the legal description on Sheet 2.
2. Prior to annexation, the subdividers shall enter into a "Sanitary Sewer Connection Agreement" with the City, as described by the City's subdivision ordinance.
3. The subdivider shall submit to City staff a recorded maintenance agreement associated with the access easement.

The Goesslings noted that they will be the only ones to take care of the road. Goessling's Farms own the driveway. It is a private road. The description will be corrected. The Goesslings agreed to the change in recommendation #2 to "prior to annexation". They explained that they needed to separate the lot from the farm in order to get a mortgage for the lot.

Plan Commission Member Gilpatrick explained that he would recommend approval with City Planner Mark Roffers' comments.

Moved by Kienbaum and Gilpatrick to approve the extra-territorial certified survey map with the understanding that if annexed the developer/owner would need to sign a sanitary sewer agreement. The approval includes the amended conditions of the City Planners' recommendations. Motion approved by unanimous roll call vote.

**Review and make recommendation to the City Council for the annexation of approximately 12.99 acres on Highway 12 located in the Town of Whitewater, Walworth County, Wisconsin lying contiguous to the City of Whitewater for Marie Kyle. The vacant land is to have a temporary zoning of AT (Agricultural Transition). The legal description is as follows:**

**Part of the NW 1/4 of the NE 1/4 of Section 10, T4N, R15E, Town of Whitewater, Walworth County, Wisconsin, described as commencing at the intersection of the north line of said quarter Section with the centerline of the highway; thence running east to the northeast corner of the NW 1/4 of the NE 1/4 of said Section 10; thence south on the eighth line to a sufficient distance so that a line drawn there from to the center of the highway and parallel to the north line of the Section, the center of the highway being the westerly line, shall contain just 15 acres. Excepting therefrom CSM 503 recorded in Volume 2 of Certified Surveys, page 333, and also excepting the easterly right of way of the highway on the west side of the parcel.** Zoning Administrator Bruce Parker explained that this property is currently in the Town of Whitewater. It is located within the City of Whitewater East Neighborhood Plan area. The property is also located within the City of Whitewater Sanitary Sewer Service Area.

Moved by Zaballos and Knaflic to recommend to the City Council to approve the annexation of approximately 12.99 acres on Highway 12 located in the Town of Whitewater, Walworth County, Wisconsin lying contiguous to the City of Whitewater for Marie Kyle. The land is to have a temporary zoning of AT (Agricultural Transition). Motion approved by unanimous roll call vote.

**Review and make recommendation to the City Council for the annexation of approximately 122 acres located east of Howard Road in the Town of Whitewater, Walworth County, Wisconsin lying contiguous to the City of Whitewater for Eugene, David and Terry Gavers and Bernard and Nancy Kleiber. The vacant land is to have a temporary zoning of AT (Agricultural Transition). The legal descriptions are as follows:**

# CA-B

The S 1/2 of the NW 1/4 of Section 2, T4N, R15E, Town of Whitewater, Walworth County, Wisconsin, excepting therefrom CSM 1480 recorded in Volume 7 of Certified Surveys, page 56, and also excepting therefrom CSM 906 recorded in Volume 4 of Certified Surveys, page 133 and also excepting a parcel of land described as commencing at the southwest corner of the said S 1/2 of the NW 1/4; thence east 33 feet; thence north 33 feet; thence west 33 feet; thence south 33 feet to the point of beginning.

And

All that part of the SW 1/4 of Section 2, T4N, R15E, Town of Whitewater, Walworth County, Wisconsin lying north of the Wisconsin & Southern Railroad northern right of way, excepting therefrom a parcel described as commencing at the northwest corner of the said SW 1/4; thence south to the northern right of way of the Wisconsin & Southern Railroad; thence east 226 feet along the said northern right of way; thence north 162 feet; thence east 356 feet; thence north to the north line of the said SW 1/4; thence west 582 feet to the point of beginning. Zoning Administrator Bruce Parker explained that this land is also in the Town of Whitewater and within the City of Whitewater Sanitary Sewer Service Area. The CDA (Community Development Authority) is also reviewing the possible annexation of this land.

Moved by Gilpatrick and Kaluva to recommend to the City Council to approve the annexation of approximately 122 acres located east of Howard Road in the Town of Whitewater, Walworth County, Wisconsin lying contiguous to the City of Whitewater for Eugene, David and Terry Gavers and Bernard and Nancy Kleiber. The vacant land is to have a temporary zoning of AT (Agricultural Transition). Motion approved by unanimous roll call vote.

## 6. INFORMATION:

- a. **ARCH FOR CRAVATH LAKEFRONT PARK.** Zoning Administrator Parker reported that the Park and Recreation Board made a recommendation to Council to approve the plan. The arch for the entrance to Cravath Lakefront Park across from 2<sup>nd</sup> Street was approved and fundraising is taking place.
- b. **REPORT FROM CDA REPRESENTATIVE.** No report.
- c. **REPORT FROM TREE COMMISSION REPRESENTATIVE.** No report.
- d. **REPORT FROM PARK AND RECREATION BOARD REPRESENTATIVE.** No report.
- e. **REPORT FROM CITY COUNCIL REPRESENTATIVE.** Council Representative Kienbaum stated that at the next Council meeting there would be consideration of increasing the number of alternate members for the Plan Commission. There will be a provision that the alternate Council representative to the Commission not be considered when there is a quorum of citizen members needed to have a meeting.
- f. **REPORT FROM THE DOWNTOWN WHITEWATER INC BOARD**

# CA-B

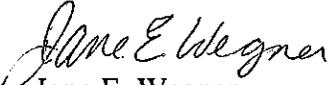
**REPRESENTATIVE.** Board Representative Zaballos stated that there was been a Design Guidelines meeting last Thursday which included members of the business community and others.

**g. POSSIBLE FUTURE AGENDA ITEMS.** Zoning Administrator Bruce Parker stated that there will be two more annexations presented to the Plan Commission before the end of May, which may require a special meeting.

**h. NEXT PLAN COMMISSION MEETING.** The next regular meeting will be held on June 11 at 7:00 pm.

Moved by Miller and Kienbaum to adjourn. Motion was approved by unanimous voice vote.

Respectfully submitted,

  
Jane E. Wegner  
Secretary

CITY OF WHITEWATER  
PLAN AND ARCHITECTURAL REVIEW COMMISSION  
Whitewater Municipal Building Community Room  
September 10, 2007

## **ABSTRACTS/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF THE PLAN AND ARCHITECTURAL REVIEW COMMISSION**

PRESENT: Gilpatrick, Miller, Kienbaum, Stone, Kaluva, Wiedenhoeft, Zaballos. ABSENT: None. OTHERS: Ryan Garcia/City Planner, Bruce Parker/Zoning Administrator, Wegner.

**HEARING OF CITIZEN COMMENTS.** This is a time in the agenda where citizens can voice their concerns. They are given three minutes to talk. No formal Plan Commission Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.

Robert Mertens, 205 N. Franklin St., received a notice regarding an amendment to the Fairhaven signage and he would like some clarification from the Plan Commission.

Chairperson Wiedenhoeft explained the public hearing is item number 4 and if he wishes, he can speak at that time.

(Mertens stepped down and will speak at that time)

**REVIEW AND APPROVAL OF THE 4-LOT CERTIFIED SURVEY MAP ALONG BLUFF ROAD FOR DELTA ELECTRIC (THIS CSM WAS PREVIOUSLY APPROVED, BUT WAS NOT RECORDED WITHIN THE SPECIFIC TIME PERIOD).** City Planner Ryan Garcia explained that this certified survey map (CSM) was recommended by the Plan Commission in April of 2006 and then approved by the Common Council later that month. The CSM and the surrounding land use have not changed. Garcia felt no new restrictions on the CSM were necessary. However, he recommended some changes be made to the document to correct some technical issues before it is recorded.

City Planner Ryan Garcia recommended the Plan Commission approve the 4 lot Certified Survey map along Bluff Road for Delta Electric and make recommendation to the City Council subject to the following conditions:

1. At the time of development of each lot, 5 foot sidewalks and terrace trees shall be installed by the developer.
2. Prior to recording the document, the CSM should be amended to correct the following technical errors:
  - a. "Wisconsin" is misspelled throughout the document.
  - b. The legend reads 24' (24 foot) iron rods were set. This would appear to be an error, and it is likely that the set rods are, in fact, 24" (inches).
  - c. The note pertaining to existing overhead utility poles (on the northerly side of vacated Bluff Road), and the symbology on the map, should be removed.
  - d. The "City of Whitewater Approval" should be changed from 2006 to 2007.

Moved by Gilpatrick and Kaluva to approve the 4-lot certified survey map along Bluff Road for Delta Electric subject to City Planner Ryan Garcia's two conditions and recommendation to the City Council for approval. Motion approved by unanimous roll call vote.

Plan Commission Member Harriet Kaluva stated she liked the idea of sharing the driveway for saving green space.

**PUBLIC HEARING FOR CONSIDERATION OF AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR CHANGES TO THE SIGNS FOR FAIRHAVEN CORPORATION LOCATED AT 435 W. STARIN ROAD.** Chairperson Wiedenhoef opened the public hearing for consideration of an amendment to the conditional use permit for changes to the signs for Fairhaven Corporation located at 435 W. Starin Road.

Zoning Administrator Bruce Parker explained that Fairhaven is a conditional use and requires a public hearing for amendments to their conditional use permit. The main nursing facility is on Starin Road on the north end of the property and Hearthstone is on the south end of their property closest to W. North Street. They wish to replace the signage on N. Franklin Street by their driveway and to replace the monument style sign off the south end by North Street that has been damaged from vandalism and also install a similar monument sign at their Starin Road entrance. Starin Road is their main entrance. They would prefer the public to use this entrance instead of the N. Franklin Street entrance. The N. Franklin Street signage is 12" X 30" and would be mounted on an arm post, located on the north side of the driveway. The other two signs are 42" tall x 8' wide in size with a planter system around it. The applicant was not able to make this meeting. Bruce Parker suggested they continue with the hearing and felt any issues could be resolved between himself, Ryan and Plan Commission Member Tom Miller. The signage is similar to what was present before.

Robert Mertens, resident of 205 North Franklin Street, was seeking clarification for the replacement of the signage that was damaged on N. Franklin Street. He felt the landscaping, the lighting, and the height and location of the sign was not clear. He assumed it is the standard 6' post. Mertens questioned where the R-3 zoning was exactly. He was unaware this was an R-3 parcel. The information he obtained from the city stated it was an R-1 parcel.

Zoning Administrator Bruce Parker stated Fairhaven buildings are in R-3 zoning. The surrounding residential is R-1. From the corner of Main and North Franklin (law office down to the fraternity house) east to Park Street is also R-3 zoning. Parker thought the strip of land along the driveway off of North Franklin was R-3 zoning, but stated whether it's R-1 or R-3, the maximum height for the arm post is 8'. The exact location of where the sign will be placed is uncertain, except that it will be placed on the north side of the driveway. The property next to the driveway is zoned R-1. Fairhaven had sold it and it might have to be rezoned. This would be a question for our City Attorney McDonell.

City Attorney McDonell commented that this might have to be researched.

Zoning Administrator Bruce Parker also stated he was not aware of any lighting for these signs.

City Planner Ryan Garcia stated he would have liked the applicant to be here to answer these questions but that would be one of the things they would need to know before finalizing the

permit. The applicant also needs to provide the materials they are using for the sign. Garcia's understanding was they could only have 4 signs but the wall mounted sign is a directional sign. So, everything is in compliance that way. He felt the Plan Commission could still make an approval subject to a condition that some of the details be worked out with Bruce Parker and him.

Bruce Parker explained the North Street and Starin Road signs will be facing the streets and the N. Franklin Street sign will be placed so people can see the sign going north or south on N. Franklin Street.

Plan Commission Member Rick Gilpatrick commented that normally there is a protocol on the outline of the requirements of submitting a plan and Mr. Mertens has raised some good points. In reading Ryan Garcia's recommendations, some of this information needs to be provided before any of the Plan Commission members should recommend making an approval. Gilpatrick would like to see a map of the exact location of the signs, the materials being used and if there would be lighting for the signs. There are many concerns like the scale of the signs, if they are accurate or not. He feels the applicant needs to provide this information. Gilpatrick would like to recommend postponing this item, keeping the public hearing open so they can get the documents and information they need to have a thorough and thoughtful discussion with the public and then move forward. He can't see the Plan Commission moving forward without that information.

Moved by Gilpatrick and Zaballos to postpone until next meeting.

Plan Commission Member Zaballos suggested unless the public feels comfortable with the city staff approval that Fairhaven should provide what the Plan Commission requires of all their applicants. These are highly visible signs.

City Attorney McDonell suggested selecting a specific date so new mailings didn't have to be sent.

Zoning Administrator Bruce Parker stated currently there is nothing on the 9/24/07 meeting so this would be the only item.

Plan Commission Member Zaballos questioned if it would be a problem for Fairhaven to postpone for a month.

Zoning Administrator Bruce Parker stated he could have issued the permit for the N. Franklin and North Street signage being replacement signs. The Starin Road sign is the one that needs to be approved.

Plan Commission Member Tom Miller, who works for Fairhaven, suggested he could possibly answer some of the questions. The sign on North Street will be a replacement. The landscaping is already there and it's a one sided sign facing North Street. The Starin Road sign will be similar to that one. For the N. Franklin Street sign, the property line was adjusted so there's more area for the sign than there was. He was pretty sure there was to be no lighting because he didn't hear of any electricity being connected out to those areas.

Chairperson Weidenhoeft stated the issue is that there is protocol to follow and there are some questions that need to be clarified even though they understand where things will be. There

needs to be paperwork to back that up. Details of the sign and lighting need to be submitted before the meeting.

Plan Commission Member Zaballos suggested that the scale of the sign be submitted along with the height, lighting and landscaping details.

Plan Commission Member Gilpatrick clarified his motion to postpone this item, keeping the public hearing open, asking the applicant to answer the questions that are identified by City Planner Garcia; to provide to-scale drawings; and in the interest of the public and the Board, to have a drawing to indicate the exact location of the subject sign that is being added or moved and some map indicating the appropriate landscaping with some kind of compromising between City Planner Garcia and the petitioner.

Zoning Administrator Bruce Parker stated this item will be postponed until October 8, 2007 and property owners will be re-notified of the meeting.

Plan Commission Member Kaluva wanted to state this postponement has nothing to do with the applicant but with the quality of the paperwork and the information the Plan Commission receives so they can do their work.

Plan Commission Member Gilpatrick asked to include in his motion, the October 8, 2007 re-schedule date as it would be too costly to have a meeting for one item on September 24, 2007.

Plan Commission Member Zaballos seconded the addition to the motion.

Rick Gilpatrick stated that he would like to have everyone understand that in order for the Board to make a decision, they need this information. That is why he made the motion and he would like to make it stand with the October 8, 2007 date.

Aye: Gilpatrick, Zaballos, Kaluva, Stone. No: Kienbaum, Wiedenhoef. Abstain: Miller.  
Motion approved.

**DISCUSSION OF RELATIVE ROLES AND RESPONSIBILITIES OF STAFF AND PLAN AND ARCHITECTURAL REVIEW COMMISSION.** City Planner Ryan Garcia stated this is in regard to an e-mail that Plan Commission Member Kristine Zaballos sent about a month ago to Zoning Administrator Bruce Parker, City Manager Kevin Brunner and him. Kristine was inquiring how things were now going to be handled regarding the process of plan review, Plan Commission and staff role. The questions are: Who should be the Plan Commission members' first contact?; What are Garcia's and Parker's respective roles at Plan Commission meetings?; Who is responsible for following up on projects once they are approved?; and who is responsible for communicating with other groups such as the Downtown Whitewater Design Team? Garcia has been attending the Design Team meetings since he has come on staff and this was a question of theirs also. Garcia suggested he would be the one to contact regarding the Plan Commission agenda or some procedural question just for consistency sake. As a planner, that would be one of his services, to be there for them. Bruce Parker has tremendous knowledge in the zoning and city ordinances and procedures and he has been a resource Garcia has been using on a daily basis. Garcia will continue to analyze proposals from a planning perspective and prepare reports for Plan Commission. He will present his recommendations to the Plan Commission members at the meetings. This echoes what City Planning Consultant Mark Roffers of Vandewalle and Associates has been doing. Garcia stated that following up on projects

should be both Garcia's and Parker's responsibility. Most of the projects relate to zoning and code issues. Garcia would be more involved with the architectural aspect of a project. Parker and Garcia will be consulting each other on different items. Parker will deal with more of the building and zoning codes and will look at the plans and make recommendations. Finally, as far as the Design Team goes, Garcia is part of that group and is in contact with them consistently. Garcia stated that the Downtown Whitewater Design Team has a say if the applicant is looking for a facade grant. The Design Team does review some of the downtown plans along with the guidelines. Garcia feels if we want a good working relationship, it would be beneficial to have some cohesiveness with the downtown. It would benefit the City to at least hear the Design Team's point of view and at the very least to hear their comments on downtown projects.

Plan Commission Member Kaluva stated that the Design Team would need to get information for their meetings. It is difficult to be prepared to make a quality decision to have a quality building if they do not have information to review for a meeting. The Design Team feels they aren't getting the material necessary to give input.

City Planner Garcia explained that this would be his area, to get the information and talk about the projects with the Design Team.

Plan Commission Member Miller stated he believed that the Plan Commission approved the role of the Design Team strictly as a guideline.

City Planner Garcia stated the Main Street Program is one example of a successful project. It's a State recognized accomplishment. It would be up to the Plan Commission to use or listen to the Design Team's ideas. The Plan Commission needs to make their decisions fairly and equitably, and needs complete information.

Plan Commission Member Kienbaum stated she is more concerned about getting tenants in the buildings.

Carol Cartwright, Downtown Design Team leader, spoke on behalf of the group. Cartwright stated that between Garcia and the Design Team, they will work together to come up with good designs and ideas. The Design Team has come up with a procedural document that clarifies what they currently do, and what they would want to continue doing. They are just tweaking it a little. Currently, they are required by Downtown Whitewater Inc. to review projects of those who are applying for grants. They are working like the other groups (CDA, Plan. Commission) but they would like to see all the projects for downtown in a timely matter. They are not here to hold up any projects or make things more difficult. They would like to offer recommendations to the Plan Commission. Their recommendations are already mandatory for grant procedures. The Design Team would also like to provide input to the Plan Commission on other downtown projects. Their input would provide additional information to help the Plan Commission make their decision. The Design Team is working with the Downtown to help fulfill the Main Street Program requirements. Qualifications to be on the Design Team are that they must be citizens and go by the design guidelines. These guidelines have been enacted in many of the Main Street communities in Wisconsin and they are nationally recognized as appropriate guidelines. The Main Street Program works on combining the economic development with historic preservation because most downtowns have historic buildings. Carol Cartwright stated this combination that provides attractive buildings has been proven to attract tenants, shoppers, and traffic. The Main Street Program has been around for over 20 years and has been proven to work. The Main Street Program has worked with architects and business owners with success.

Plan Commission Member Zaballos commented that the Wisconsin Main Street Program is administered by the Department of Commerce. She questioned if there were any changes done from the Plan Commission originally approved plan, changes which the Design Team approved, how would that information be known to others?

City Planner Garcia commented that it would be appropriate for him to take time at the end of the Plan Commission meetings as informational to update the Plan Commission members on any projects as needed.

Plan Commission Member Kaluva spoke specifically to the Design Team members to have a hard copy of the plans for downtown buildings going to Plan Commission prior to the Plan Commission meeting. In this way, things can be done more smoothly and not be backtracking after something has been approved. It will also help to keep track of what was approved and if it is being carried out by the developer.

Plan Commission Member Miller commented that he feels the Design group wants the Plan Commission to accept things they want to happen. He feels they are trying to get more power for the Design Committee and the Plan Commission doesn't want that.

Plan Commission Member Kaluva stated she wouldn't call it power. If the Design group has to put their signature on the line to o.k. grant money, it would be beneficial to at least have the plans and material in front of them in order to make that judgment.

City Planner Garcia likes the idea that everyone on the Design Team is a citizen. He likens their input to getting information from other citizens in Whitewater. It's up to the Plan Commission to address their ideas. In a lot of respects, they do have expertise that may be beneficial to Plan Commission review.

Marilyn Kienbaum commented on how nice Dan's Meat Market looked now.

Carol Cartwright stated the Design Team did not have anything to do with that but that is what she is trying to show the Plan Commission is that Dan Malone did that all on his own, keeping the integrity of the windows and the facade. That is what they are trying to do with other business owners or building owners to help preserve or bring back the historic look of the building.

Tom Miller corrected that it was Ryan Hughes, owner of the building where Dan's Meat Market is operating that took on that project.

**DISCUSSION OF THE DOWNTOWN PARK ACQUISITION FEES AND PARK IMPROVEMENT FEES.** City Planner Ryan Garcia stated this was brought up in the provision of Section 19.30.050 which states our park fees may be reduced by up to 50% if new housing units were created as a result of a conversion or remodeling of pre-existing buildings. This is in the B-2 Central District area. This came up a few months ago regarding the Stewart building and when Pete D'Aquisto's building was being proposed.

City Planner Garcia provided a chart to the Plan Commission members on some research he had done. He found that it is up to the community as to how they want to handle it themselves. Perhaps we could look into more effective ways to promote downtown areas besides reducing

impact fees. Another point is if we do maintain the 50% provision, maybe the provision, knowing the context, could be tightened up a bit. Any conversion may be subject to a reduced fee. That may sound arbitrary but it is at the discretion of the building inspector as far as our zoning code goes to determine if these fees should be reduced. Some developers might feel this isn't fair as far as qualifications. These are some ideas so the Plan Commission can set the guidelines as far as whether the park fees should be reduced. This would be commercial density not residential density. We need to qualify why we are reducing the impact fees, such as façade improvements or green building, which might encourage added improvements.

Plan Commission member David Stone commented he liked all the suggestions, but the changes to building facades would require Plan Commission approval anyway.

Building and Code Enforcement Director Bruce Parker commented that with talking to staff these impact or park fees may be earmarked for the downtown area, the ones that the city does collect. With the Cravath Lakefront Center, the tree replacement and the Stone Stable work that is being done, some of the park impact fees go toward those programs. When we collect the whole amount, we could earmark it to go to particular areas like the skate park, improvements to the Armory and surrounding area, down by the mill pond, the parking lots, and the bike path. With the many new residential projects we have going on now in the downtown, many people will have to go somewhere for their recreational activities, so these fees should be earmarked for those purposes.

Plan Commission member Rick Gilpatrick found interesting that Janesville's is zero and East Troy is 2,651, there is such a variance between those. Rick asked Ryan if he learned anything about East Troy, why they charge so much?

Ryan stated he did not.

Plan Commission member David Stone questioned if they ever look at changing the ordinance instead of being re-calculated by some formula. The developer will just look and it will have a number right in there and if Council wanted to change it, they could.

Bruce Parker explained the park impact fees are only for residential not commercial.

City Manager Kevin Brunner had a few comments. One of the key strategies in the Downtown Redevelopment when they passed the Downtown Improvement Plan about 2 years ago, was to bring more housing, more density to downtown. He has heard from developers about the high fee. They don't know where that money is going to go. If it was going to improve the downtown, the park and open space in the downtown, there would be fewer complaints. Like anyone else, they want to see where their money is going. Brunner thinks if these were targeted for park and open space improvements to the downtown area there would be a lot more support from the developers and less resistance. He also wanted to point out both of Pete D'Aquisto's projects have been charged the full amount. D'Aquisto had carefully read the zoning code and asked for a reduction in the impact fees.

Plan Commission Member Kristine Zaballos asked when the consideration was made, who made the decision and what did they base that decision on?

Kevin Brunner stated he and Bruce Parker had looked at it and decided, given the investment the developer was adding to the downtown, it was justified. In one case, it was almost one million

dollars. Given it is an option under the current code, he assumes there will be more pressure. He feels if the money went into a fund to go into the downtown area, it would be less of a struggle with the developers.

Kristine Zaballos questioned if they wanted to make sure all fees went back into the downtown area, who would make sure that would happen, what board?

Kevin Brunner stated those funds are under the auspices of the Park Board budget.

Bruce Parker recommended that every major project that comes to the Plan Commission, make a recommendation either 50% or the whole amount and have it referred into the city's account designated for the downtown area. Bruce explained that if the developer wanted to pay the fee instead of providing park area, trails or shelters (if not on the site), those fees should be designated to improvements within 1 –1 ½ miles radius of that property.

Rick Gilpatrick commented that made a lot of sense.

Kevin Brunner stated these fees would be in a segregated park improvement fund for the downtown park and open space improvements.

Kristine Zaballos wanted the Plan Commission to come to some consensus as to if there is some incentive for the developers to know the benefits of this fee. She didn't want this thrown in the pot as an incentive for developers and not have a clear sense of what it means. Perhaps having direction from staff of what can be expected to allow for the 50% reduction, something other than a lot or a great improvement. Something that's more tight than that. Something that can be assessed and then maybe look at alternatives. Where is the cut made so we have a clearer understanding of this?

Bruce Parker suggested having all park fees designated and have the wording in the park fees that are collected be earmarked for the downtown park improvement area. Take the 50% out of the ordinance so that there is no question. You may have a major project on a small building that will provide two residential units upstairs. It's a major improvement to that block but is that enough of a project to cut it in half versus 20 new apartments in another building?

Kristine Zaballos stated she agrees we should use the money from downtown for downtown. Kristine would like to see that 50% reduction removed so it is not an ongoing complication.

Bruce Parker suggested they could come back with a recommendation for the Plan Commission.

City Attorney Wally McDonell stated this would be an ordinance change requiring a public hearing before the Plan Commission. The Plan Commission makes a recommendation to the Council. The ordinance change could be initiated by staff, Zoning Administrator Bruce Parker, City Planner Ryan Garcia, City Manager Kevin Brunner and City Attorney McDonell. If, during the public hearing, there were changes to be made, they would make the changes prior to going to Council.

**DISCUSSION OF REDUCING THE NUMBER OF PLAN AND ARCHITECTURAL REVIEW COMMISSION MEETINGS TO ONE PER MONTH.** City Planner Ryan Garcia noted that it was a request at the last meeting, August 27, 2007, to look into the possibilities of changing Plan Commission meetings to one time per month. Garcia was asked to check out

other communities and how many meetings their Plan Commission has per month. Only one of the ten communities that responded with their information had more than one meeting per month and that was the City of Milwaukee. Garcia checked with communities in Dane, Jefferson, Walworth, Waukesha and Milwaukee Counties. Some of the communities have had only one meeting per month for a long time and that it has worked well for them. Some said the first couple of months of transition were a little rough but it has paid off well.

Plan Commission Member Rick Gilpatrick stated they tried to do this a few years back, it didn't go over very well. He brought it up again, because there would be a cost savings. City Planner Garcia had brought up a good point that when staff and the developers have more time to work on items and get the details nailed down, the quality that is brought before the Plan Commission is better.

City Planner Garcia stated the time saved regarding the details and any questions that come up will be great.

Rick Gilpatrick did state that there should be an understanding that there will be special meetings from time to time.

Plan Commission Member Jason Wiedenhoefst questioned if there would have to be an amendment to the rule regarding the deadline for the Plan Commission material?

City Planner Garcia suggested a month prior would probably work well.

Jason Wiedenhoefst questioned if there would be an inconvenience to the community regarding the deadline. His fear is if it would be somewhat detrimental regarding businesses or bank dealings that are pending on the Plan Commission review process.

Ryan Garcia stated in most cases, it wasn't an issue. It just made people get the work done more efficiently. As Plan Commission Member Gilpatrick stated, it would make sense to hold a special meeting at the request of the developer. Possibly a fee could be added if this were to happen.

Rick Gilpatrick liked the idea of a fee if there was a special meeting to be called.

Chairperson Wiedenhoefst stated, Chapter 19.06.050 (b) in the city code it states the meeting should be called on the request of the chairman or the zoning administrator and should be open to the public. Jason doesn't want to make this decision. He would like to hear what the other members feel about this. He would also like to know what city staff has to say.

Plan Commission Member Marilyn Kienbaum stated charging an extra fee if a special meeting were to be called is not customer friendly. Marilyn stated when this topic of having one meeting a month came up before, Attorney Mitch Simon stated so many things happen at the last minute.

Plan Commission member Harriet Kaluva questioned if it would be problematic having one meeting a month and getting the notices to the newspaper.

Bruce Parker stated it wouldn't make a difference.

Harriet Kaluva stated it might be well worth one meeting if having more material to make a quality decision and working until 1 a.m.

Plan Commission member Kristine Zaballos questioned if Ryan received any feedback from the other communities on the length of the meetings.

Ryan Garcia commented that in most cases it wasn't significantly longer and most of the time it was 2 – 3 hours long.

Kristine Zaballos commented on a current meeting that lasted until 11:30 p.m. There were 25 people from the public there until almost 10 p.m. She would like staff to direct the order of items, for public input, to eliminate this in the future if possible.

Ryan Garcia stated it's communication between staff and the developers and to share that information in a timely manner and to be able to work issues out.

City Manager Kevin Brunner had a few items to speak on. Before coming to Whitewater, he was a member of the Plan Commission in De Pere, WI as a citizen member. Through the 25 years' experience before coming to Whitewater, everywhere he was, they only had one meeting per month. He thought it was strange a small community would be meeting twice a month. He had a few thoughts on this. Number one, the deadline is the deadline. If someone doesn't get their paperwork in on time, they will have to wait until the next meeting being next month. In De Pere, their meetings were no longer than 2 hours. The Commission received their packets early enough to look them over and if there were any questions, they would contact the planner ahead of time. Another point is in trusting the city planner. Also to have determination not to table projects. Only have special meetings in a case of an emergency. Not to be lenient on that. Brunner would like to encourage the Plan Commission to try the one meeting per month.

Rick Gilpatrick questioned Kevin in his experience, if the Plan Commission is more prepared, the petitioner is more prepared, how does that affect the public input?

City Manager Kevin Brunner stated most of their meetings, about 75%, were public input. The Plan Commission is an arbiter of the community values.

Harriet Kaluva commented she was on the Plan Commission in Milwaukee in the 1960's and 70's. They had very good public input. Maybe going to one meeting a month, handling things more efficiently, would get more public input. Not to have longer meetings but to hear from the public regarding projects.

Plan Commission David Stone questioned how much time is there when a project is submitted for the Plan Commission to review it? Is there a statute regarding this?

City Attorney Wally McDonell stated none would be affected by the one meeting a month.

Rick Gilpatrick questioned what would be the next step to adopt or not to adopt one meeting a month?

Plan Commission Member Jason Wiedenhoefst stated it would be a motion from the Plan Commission which would require a unanimous consent. Probably would have to state what time of the month would they meet. The way it is stated, it's up to the chairman or the zoning

administrator and he would like to leave it up to the Board. City Staff can work on the deadline aspect.

Rick Gilpatrick would like to make a motion but suggests possibly the 3<sup>rd</sup> week of each month because many holidays occur during the beginning or end of a month. Perhaps make the deadline for submittals to be in by the 1<sup>st</sup> of the month and the meeting will be the 3<sup>rd</sup> Monday of the month. He is just throwing it out as a point of discussion. He would rather have staff dictate the deadlines for the paperwork.

Bruce Parker suggested setting up a procedure policy and talking about it at the next meeting. Bruce agreed with Kristine regarding having a fee if an applicant wanted to have a special meeting.

Wally McDonell stated that might be something that has to be approved by the council, regarding the extra fee. He will check on it.

Jason Weidenhoeft suggested having this extra fee in place right away and not waiting to see if there were any special requests for extra meetings. He would like to wait until the beginning of the year. That would give the developers time to adjust and get their information in place.

Bruce Parker stated currently other fees are set by staff and it's reported to council.

Wally McDonell is going to see if it's statutorily or ordinance policy regarding the fee set. Usually if there is a fee, there must be some form of underlining for legislation meaning council decision. He will look into this, also.

Jason Weidenhoeft agreed with Bruce with bringing it back at the October 8, 2007 meeting.

## **INFORMATION:**

- a. CDA Representative Tom Miller reported no meeting since the last time Plan Commission met.
- b. Tree Commission Representative Harriet Kaluva stated they will be having a meeting later this month.
- c. Park and Recreation Board Representative David Stone reported they had a meeting earlier tonight. Clay Street boat launch, Nature Park and East Gate Park and now our procedure requires a notification in the newspaper and wait 60 days to see what the public comment is and forward that to the city council. Dapper Dogs had decided not to continue with the concessions because it's not economical for them. The Arts Alliance has proposed some sponsors for signs that will go on the arch.
- d. City Council Representative Marilyn Kienbaum reported that the City Council talked about the sign ordinance. The City Manager would get a committee together to work on it instead of the regular meeting. Also, the drive-thru at Westsider was passed. Everyone felt that the Frawley family is very responsible and it would be operated in a good manner.
- e. Downtown Whitewater Inc. Board Representative Kristine Zaballos reported they did meet last week and they will meet tomorrow. They interviewed 3 candidates for the Downtown

Whitewater Executive position. They did offer the position to one but Kristine could not say if this person has accepted it or not. She will be able to report this at the next meeting.

f. Possible future agenda items. Jason Weidenhoeft stated Bruce Parker, Ryan Garcia and himself had a brief discussion about the fraternity and sorority houses on Main Street. Many of those houses have gone vacant because the chapters have not been recognized by the University. Many of those chapters are going to be re-applying to be recognized with the University. Some of the properties are R-2 and R-3 and this is in regards to the group lodging zoning codes. One is currently zoned institutional. Jason would like to have put on the agenda, **all fraternities and sororities that are going to have housing, to have a conditional use permit issued, from Plan Commission for use of the property and if it's going to be a fraternity or sorority house, it has to be recognized by the University.** There have been some cases where nationally they are recognized but not by the University. If it's zoned institutional, it would have to be recognized as a fraternity or sorority house. If they lost their recognition, it would have to be an R-2 duplex for example. They couldn't put some group in a house if it's not zoned to have six or seven people and they have fifteen people. It has to be zoned, and recognized as such. Bruce stated all fraternities and sororities have to be in R-3. There are none in R-2 zoning.

The next Plan Commission meeting will be October 8, 2007.

Moved by Miller and Kaluva to adjourn. Motion was approved by unanimous voice vote to adjourn. Meeting was adjourned.

Respectfully submitted,



Jane E. Wegner  
Secretary

CITY OF WHITEWATER  
PLAN AND ARCHITECTURAL REVIEW COMMISSION  
Whitewater Municipal Building Community Room  
November 12, 2007

## **ABSTRACTS/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL ACTIONS OF THE PLAN AND ARCHITECTURAL REVIEW COMMISSION**

PRESENT: Gilpatrick, Miller, Kienbaum, Stone, Kaluva, Wiedenhoeft, Zaballos. ABSENT: none.  
OTHERS: Wallace McDonnell/City Attorney, Ryan Garcia/City Planner, Bruce Parker/Zoning Administrator, Wegner.

**HEARING OF CITIZEN COMMENTS.** This is a time in the agenda where citizens can voice their concerns. They are given three minutes to talk. No formal Plan Commission Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.

There were no citizen comments.

**MINUTES.** Moved by Miller and Zaballos to approve the minutes of March 12, 2007. Motion approved with all ayes except Gilpatrick abstained. Moved by Kaluva and Miller to approve the minutes of March 26, 2007 (correction from March 23, 2007 date on agenda). Motion approved with all ayes except Zaballos abstained. Moved by Miller and Stone to approve the minutes of October 28, 2007 as written. Motion approved with all ayes except Zaballos abstained.

**REVIEW EXTRA-TERRITORIAL 2-LOT CERTIFIED SURVEY MAP FOR THE PARCEL OF LAND LOCATED ON PIPER ROAD FOR JOE COBURN.** City Planner Ryan Garcia explained that this parcel is located approximately ¾ miles off Piper Road just northwest of the land that was recently annexed by the City. This area is outside the City sanitary sewer service area. Currently there is a single home located on one parcel of the CSM. This proposal is not in conflict of the city's land ordinances. Ryan recommends approval based on a few technical corrections to the document itself. 1) The "surveyors certificate" shall be revised to also indicate compliance with the subdivision regulations of the City of Whitewater. 2) An "owner's certificate" section shall be added to the document and signed by the owner(s). 3) The year should be changed to 2007 on page 2 of 2. He had no other issues with this map.

Moved by Zaballos and Kaluva to approve the 2-lot certified survey map for the parcel of land located on Piper Road for Joe Coburn, including Ryan Garcia's recommendations. Motion approved by unanimous roll call vote

**PUBLIC HEARING FOR AN AMENDMENT TO THE CONDITIONAL USE PERMIT TO INCREASE THE NUMBER OF WHITEWATER SELF STORAGE UNITS (4 ADDITIONAL BUILDINGS) TO BE LOCATED OFF SUNRISE LANE FOR WHITEWATER SELF STORAGE LLP (CLAYTON DROULLARD).** Chairperson Wiedenhoeft opened the public hearing for consideration of an amendment to the conditional use permit to increase the number of Whitewater

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Self Storage units (4 additional buildings) to be located off Sunrise Lane for Whitewater Self Storage LLP (Clayton Drouillard).

City Planner Ryan Garcia explained that the existing self storage units are located on the east side of town. A conditional use permit is required for more than one building on a lot. He has been working with the developer. Garcia suggested that before taking action, the following items need to be submitted: detailed elevations including materials, colors and sizes; a landscape plan (there is a lot of impervious area on the site and some of the existing landscaping will be disturbed); and a lighting plan. He stated all three components are required.

Chairperson Wiedenhoeft asked why this plan is on the agenda if there are some missing requirements for approval.

City Planner Garcia was hoping for the remainder of the plans to be in by now, not to delay this any longer. The grading, drainage and erosion control and the missing maintenance items will need to be worked out with the City Engineer Strand Associates.

The Board asked about the stormwater and grading plans and the forms that need to be submitted for the Stormwater Management Plan as listed in the City Engineer report.

Jeff Seefeldt, part owner of the Self Storage Units, understands that the City needs all the plans. He was hoping to get conceptual approval of the plan and some consent to proceed with the 4 buildings providing they do the landscaping. The difficult part is the drainage. Seefeldt is working with City Planner Garcia and City Engineer Strand and Associates in regard to the drainage. Jeff Seefeldt stated they have had storage units in Whitewater since 1983. Back then, he wouldn't have thought they would need these many buildings. Today it's different. They keep adding and filling buildings.

Mike Mason, who owns the property west of the proposed building, voiced his concern of the water run-off coming through a 24 inch culvert which is dumped on his farmland. He wanted to know what is going to happen with the water. Mason wanted to know if the water could be discharged into a storm sewer instead of on the surrounding land. There is a detention pond on this property and when that detention pond is full, the water runs onto his land, also. The water run-off from the black top comes through to his land too.

Jeff Seefeldt questioned if there had been problems recently. When the apartment buildings behind them were being built, that water was running into the detention pond, too. Since then, he hasn't seen any water in it.

The Board voiced suggestions of: Jeff Seefeldt working with the neighboring property owners; bike path easement; postponing consideration of the amendment until all information is provided; and storm water issues need to be corrected.

Jeff Seefeldt agreed to work with the neighboring property owners. He would also like to recommend the property to the east of them be graded. Someone came in and filled it and now that run off is coming onto his property. He would like the name of that owner so he can work with them.

City Planner Garcia explained that the bike path is an item for consideration. The property to the east is more for residential use. He would suggest the Board incorporate the bike path into these plans and into a future recommendation. The bike path is on the east line of the property. It is shown on the Park and Open Space Plan and the Neighborhood Plan for this area. He recommended that the Plan Commission did not require it as far as this submittal.

Chairperson Wiedenhoeft stated that City Planner Garcia will add a fourth recommendation for the stormwater issues. The motion would include the four recommendations: detailed elevations, landscape plan, lighting plan and a storm water plan.

City Planner Garcia recommended to postpone action on the conditional use permit for the four mini-warehouse buildings off of Sunrise Lane, to allow the applicant time to address the following issues as amended at the meeting.:

1. Submit detailed elevations for the proposed buildings, including materials, colors, and sizes.
2. Submit a landscape plan.
3. Submit a lighting plan.
4. Revise plans to address issues brought forth by Strand & Associates in November 6, 2007 memo (attached), including completion of Stormwater Management Plan forms as described on Page 2.

Moved by Kaluva and Stone to postpone this item. They asked that the petitioner bring in three submittals required for the conditional use as recommended by the City Planner Ryan Garcia's report, and the stormwater management plan be corrected. Motion approved by unanimous roll call vote.

**PUBLIC HEARING FOR A CONDITIONAL USE PERMIT TO CONVERT PART OF THE FIRST FLOOR AND SECOND FLOOR INTO APARTMENTS AT THE WISCONSIN DAIRY SUPPLY COMPANY, INC. AT 141 W. WHITEWATER STREET (DLK ENTERPRISES, INC.).**

Chairperson Wiedenhoeft opened up the public hearing for consideration of a conditional use permit to convert part of the first floor and second floor into apartments at the Wisconsin Dairy Supply Company, Inc. at 141 W. Whitewater Street (DLK Enterprises, Inc.).

Plan Commission Member Zaballos stated she is a departing member of the Downtown Whitewater Inc. After careful thought, she decided there is no conflict of interest because there is nothing personal or material to gain. She wants to keep these roles separate. Zaballos did not agree with some of the ideas regarding the first floor residential decision and feels if something needs to be done, there needs to be a new ordinance created.

City Planner Ryan Garcia stated that the conditional use is required for first floor residences in the B-2 Zoning District and must come to the Plan Commission for review. The applicant has had a chance to review his comments. A trash room has been added to handle the garbage. The elevation has been changed to enhance the Whitewater facade. The B-2 district doesn't require any parking to be on site. More discussion with the applicant regarding parking would be appreciated. The city does have a parking permit program and City Planner Garcia encourages this. Garcia suggested bringing the building elevations to a more pedestrian level, to echo what the other developers have done in the downtown. Some of the vinyl siding was done a year ago and it wouldn't be necessary to do this over again. He stated the first floor seems to be in compliance. The residential part is out of the pedestrian

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traffic and there is a retail space at the front of the building. The outline of the use of space looks good. The residential units are all single bedroom units with the exception of a 2 bedroom unit on the first floor.

Attorney Mitch Simon, representing the applicant, spoke about an open space easement for fire access and safety, which needs to get back to the City to be recorded. There is no building within 10 feet of the north line of the building. Part of the concept of the downtown is to try to be more pedestrian oriented. If residents have a car, they need a place to park it. There is no parking offered on this property. Simon was hoping the proposed expansion of the downtown parking could be coming along soon. They will let the tenants know if there are any parking permits available. Mitch handed out past pictures of the downtown. The first one is a picture of the groundbreaking ceremony of the old City Hall that was taken down in the early 1970's. The picture was approximately from 1899. In the picture, it shows what the Dairy Supply Building looked like at that time. The next picture was from the 1937 Homecoming event. There was also a picture of the Dairy Supply Building at that time. The building hasn't changed much since 1899. Another picture was of the north/northeast corner, where the parking lot of Novak's is located now. Mitch Simon stated Whitewater Street was never in a grand style of design. It is right next to the railroad tracks and by looking at the pictures, not too much has changed.

Downtown Whitewater Director Tami Brodnicki read a statement from the Board of Directors. Tami stands against street level housing. She doesn't feel it's consistent with the goal of revitalizing the downtown.

Mitch Simon stated the Dairy Supply Building has been a manufacturing building for a very long time. It is not a retail type of building. They are attempting to preserve the whole building, particularly the front but the back of the building too. They have a lot of space available if they can generate enough interest.

Vice President of the Downtown Whitewater Board Bill Bowen mentioned as an owner of a business downtown, he is opposed to first floor housing. All businesses rely on each other for the foot traffic to drive sales.

Owner of GMA Printing, Kim Scharine spoke on her concern regarding first floor residential living. She stated even if the Dairy Supply Building was not located on Main Street, it is still part of the downtown area.

Citizen Roy Nosek commented that he has suggested to the Plan Commission and the City Council that the city should acquire this property (possibly through condemnation) because of its location to the costly development of the Cravath Lake building and park. Previous acquisitions have been approved in regard to the Whitewater Register building and the Zingg building. Nosek feels this property should not be given a conditional use permit. He felt that this building is not being utilized for the whole downtown concept. He also felt the board has made past mistakes in regard to first floor residential space. Nosek believes the restaurant should be removed too, but that's probably not practical. He feels the same way regarding the Hallmark building with regard to residential space. It's a step backward.

Mitch Simon stated the zoning ordinance allows for first floor residences by conditional use. If no residential living is allowed in the downtown district, the ordinance should be amended. Until it's

amended, the Plan Commission should evaluate the project, based on what the ordinance provides right now. It is a conditional use and they have satisfied that. If they want to change the zoning, that would be binding from that point forward. The Supreme Court has changed the rules on condemnation for property.

Chairman Wiedenhoefft closed the public hearing.

Plan Commission Member Stone commented that the Central Area Plan was adopted by the Plan Commission and certified by City Council. The plan calls for first floor retail, second floor residential. He is bringing it up because of the citizen concerns.

Chairperson Wiedenhoefft stated the Central Area Plan is not a rule, but a guideline.

Plan Commission Member Stone asked what the rule is for the city to follow a Master Plan.

City Attorney McDonell explained that Master Plan documents are a planning tool, not a binding document.

Plan Commission Member Zaballos felt it is important to point out if they want something specific, it needs to be in an ordinance, not a plan.

Plan Commission Member Marilyn Kienbaum questioned "if any of the people objecting to the first floor residential are willing to fill the buildings? She stated the owner of the previous business "The Gift Hutch" claimed when Zingg Motors moved, her business slowed down. Kienbaum also stated that living in the back of a building with a business in the front is not a new concept.

City Planner Garcia commented on David Stone's research of the neighborhood plan. He did consult these documents. Ground floor retail and upper floor residential is in the Central Area Plan. The conditional use is the exception.

Plan Commission Member Zaballos asked if City Planner Garcia could clarify why certain developments have second floor residential and a first floor handicapped accessible apartment or other ones like this one. She doesn't understand. Is the first floor apartment handicapped accessible?

City Planner Garcia stated he believed it is. It's not labeled on the plans.

Zoning Administrator Bruce Parker stated state requires ADA accessibility for new apartments. Since there are no apartments presently in this building, they either have to do the 20% rule (ADA improvements) to either provide an elevator or a ground floor apartment. They are proposing to have the ground floor apartment.

Chairperson Wiedenhoefft wanted to know how much more we are going to push parking downtown. We can't keep increasing apartments downtown with no additional parking. He's disappointed in the parking situation with the elimination of many 24 and 12 hour parking lots. Wiedenhoefft feels the board needs to give some direction regarding the amount of residential in this district.

# CA-B

City Planner Garcia stated they are changing some to 24 hours additional parking. On January 1, 2008, they are to add another 15 – 20 additional permit spaces. There are currently around 100 permit spaces with 45 – 24 hour parking spaces.

Plan Commission Member Kaluva questioned if the Second Street area couldn't be changed to 24 hours parking. She believes the other permit areas are sold out.

Plan Commission Member Kienbaum contacted the City Manager of Fort Atkinson regarding parking uptown for the upper floor residents. He stated they park in the public parking lot. Kienbaum commented that perhaps if we didn't have two hour, four hour, and so on, parking spaces, we would have enough spaces for people to park.

Plan Commission Member Kaluva questioned on the parking lot between Novak's Restaurant and the Mill Pond. How many spaces are 12 hour or 24 hour and if it's a public parking lot.

City Planner Garcia stated he thought there were a handful of spaces that were 24 hour.

Plan Commission Member Kaluva stated for the record she is against first floor residences in this situation. She believes the conditional use is to be deliberated on a case by case situation. She will be voting against it.

Plan Commission Member Stone commented because so many people have spoken here tonight at the public hearing against this, he will be voting against the residential part of the plan. The rest is fine with him.

Chairperson Wiedenhoefft commented if they were to make a motion not to pass this, how does the ADA compliance work? What does the 20% go towards?

Zoning Administrator Parker stated the 20% goes towards the cost for improvements which would be to install an elevator and set up an upstairs apartment to be ADA compliant. If the elevator cost more than 20%, they can go to the state to get a waiver.

Plan Commission Member Gilpatrick questioned if there is a conflict between the city codes and the State Statutes.

City Attorney McDonell stated no there is no conflict. It just depends on the decision of the Plan Commission and the developer.

Plan Commission Member Zaballos agrees there are problems with the parking. She stated if there were other businesses downtown like a supermarket, drug store and the like, that would be more tolerable regarding the parking but that won't be happening for a long time. Until that happens, we do need space for the cars to park. We need to get the additional money, as in parking fees, to get additional land to provide parking.

Brad Werginz, Architect for the project, explained the air conditioning venting system was added per the City Planner's previous comments not allowing window air conditioning units.

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Plan Commission Member Zaballos questioned the window elimination on the second floor in the back. There used to be four windows, now there are three windows. Is this based on esthetics? Also, the closet location in the first floor bedroom isn't located in the bedroom but in the hall outside the bedroom.

Brad Werginz stated in looking into the historical plans, they decided to preserve that look and take a window out. There is another window around the corner in that same room to meet the requirements. Their intent for the closet is to have the closet in the bedroom.

Plan Commission Member Gilpatrick questioned the revised store front from the old plans to the new plans. Is that signage or awnings?

Brad Werginz stated they are proposing new awnings right above the windows. The company sign will be above the awning area.

The Board asked if: the plan restores the historic look of the building; is it an historical preservation; and if the former Kidd Street area could be used for parking.

City Planner Garcia stated the building has been more of an industrial use building. The end buildings enhance more of the brick look similar to the other downtown buildings. He feels it is consistent with the look they are going for. The vinyl siding is appropriate for the Dairy Supply Building.

City Planner Ryan Garcia stated they did see the plans and they generally wanted to see some enhancement of the building but nothing was formally written down.

Mitch Simon stated that the Kidd Street area is too narrow and couldn't be made into a parking lot.

Moved by Stone and Kaluva to deny a conditional use permit to convert part of the first floor and second floor into apartments of the Wisconsin Dairy Supply Building at 141 W. Whitewater Street.

Ayes: Gilpatrick, Stone, Kaluva. Noes: Miller, Zaballos, Kienbaum, Wiedenhoeft. Motion Failed.

City Planner Garcia recommended the Plan Commission approve the conditional use permit and site/building plan review requests to allow first floor residential use at 141 W. Whitewater Street and various remodeling, expansion, and use conversion proposals for that address, subject to the following conditions as amended:

1. The project shall be developed in accordance with the Site Plan, First Floor Plans, Second Floor Plans, Schedules and Details, Reflected Ceiling Plan, First Floor Demolition and new Structural Plan, Second Floor Demolition and New Floor Framing Plan, and Roof Framing Plan, all dated November 12, 2007 and approved by the Plan and Architectural Review Commission on the same date, except as those plans are amended per the conditions that follow.
2. Before the issuance of a building permit, final building elevations shall be submitted for city planner approval, to meet the recommendations of the Whitewater Street Corridor Plan and other applicable City Plans, detailing all proposed materials, colors, and signage.

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3. Non-family households within each apartment unit shall be limited to not more than three unrelated persons, unless a conditional use permit for greater non-family occupancy is later obtained.
4. Any personal satellite dishes and related equipment shall be located inside the buildings or on the roofs, rather than mounted on exterior walls.
5. Window-mounted air conditioner units shall not be allowed.
6. Prior to the issuance of a building permit, the proposed building access easement shall be recorded with Walworth County, with a copy provided to the office of the city planner.
7. Prior to the issuance of a building permit, the petitioner shall pay fees-in-lieu of parkland dedication and park improvement fees as specified by the zoning ordinance.

Plan Commission Member Gilpatrick reiterated the reasons why there are Master Plans, and the reason why they didn't want first floor residential living space. They should use that as a guide.

Plan Commission Member Kaluva stated she was going to play the devil's advocate. She questions aren't these documents suppose to be living, growing documents?

Plan Commission Member Gilpatrick stated he didn't think so. These are tools, a guideline to go by. The Plan Commission can use this information to make consistent decisions for proposals brought to the Plan Commission. Of course, there are exceptions.

Moved by Gilpatrick and Kaluva to postpone this item for further discussion from the board, knowing the public hearing is closed.

Plan Commission Member Zaballos felt the Plan Commission has had their discussion and the public has had their hearing. We shouldn't be postponing this item any further.

Plan Commission Member Gilpatrick stated the reason he is postponing it is because he feels there are some considerations that can be made to the downstairs first floor arrangements and if there were some time to reconsider and adjust the plans, he would be in favor of the plan.

Plan Commission Member Zaballos asked what the applicant would prefer denial or postponement?

Mitch Simon stated without first floor residential, the project doesn't work.

Plan Commission Member Zaballos questioned if the applicant has fulfilled the requirements of the railroad right-of-way.

Zoning Administrator Bruce Parker stated because there are no alterations to the setbacks of the building, they are ok.

Plan Commission Member Gilpatrick rescinded his motion to postpone.

Plan Commission Member Kaluva rescinded her second because her intentions were to get the parties together to come to an understanding.

Chairperson Wiedenhoef made a motion to approve the document, with the conditional use. (The board has exercised every option. According to the City Attorney McDonell, the Chairperson does have the option to do this without a second.) This motion includes the City Planner's recommended conditions of approval (1 through 7) as amended.

City Attorney McDonell stated it's not a formal motion it's a parliament procedure where the chairman can put the question to a vote if he chooses. It's putting the question out to the Plan Commission for a decision.

Chairperson Wiedenhoef's motion was voted on. Ayes: Miller, Zaballos, Kienbaum, Wiedenhoef. Noes: Gilpatrick, Kaluva, Stone. Motion is approved.

**PUBLIC HEARING FOR CONSIDERATION OF A CONDITIONAL USE PERMIT TO ALLOW FOR TWO RESIDENTIAL UNITS ON THE FIRST FLOOR OF THE BUILDING (THE FORMER HALLMARK STORE) LOCATED AT 174/176 W. MAIN STREET FOR JIM LEWIEN.** Plan Commission Chairman Jason Wiedenhoef opened the public hearing for consideration of a conditional use permit to allow for two residential units on the first floor of the building (the former Hallmark Store) located at 174/176 W. Main Street for Jim Lewien. This item is separate from item number six. If you have something you want to state, it does need to be stated again because it is separate, for the record. The board will not assume whatever one's thoughts were on item number six is the same on item number seven.

City Planner Ryan Garcia stated the conditional permit in review is the request for the conversion of a portion of the first floor space at 174-175 W. Main Street, two residential units at the rear of the building. As well as a plan review for the alteration facade on Main Street and some renovation of the upstairs space. This is currently occupied and would like to add an additional living space upstairs. Garcia kept this in accordance with the zoning and ordinance. He has been working with the developer and the applicant and most criteria has been met. He pointed out that toward the rear of the building, there is a shared entry/exit way. One of the concerns is the courtyard in the back. Who is responsible for clean-up, trash, snow removal and the safety of the area? They are allocating space for a dumpster. Garcia would like to have more details in regard to the screening of the dumpster. There is some on-site parking on this plan. He is not too clear on the number of parking spaces, if this will accommodate for all residential and business parking customers. Garcia doesn't feel this is going to be a nuisance to neighboring properties. The west store front is smaller than the east store front. His rationale for the thirty foot setback from the storefront interior window or wall (on Main Street), whichever is closer balances it out. It allows a little more retail space for a more successful Main Street use. Garcia has expressed to the applicant that the total square footage of 3500 is realistic for a retail tenant. Some improvements can be made in the allocation of space. In all things considered, the improvement of the streetscape, the separation of uses and on-site parking all work well. He doesn't see any problems with nuisance or property values going down. We have seen evidence of this from other first floor residential apartments. The next step is adequate utilities. Garcia has a little concern with the location of the electrical box. He also would like clarification on the use of the bedroom/den area. Access to a bathroom through another room is not allowed by City and State Codes.

Craig Ellsworth, architect for KJN Development, explained that the potential owners of the building wanted to point out from a planner's perspective it's never all right or wrong. Anyone can look at a plan

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and have a completely different take on them. Also, there was some discussion on critical mass. What he has seen for a downtown to be successful is they have to re-invent themselves every ten years or so, to keep up with changing times. Some of these businesses might not be here in five to ten years. They are trying to invigorate the downtown and modern planning has shown them, inserting housing into the mix supports the retail. The city's requirement for parking stall usage goes down with more residential use. By blending the two uses on that first floor, the city's own guidelines show us that we actually reduce the requirements for stalls. Currently the parking lot is ill defined. He would encourage the Plan Commission and possibly Mr. Hicks and the applicant to get together and redefine and redesign that area. Craig would also like to point out that they encourage a remote dumpster area. Their design of the courtyard walls is to completely enclose the dumpster area. They also have all rooftop mechanical units. As far as who will take care of the courtyard, this is private property and it would be the owner's responsibility. They are more than willing to relocate the electric if necessary. They will comply with the site plan. They have submitted the financial analysis to the city and guarantee a \$600,000 assessed value on this property. This would increase it by \$350,000. The net income from the two units on the first floor is enough to support the expenses of the exterior improvements which are a little over \$100,000. Craig has found in other businesses that 3500 sq. ft. is prevalent today in downtown areas for successful businesses such as attorneys, head hunters and financial advisors. They also went through the Design Committee and they have an approval letter regarding the facade. They are consistent with the community standards, the planning and zoning regulations.

John Tincher, realtor of Tincher Realty, spoke on the history of the selling of the building. They have had four acceptable offers on the building. This offer is the only one that's financially feasible to get the project done. The first buyer didn't know if he could handle that much retail space. The apartments he could handle. The second offer they wanted to put a day spa in there. To meet the codes and do the upgrades, it was going to be too expensive. The third offer, towards the end, the financing fell apart. Just to point out as an example of successful businesses working in a smaller space, Dapper Dogs across the street operates in a 1,000 sq. ft. area. The Travel Café operates in 850 sq. ft. The Sweet Spot is at 876 sq. ft. People can't afford these large areas. They need a space they can manage with a good store front. John has received eight signatures from other business owners that have reviewed the plan and felt it was a good plan.

Bill Bowen owner of Double Dip Deli is located next door to the applicant's property. He not only is not interested in this plan but will probably lose two parking stalls for his dumpster. Bill questioned the Plan Commission if they ever denied any first floor residential living in the downtown area.

Chairperson Weidenhoeft stated in his three years of being on the Plan Commission, they have approved all of them.

Zoning Administrator Parker stated he believed the only one that came close to denial, but doesn't believe it came before the board, was on the corner of S. First Street and Center Street. There was talk about having a couple first floor apartments but only one was approved.

Bill Bowen stated the reason why he asked is the city has a master plan and a downtown group trying to revitalize the downtown. We have statements of what we want downtown and what we want to encourage. Yet this board has a history of never denying first floor residential living. The board has opened the flood gates. He agrees some mixing is a good thing. He wants to know when it's going to

stop, before we lose all the retail space downtown. Bill stated the last he has heard on the amount of residential added to the downtown recently has been 51 units. That puts pressure on the parking situation. Bill stated there are currently eleven parking spaces in the area behind him. If you add a patio to the back, you will lose two to four parking stalls. The space that Craig Ellsworth spoke of currently extends onto city property. One of Bill's concerns is, probably students will be renting these units. He doesn't want partying to be going on right outside one of his public entrances. Realistically, that store space will be divided into two spaces because the stairwell goes up the middle and that would be difficult for a business to run. Probably, if one were to split the spaces, one would be 800 sq. ft. and the other 500 sq. ft. The 500 sq. ft. is pretty small. You're almost guaranteeing that would be some kind of service space (attorney, accountant, etc.). Those kinds of businesses do not generate retail dollars. Bill's sales at the deli have dropped 5% since the Hallmark business closed. They have been down ever since. There hasn't been one month that exceeded the previous year. Bill states up to six or seven years ago, there used to be a wall down the middle of this space and it was two businesses and it had two addresses. He doesn't see why this can't be done again; then it won't be a huge 3000 sq. ft. area.

Dave Saalsaa of Quiet Hut Sports Shop stated that he is a 37 year resident of Whitewater. He has been in business for 32 years, mostly downtown. He feels it's very counter-productive to incorporate residential living in the retail area. He grew up in a small southwestern town in Wisconsin with a population of 400. There used to be five to seven businesses downtown. Today, it's a low income residential living area, except for the two bars. The decision we make today will affect the use of the buildings in the future. He guarantees it will never return to retail use again if this changes to residential.

Tami Brodnicki, Downtown Director stated when she thinks of balance, she thinks of attracting younger couples and empty nesters, people who have money and want to spend it in the downtown. Also, part of her job is to recruit businesses and she does that every day. We have had over \$4,000,000 in renovation in the downtown area in the past year. Tami doesn't feel they should increase the residential on the first floor when there is still residential on the upper levels not being utilized. She has had some people interested in opening a business in Whitewater. There are some issues that need to be addressed. One of those is parking and the square footage of the stores. She has only been here a month but from talking with the people, she knows some of what they would like to see is a high end restaurant in the downtown and possibly bookstores. Tami stated she needs the space for this to happen. Things take time and there are buildings that need to be renovated, parking issues and an organizational committee that address their policies. There is an Economic Restructuring Committee that addresses getting people into the buildings once the Design Committee has worked with the developers and the buildings have been renovated. They have a Promotions Committee that markets these buildings to attract potential businesses to come. It does happen; it just takes time. That's why Wisconsin is a Main Street state and Whitewater is a Main Street city.

Kim Scharine, downtown business owner, stated the Good Morning and Printing has been part of the downtown for 75 years. Currently, they struggle to keep their doors open. She strongly feels if they allow first floor residential living, they will be one of the businesses that will be gone in five years. It's that serious. There is nothing drawing people to the downtown area.

Craig Ellsworth wanted to clarify the 1350 square feet is right on Main Street, has a double store front and it has ways of working with the space as a 1350 square foot space. The residential units would be in

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the back. City Planner Garcia and Ellsworth have walked through the building and Garcia commented on how open it was. It would also be very viable to have security cameras in this amount of space.

Chairperson Wiedenhoef closed the public hearing.

Plan Commission Member Kristine Zaballos questioned if the apartments were already there or if they wanted to take some of the retail space to make them and why the architect, Craig Ellsworth, felt the garbage area in the back was worth the trade off.

City Planner Garcia stated the apartments were already there and they are three bedroom apartments. He had consulted the State Main Street Architect and one of the points he made was they would not encourage a site like this that has back access to ignore that for loading and unloading for the retail space. Garcia agreed to keep the flexibility open.

Plan Commission Member Kaluva questioned Craig Ellsworth regarding the second floor apartment bedroom/den area and access to the bathroom.

Craig Ellsworth response was, it is an existing unit and embedded in it are existing use rights. It is not being altered. It's occupied right now. It will be painted and decorated.

Zoning Administrator Parker stated he would disagree with that statement. There is no building code that would allow that and if that was turned into a bedroom, it wouldn't comply with any building codes because you can't have access through a bedroom to get to another area of the building. That would have to be altered or changed to comply. There is a sky light but the access to the bathroom would have to be another route.

Plan Commission Member Kaluva questioned if Craig has figured out how much retail space would be taken away on the first floor for residential use.

Craig Ellsworth commented that he has been stating 3500 square feet so we are keeping 1350 for retail space.

Plan Commission Member Gilpatrick thanked the business owners for their comments and their concern on preserving the building. He also wanted to remind the Plan Commission to keep those comments in mind before making a decision. He feels there's a bigger picture to consider and feels it's important to keep the retail space as retail space.

Plan Commission Member Kienbaum stated she feels one of the ideas behind the smaller space is it would be more affordable to rent.

Chairperson Wiedenhoef wanted to know how the bathroom accessibility issue is enforced. He has been in other college student rentals and that the only way to get to the bathroom was through the bedroom.

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Plan Commission Member Stone stated many people have spoken against this project and many people have put time and money into the revitalization of downtown. Much of this has been through grants and loans and he wouldn't want to see that disappear.

Plan Commission Member Kienbaum feels the buildings need to be filled, for people to come downtown. Doesn't matter how beautiful they are, they need to be filled.

Plan Commission Member Zaballos stated this is a conditional use permit. It's not a popularity contest between this item and the other item. They are both totally different situations. It's up to the Plan Commission to decide if this is a good use of the building, enough value added back and to look at all these other concerns that were brought up tonight. There is a statement signed by other property owners that feel this is an excellent compromise. Zaballos feels this is not an excellent compromise. The square footage is just under half of the first floor space that is being taken away from retail and put into an apartment. The foot traffic going by a residential unit for commercial usage doesn't sit well with her. Whitewater Street is very different from Main Street. She stated not all owners take care or clean up the area around their building. She is not convinced this merits the conditional use permit.

Plan Commission Member Kaluva stated she is never in favor of taking away the retail space in downtown.

Chairperson Wiedenhoefl feels we need to get people downtown but it is too expensive to open a business. He feels there's more to work with in this space. Whitewater doesn't attract businesses because the tenants would have to bring it up to code and that's expensive. Whitewater depends heavily on the University students which are only here from August to May. We need to work with this mixed use. The reality is the statements from the people who are in support of this were not represented tonight. Wiedenhoefl would like to encourage the public to speak at these meetings about what they do want, not just what they don't want.

Plan Commission Member Gilpatrick explained that we need the right businesses that will encourage people to go downtown. The fact is we have a downtown we need to restore. The property owners need to update their buildings. He understands there are burdens to this. The Downtown Revitalization Group has been making every effort to get incentives to fix buildings, market plans, and the people in place to help get more businesses downtown. He feels first floor residential is the wrong thing to do.

Plan Commission Member Miller stated if it doesn't go through, the owners will have the fourth person backing out on this deal. It will just sit there. The owner is guaranteeing \$600,000 taxable assessment with no business in it. He would rather see one apartment on the first floor. Many buildings have been remodeled downtown with the residential as their main income. Miller is totally against having a store front being residential. The residential part will be in the back where no one will see it. He is in favor of this project.

Moved by Kaluva and Stone to deny the conditional use permit to allow for two residential units on the first floor of the building (the former Hallmark Store) located at 174/176 W. Main Street.

Ayes: Kaluva, Stone, Gilpatrick, Zaballos. Noes: Miller, Kienbaum, Wiedenhoefl. Motion approved.

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**PUBLIC HEARING FOR A CONDITIONAL USE PERMIT TO ALLOW A 15 FOOT SETBACK FROM THE RAILROAD RIGHT OF WAY AND TO ALLOW CONSTRUCTION OF A MIXED COMMERCIAL AND RESIDENTIAL BUILDING TO BE LOCATED EAST OF S. JANESVILLE STREET AND SOUTH OF BURTNESSE CHEVROLET (563 S. JANESVILLE STREET) FOR RUSSELL WALTON.** Plan Commission Chairperson Wiedenhoeft opened the public hearing for consideration of a conditional use permit to allow a 15 foot setback from the railroad right of way and to allow construction of a mixed commercial and residential building to be located east of S. Janesville Street and south of Burtness Chevrolet (563 S. Janesville Street) for Russell Walton.

City Planner Ryan Garcia distributed revised plans that were given to him at the meeting.

Chairperson Wiedenhoeft questioned if the board was ready to proceed with a decision tonight based on the new plans they were just given, would they have enough time to look them over?

City Planner Garcia made reference to the floor plan. They were not submitted with the application itself. The floor plan is not required in the City Ordinance for plan review. It's a requirement of the building permit process. The landscaping was updated per his request and was submitted at the meeting also.

Zoning Administrator Parker stated the floor plans are needed in order to determine the zoning and parking plan to make sure the apartments comply with the minimum standards of the square footage of the apartments. On the conditional use application, it states the plans that are to accompany the application. The floor plans are required to be part of the application. It may not be spelled out in the ordinance but it is on the application.

City Planner Garcia stated in respect to that, certain elements were spelled out; we just didn't know how it was going to work out. He was going by the ordinance.

Plan Commission Member Stone would like to have all the plans included in the packet in the future.

City Attorney McDonnell stated the ordinance does not specifically require the floor plans to be included. However, in order to get a clear view of the plans, the floor plans would be necessary.

City Planner Garcia stated the conditional use is for the set-back from the railroad. This would be 15 feet where typically it's 30 feet in the B-1 district. This is similar to what the developer did on the eastside of the city. It includes retail space and one residential unit on the first floor and the upper level six residential one-bedroom apartments. The project proposes 25 parking spaces which meets the zoning requirements. Garcia wasn't sure on the status of Planning Consultant Mark Roffers' first comment regarding the building setbacks. There was also a comment regarding no sidewalks on that side of Janesville Street, however, there are sidewalks. Garcia wasn't sure if the developer had submitted plans to the Railroad and the DOT. A variance will be needed for the front yard setback in the B-1 district. It's proposed to be 25 feet and 30 feet is required by ordinance. He will add that to his conditions of approval. Garcia feels this plan is compatible to the existing plans in the neighborhood. He did request re-submitting landscaping plans because he felt the one side was light on the landscaping. He also would recommend the developer abandon the well. They might want to limit or not allow any outside storage of any kind for the businesses.

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City Planner Garcia recommended approval with the following conditions as amended at the meeting.

1. The Project shall be developed in accordance with sheets SP-1 (Site Plan), C-1 (Civil Site Plan), C-2 (Grading and Erosion Control Plan), C-3 (Sections and Details), LS-1 (Landscape Plan), A-2 (Upper Floor Plan Diagram), all dated 10/26/2007 and marked "revised" 11/12/07; sheets A-3 (Roof Plan), A-4 (Elevations), A-5 (Elevations), and LT-1 (Site Lighting Plan) all dated 10/26/2007; A-1 (Main Floor Plan Diagram) dated 10/24/2007 and marked "revised" 11/12/07, except those plans are amended per the conditions that follow.
2. Development of the project as presented shall be subject to Board of Zoning Appeals approval of a variance to allow a 25-foot front yard setback. This condition shall in no way compel the Board of Zoning Appeals to approve such variance request.
3. Development of the project as presented shall be subject to all approvals and permitting by the State of Wisconsin Department of Transportation and Wisconsin and Southern Railroad. Any alteration of the plans that results in a change in the character, intensity, use, or conformity of the project shall be subject to further review by the Plan and Architectural Review Commission.
4. The grading/drainage plan shall be subject to the final approval of City staff and consultants, and shall address the items found in the November 6, 2007 memo from Strand Associates.
5. The landscape plan shall be revised and resubmitted for staff approval, incorporating approved shrub and tree species in the yard east of the parking area in accord with the City's landscaping guidelines.
6. Before installing any signage, the applicant shall apply for and be granted a sign permit from the Neighborhood Services office. Staff shall determine if any proposed signage requires conditional use permit approval through the Plan Commission.
7. Prior to the issuance of a building permit, the small well on the property shall be abandoned by the applicant.
8. Non-family households within each apartment unit shall be limited to not more than three unrelated persons, unless a conditional use permit for greater non-family occupancy is later obtained.
9. Prior to the issuance of a building permit, the applicant shall pay to the city all fees-in-lieu of parkland dedication (\$246 per unit) and park improvement fees (\$580 per unit) associated with this project.

Russell Walton, developer of the project, brought in color samples for the board. This is similar to the development they did at 467 N. Tratt Street. The siding is a hard board siding. The plan does provide for a nice size parking and dumpster area.

Plan Commission Member Kaluva questioned how they improved the landscaping.

Russell Walton stated that they added more shrubs along the parking lot per City Planner Garcia's request.

Plan Commission Member Zaballos would like to see more balance with something taller like a tree.

Zoning Administrator Parker stated in this instance, City Planner Garcia will provide some conditions that will go with the conditional use. The proposal will need a variance granted from the Board of Zoning Appeals. Also, the Railroad will need to review the plans to make sure they are satisfied in

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regards to visibility and drainage, which the Railroad hadn't reported back on. The Railroad would like to see the calculations and the plans. Jane Wegner e-mailed the plans to them but not these updated plans. So any approval would be contingent upon the variance from the Board of Zoning Appeals and the Railroad's input.

Chairperson Wiedenhoft closed the public hearing.

Russell Walton stated he could replace some of the shrubs with trees.

Plan Commission Member Gilpatrick questioned the lease space. The divided spaces are under 900 sq. ft. and now the new submitted plans are one large lease space for 2500 sq. ft. Is the plan to have one large open space?

Russell Walton explained that basically it depends on the customer. They try to show the whole space or they can make it smaller if the customer chooses. Walton would have to come back in to get a building permit to divide it off later.

Plan Commission Member Zaballos stated there doesn't seem to be a bathroom.

Russell Walton explained it's the same concept. It depends on the customer and how they want to have their business. They will put one in later.

Moved by Kienbaum and Miller to approve with City Planner Garcia's conditions.

The Board voiced concerns of: outside storage; parking lot lighting; and the dumpster area.

Russell Walton stated he talked to his architect and the City Planner regarding this. They should have some plans.

City Planner Garcia stated when it's ambient lighting, it's not to be more than ½ candle. They do have some higher lighting in front of the building. Garcia's concern was to the west of the property, it looks to be dark. This can be addressed at staff level.

City Attorney McDonell clarified the B-1 district does allow outside display of merchandise. This can be subject to limitations by the board. Ordinance 19.27.025(E) states as a permitted accessory use, the outdoor display of temporary storage of motor vehicles where the principal use on the lot includes the sale, repair or servicing of such motor vehicles. No vehicle in inoperable condition shall be stored for more than 30 days. Ordinance 19.27.025(C) as a permitted accessory use allows for outside storage and trash dumpsters where located outside of the required yards in Section 19.27.060 of this chapter and enclosed by a decorative opaque fence, wall or landscaping designed to provide a total visual screen.

Plan Commission Member Gilpatrick stated the plan has changed a lot. Would the person who made the motion, rescind the motion and he would consider postponing it. He is not comfortable with the lighting plan.

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Plan Commission Member Stone commented that if the board includes Strand's comments, regarding the railroad work and permits, would that take care of it?

Zoning Administrator Parker commented no it wouldn't. The railroad would have to allow the 15 foot setback from 30 foot required setback. Russell Walton is not working in the railroad right-of-way.

City Attorney McDonell stated when you do a conditional use, you can draw on the whole item. The first floor apartment and the setback both require a conditional use permit. The board can look at it as one conditional use but you don't have to approve it.

Plan Commission Member Zaballos stated the project looks like it will enhance the area but she is tired of the last minute plans being submitted. The board cannot do their job. A night like tonight where the board is here for several hours, they tend to get a little cranky. She is feeling to possibly postpone this, too. She is on the fence.

Marilyn Kienbaum stated she doesn't see anything wrong with the plans. There was a building there before.

The motion by Kienbaum and Miller to approve was repeated. This would include City Planner Garcia's conditions of approval as amended at the meeting. Ayes: Kienbaum, Miller, Zaballos, Kaluva, Stone, Wiedenhoeft. Noes: Gilpatrick. Motion approved.

**PUBLIC HEARING FOR A CHANGE IN THE ZONING ORDINANCE REGULATIONS, TO ENACT THE PROPOSED AMENDMENTS TO THE CITY OF WHITEWATER MUNICIPAL CODE CHAPTER 19, INCLUDING CREATING SECTION 19.48.030(E) TO ADD FRATERNITY AND SORORITY HOUSES OR BUILDINGS AS A CONDITIONAL USE; SECTION 19.09.330 TO CORRECT THE FRATERNITY AND SORORITY DEFINITION; AND SECTION 19.21.030(D) TO ADD "FRATERNITY AND SORORITY".** Plan Commission Chairman Wiedenhoeft opened the public hearing for consideration of a change in the Zoning Ordinance regulations, to enact the proposed amendments to the City of Whitewater Municipal Code Chapter 19, including creating Section 19.48.030(E) to add fraternity and sorority houses or buildings as a conditional use; Section 19.09.330 to correct the fraternity and sorority definition; and Section 19.21.030(D) to add "Fraternity and Sorority".

Zoning Administrator Bruce Parker stated there is a fraternity that owns a property in the University zoning district (Institutional Zoning District). The fraternity wants to operate their home as a fraternity house. It's not uncommon for Universities to host a fraternity home. Parker felt it was a good mix to include fraternities or sororities in the Institutional Zoning District. It would also help to do some housekeeping with the sorority and fraternity definitions. Currently it is not specifically listed in the R-3 (Multi-family Residence) Zoning District ordinance.

Chairperson Wiedenhoeft closed the public hearing.

Plan Commission Member Kaluva asked if including these in the Zoning Ordinance gave the Plan Commission more control over the fraternities and sororities that aren't in the University district.

Zoning Administrator Parker stated that fraternities and sororities have to be recognized by and in good standing with the University. If the fraternity or sorority is not in compliance, Plan Commission can put restrictions on them.

Chairperson Wiedenhoeft commented that he used to work in this field. There are times when fraternities become unrecognized by the University because of conduct. They can still be recognized by their national organization. This gives the city more control over that building if something were to happen. If the fraternity or sorority has conduct issues and is no longer recognized by the University, they can't allow fifteen people living in that house anymore. They would have to comply with the standard rules of the R-3 (Multi-family Residence) Zoning District.

Moved by Gilpatrick and Kaluva to approve and make recommendation to the City Council to approve the zoning ordinance amendment clarifying the definition and conditional use permissibility for fraternity and sorority houses in the R-3 (Multi-family residence) and Institutional Zoning Districts. Motion approved by unanimous roll call vote.

**PUBLIC HEARING FOR A CHANGE IN THE DISTRICT ZONING MAP FOR THE FOLLOWING AREA TO REZONE FROM R-3 (MULTI-FAMILY RESIDENCE) ZONING DISTRICT TO AN I (INSTITUTIONAL) ZONING DISTRICT, UNDER CHAPTER 19.48 OF THE ZONING ORDINANCE OF THE CITY OF WHITEWATER:**

**THE FOLLOWING DESCRIBED PARCEL, CONSISTING OF LAND LOCATED EAST OF N. PRINCE STREET AND SOUTH OF W. STARIN ROAD, IDENTIFIED AS TAX PARCEL NUMBERS /WUP 00139, /WUP 00131A, /WUP 00131B, /WUP 00132B, AND /WUP 00132C, CITY OF WHITEWATER, WALWORTH COUNTY, WISCONSIN.** Chairperson Wiedenhoeft opened the public hearing for a change in the District Zoning Map for the following area to rezone from R-3(Multi-family Residence) Zoning District to an I (Institutional) Zoning District, under Chapter 19.48 of the Zoning Ordinance of the City of Whitewater: the following described parcel, consisting of land located east of N. Prince Street and south of W. Starin Road, identified as tax parcel numbers /WUP 00139, /WUP 00131A, /WUP 00131B, WUP 00132B, and /WUP 00132C, City of Whitewater, Walworth County, Wisconsin.

Zoning Administrator Bruce Parker stated this is part of the Institutional Zoning District. What is shown on the plan in the highlighted area, used to be residential. The University acquired the land but it was never amended.

Chairperson Wiedenhoeft closed the public hearing.

Moved by Gilpatrick and Kaluva to recommend to the City Council the approval of the rezoning of the parcels /WUP 00139, /WUP 00131A, /WUP 00131B, WUP 00132B, and /WUP 00132C (land located east of N. Prince Street and south of W. Starin Road) from R-3 to Institutional. Motion approved by unanimous roll call vote.

**REVIEW AND MAKE RECOMMENDATION TO THE CITY COUNCIL ON THE HOPKINS PROPERTY (WEST OF HIGHWAY 12) DETACHMENT FROM THE CITY OF WHITEWATER.** Zoning Administrator Bruce Parker explained that last December the city annexed in some property on the west side of Whitewater. The City was working under some property descriptions

that were given to them and had since found out that the 41 acre parcel located west of the bypass area and north of Walworth Ave/Hwy.N/ Hwy. S and east of Warner Road, was included in the description that was annexed in. It was not supposed to be annexed in, so now the City has to detach it.

Moved by Miller and Zaballos to recommend to the City Council to detach the 41 acre parcel of land from the City of Whitewater. Motion approved by unanimous roll call vote.

## **INFORMATION:**

- a. Report from CDA Representative.** Tom Miller reported that the CDA approved to apply for an application for a Brownfield grant for the Five Point gas station.
- b. Report from Tree Commission Representative.** Harriet Kaluva reported there have been some recent streets in the Bluff Road area where 46 large trees are going to be planted. When Caine, Clark and Gault Streets were fixed up, they decided to put in 20 large and 8 small trees. On Fremont and North Streets, they are going to put in 10 small trees.
- c. Report from Park and Recreation Board Representative.** David Stone reported on the completion of the Stone Stable. There will be a dedication on Saturday, November 17<sup>th</sup> at 4 p.m. Also, there was some discussion regarding handicapped playground equipment at Starin Park.
- d. Report from City Council Representative.** Marilyn Kienbaum reported the Council has been working on the budget for the year and thanks to all the construction, taxes will not have to be raised. The mill rate will be raised.
- e. Report from Downtown Whitewater Inc. Board Representative.** Kristine Zaballos reported they have four new board members who will be starting December 4<sup>th</sup>. John Patterson and Jon Kachel are returning along with Jan Bilgen-Craggs and Bruce Birling. This Thursday, the Chamber and Downtown Whitewater will be doing the Downtown Open House which is located in the Main Street Shops from 5:30 – 7:30 p.m. The winter parade is set for November 30<sup>th</sup>. Freezefest will be on February 9<sup>th</sup>.
- f. Possible future agenda items.**  
The Board requested: some clarification on what plans are to be submitted to the Plan Commission; to take a look at parking fees to find out what the comparables are for cities of our size in the adjoining counties; and consideration of a parking ramp.

Chairperson Wiedenhoeft asked if they were officially on the one month meetings.

City Planner Garcia answered he doesn't feel the questions have been answered as to what direction they are going for meeting once a month. He feels tonight's meeting could have been shorter had they had the information and in a timely manner. He still feels if they go to one meeting per month, they would have enough time to look things through and ask questions before the meeting. It was on the agenda tonight but it wasn't resolved.

Zoning Administrator Parker, City Planner Garcia and City Attorney McDonell were going to come back with a proposal.

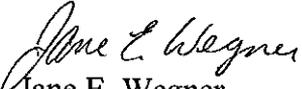
Chairperson Wiedenhoeft would like to see this on the next agenda with a motion made.

The next Plan Commission meeting will be November 26, 2007.

Moved by Miller and Stone to adjourn. Motion was approved by unanimous voice vote to adjourn.

CA-B

Respectfully submitted,

  
Jane E. Wegner

Secretary



Whitewater CDA

**MINUTES**

**Monday, January 25, 2010**  
**4:30 PM – CDA Board of Directors**  
**2<sup>nd</sup> Floor – Lakefront Conference Room**  
**Whitewater Municipal Building**  
**312 W. Whitewater Street**  
**Whitewater, WI 53190**

**1. Call to order and roll call**

Tom Miller called the meeting to order at 4:33PM

Present: Jim Allen, Jeff Knight, Alan Marshall, Tom Miller, Jim Stewart, Marilyn Kienbaum

Absent: Stanek

Others: Doug Saubert, Mary Nimm, Kevin Brunner

**2. Approval of the Agenda**

Jim Allen motioned to approve the agenda. Marshall seconded.

Ayes: Allen, Knight, Marshall, Miller, Stewart, Kienbaum

Nays: None

Absent: Stanek

The motion to approve the agenda passed on a voice vote.

**3. HEARING OF CITIZEN COMMENTS.** *No formal CDA Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.*

**No Citizen Comments**

**4. Approval of the December 15, 2009 Minutes**

Jim Allen motioned to approve the December 15, 2009 Minutes. Marshall seconded.

Ayes: Allen, Knight, Marshall, Miller, Stewart, Kienbaum

Nays: None

Absent: Stanek

The motion to approve the December 15 minutes passed on a voice vote.

**5. Receipt and Filing of the November and December 2009 Financials**

Saubert noted nothing new in the financials and loan payments are current. Saubert also highlighted that something has to be done by year end, December, 2010 for funding the CDA operations in future years. Brunner noted we will have to look into the TID districts for options for continued financing.

Jim Allen motioned to approve the November and December 2009 Financial Reports. Marshall seconded.

Ayes: Allen, Knight, Marshall, Miller, Stanek, Stewart, Kienbaum

Nays: None

Absent: None

The motion to approve the December 15 minutes passed on a voice vote.

**6. Discussion and Possible Action on 2010 Goals and Objectives**

1. Conduct two (2) First-Time Homebuyers education programs.
2. Execute agreement with Keller for spec building construction-Approved in October 2009.
3. Complete design/bid process for Technology Park development: (1) Starin Road extension; (2) Park infrastructure improvements; and (3) Innovation Center by June 10<sup>th</sup>.
4. Begin construction of all Technology Park projects by June 11<sup>th</sup> (completion dates will vary based on schedule).
5. With Tech Park Board, implement marketing plan for Innovation Center and Park by July 1<sup>st</sup>.
6. Perform as lead agency and comply with all EDA grant requirements as contained in Grant Agreement.
7. Complete Dark Fiber extension to Technology Park and other municipal/school buildings as needed by year end.
8. Facilitate retail recruitment efforts with community business stakeholder groups.

9. Facilitate development of a Whitewater Shop Local Campaign with community business stakeholder groups.
10. Conduct 8-10 business retention visits (two-year cycle for program).
11. Investigate/apply for outside funding to acquire/rehab foreclosed homes for single-family use (on-going).
12. Facilitate with Chamber of Commerce quarterly meetings of Whitewater community groups to foster enhanced communication and cooperation.
13. Continue to promote all three (3) CDA loan programs.
14. Develop long-term funding plan/agreement for CDA continuance by May 1<sup>st</sup>.
15. Complete site assessment process/pursue redevelopment of Five Points and Eastgate areas.

Marshall questioned #10 – does this include the large businesses in Whitewater or only business park businesses?

Kienbaum questioned #1 – should we do this if no one signed up for the last two that were offered?

Stewart – not much on TID....

Brunner – TID 6 involved in #14, could include an item #16 **“pursue distressed TID designation for TID 4 and conduct appropriate follow-up actions”**.

Knight – housing prices disparity – can we work with the University to look at what causes the disparity – what is driving the higher price for homes in Whitewater and is there something we can do to help change this perhaps help change the market? Can we add an item #17 **“Housing market analysis to determine disparity in home prices”**.

#### **7. Approval of Lease with CESA 2 as Tenant in the Whitewater Innovation Center**

Brunner – lease has been signed by CESA and was largely negotiated by Bud Gayhart, Bruner and McDonell were also involved. 9,000 sq ft, looking for additional 1,100 sq feet, this would be an amendment to this lease as an addendum. Rents will escalate through the 10 year lease. Common areas will be available for use by CESA. The lease is written so that CESA may use the common area spaces up to 4x/month. CESA will have to pay additional fees if use is over the approved 4x a month. CESA will bring approx 30 employees, they offer training for over 70 school districts in the region and serve up to 100 people a day for training. The Tech Park Board unanimously recommends this to the CDA.

Knight – would like the economic profiler/multiplier on this lease to demonstrate the economic benefit for the community.

Caldwell – is there and what is the PILOT?

Brunner – answered the PILOT is estimated to be \$92,500 yearly – the CESA lease is expected to cover the PILOT. There is still risk in rest of the building and we must work to pre-lease the additional spaces.

Caldwell – will there be a total financial presentation to the CDA on expenses and incomes to find needs for required lease rates on the remaining spaces?

Brunner – can bring sources and uses statement at next CDA agenda.

Al Marshall motioned to approve the lease with CESA subject to EDA approval. Jim Allen seconded.

Ayes: Allen, Knight, Marshall, Miller, Stanek, Stewart, Kienbaum

Nays: None

The motion to approve the Lease passed unanimously on a roll-call vote.

#### **8. Approval of Financial Accounting Agreement with Whitewater University Technology Board for Whitewater University Tech Park and Whitewater Innovation Center**

Brunner – The Tech Park Board talked about the flow of money as it relates to the Innovation Center and the Technology Park. The Innovation Center will be owned by the CDA and the finances should also run through the CDA. The Tech Park Board has been incorporated and will be going through 501c3 but revenues and expenses will have to flow through the CDA. Since the project beginning one year ago, no agreements have been executed to date. Agreements need to be executed so everyone is on the same page. This agreement set's forward the understanding of the relationship of the Tech Park Board and the CDA. TPB & CDA should define roles by virtue of state Statues.

#### Memorandum of Understanding

This memorandum of understanding made this 1<sup>st</sup> day of February, 2010 by and between the Whitewater University Technology Park Board of Directors, hereinafter called Tech Park Board, and the Whitewater Community Development Authority, hereinafter called CDA.

**Witnesseth:**

The Tech Park Board and the CDA have enjoyed a positive working relationship during the past year as the two organizations have jointly developed the Whitewater University Technology Park and Whitewater Innovation Center. The Tech Park Board has been established by the City of Whitewater and the University of Wisconsin-Whitewater to develop the Whitewater University Technology Park through a close alignment of the University's research and educational competencies and the resources of the City. The CDA has been established pursuant to Wisconsin State Statutes 66.1335 by the City for the purpose of carrying out blight elimination, urban renewal programs and projects and housing projects. In addition, the CDA has been charged by the City to act as the agent of the City in planning and carrying out community development programs and activities approved by the City Council under the federal housing and community development act of 1974 as well as to act as agent of the City to carry out the tax increment financing (TIF) planning and programming activities of the City with final approval of TIF budgets and plans by the City Council.

The Tech Park Board and CDA hereby agree to the following:

1. The Tech Park Board and CDA will continue to work collaboratively on the development and construction of the Whitewater Innovation Center as well as public infrastructure improvements needed for the further development of the Whitewater University Technology Park.
2. The CDA will serve as lead agency on the U.S. Economic Development Administration grant that has been awarded to the City for partial financing of the Whitewater University Technology Park infrastructure improvements and construction of the Whitewater Innovation Center. The Tech Park Board and City are co-partners with the CDA on these projects. The CDA will be the owner of the Whitewater innovation Center.
3. The CDA will serve as the fiscal agent for all finances related to the Whitewater University Technology Park and Whitewater Innovation Center project. The Tech Park Board will serve as the lead agency in the planning, organization and marketing for the Whitewater University Technology Park and Whitewater Innovation Center.
4. It is the intent of both the CDA and Tech Park Board that the Tech Park Board will be responsible for the management of the Whitewater Innovation Center, however, the terms and conditions of those responsibilities will be subject to a future agreement between the CDA and Tech Park Board.

Agreed to this 1<sup>st</sup> day of February, 2010.

Whitewater University Technology Park  
Board of Directors

Whitewater Community  
Development Authority

\_\_\_\_\_  
Dr. Richard Telfer, President

\_\_\_\_\_  
Thomas Miller, Chair

\_\_\_\_\_  
Kevin M. Brunner, Secretary

\_\_\_\_\_  
Alan Marshall, Vice Chair

Brunner – this is an initial agreement and there will be a need for much more detailed agreements. We need to do strategic planning on who's doing what, and how and what are the reporting agreements.

Stanek – the MOU perhaps need some wordsmithing. #4 – “take care of everything later”. Need clean delineation as to roles of each organization.

Stewart – the board had discussed having a staff person and had a date for the start however financing of that person has not yet been decided upon.

Brunner – this agreement sets the tone that the CDA is the lead agency.

Al Stanek motioned to approve the lease with CESA subject to EDA approval. Jeff Knight seconded.

Ayes: Allen, Knight, Marshall, Miller, Stanek, Stewart, Kienbaum

Nays: None

The motion to approve the Lease passed unanimously on a roll-call vote.

**9. Discussion and Possible Action on TID Benefit PowerPoint**

Nimm – stated there was a request by the board to have a PowerPoint illustrating the benefit of the TID(s) to the community. She noted that she and Brunner put together the slide show and that Brunner gave the presentation at a chamber luncheon and had a positive response from those in attendance.

Knight – add value to school district and community to slides?

**10. Discussion and Possible Action on Contract with Equity Commercial Real Estate**

Nimm noted that she is bringing back to the board the listing contract with Equity Commercial. The form has changed since the first edition in December so some of the language changed and she is asking for the board's approval on this version.

Caldwell – please add **“commission due only on completion of a sale or closing”** at line 261. Correct Typo on line 260.

Stanek – initial line 139 - designated agency gives best representation for both buyer and seller

Caldwell – initial line 140 - line 140 gives you a broader exposure

Knight – motioned to approve the listing contract with Equity Commercial Real Estate to include the changes listed above to line 260, correction of typo on line 260 and selecting line 140.

Marshall seconded.

Ayes: Allen, Knight, Marshall, Miller, Stanek, Kienbaum

Nays: Stewart

Absent: None

The motion to approve the listing contract with the changes as noted passed on a 6-1 roll-call vote.

**11. Website Review**

Nimm was prepared to review the website with the board. Allen suggested, that in the essence of time, the board review the website at home and bring suggestions for change to the next meeting.

**12. CDA Coordinator**

- a. **Site Search Request(s)** – Nimm reported that there were no searches requests since the last meeting
- b. **Buy Local** – Nimm reported that she is working with a group to start a buy local campaign. She noted that they have met monthly, have had two meetings, and that at the last meeting they met with Richard Brooks from the Dane County Buy Local program.
- c. **The Retail Coach** – Nimm reported that at the start of the Buy Local Campaign meetings she contacted the retail coach searching for statistics as they relate to \$1 spent locally versus \$1 spent in a “big box”. The Retail Coach didn’t have an answer to that question, but did offer to do an in-depth study on the retail potential for the Downtown Whitewater district. The study has been completed, but Nimm feels it is missing a few elements and would like those included prior to sharing the information with the community.

**13. Future Agenda Items**

Tech park/CDA relationship

**14. 2010 Meeting Schedule**

January 25, 2010	July 26, 2010
February 22, 2010	August 23, 2010
March 22, 2010	September 27, 2010
April 26, 2010	October 25, 2010
May 24, 2010	November 15, 2010
June 28, 2010	December 20, 2010

**15. Adjourn to closed session at approximately 5:30PM to reconvene at approximately 5:45PM Per Wisconsin Statute 19.85 (1)(e). Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session**

- a. **East Main Street Property Acquisition as it Relates to Brownfield’s and the Site Assessment Grant Application(s)**

Tom Miller motioned to adjourn to closed session at 6:05PM. Allen seconded.

Present: Allen, Knight, Marshall, Miller, Stanek, Stewart, Kienbaum

Absent: None

Others: Mary Nimm, Kevin Brunner

**16. Reconvene**

Jim Allen motioned to reconvene at 6:18PM. Marshall seconded.

Present: Allen, Knight, Marshall, Miller, Stanek, Stewart, Kienbaum

Absent: None

Others: Mary Nimm, Kevin Brunner

- 17. Discussion and Possible Action on East Main Street Property Acquisition as it Relates to Brownfield's and the Site Assessment Grant Application(s)**  
NO action taken

**18. Adjourn**

Tom Miller motioned to adjourn at 6:19PM. Stewart seconded.

*Respectfully Submitted,*

*Mary S Nimm  
Coordinator*

Report Criteria:

Detail report.  
Invoices with totals above \$0.00 included.  
Paid and unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
<b>ADVANTAGE SAFETY PLUS</b>						
4998	ADVANTAGE SAFETY PLUS	1747	GEN BLDG/OPERATING SUPPLI	03/03/2010	151.95	100-51600-340
4998	ADVANTAGE SAFETY PLUS	1747	LIBRARY/OPERATING SUPPLIE	03/03/2010	31.39	100-55111-355
4998	ADVANTAGE SAFETY PLUS	1747	LIBRARY/BLDG MAINTENANCE	03/03/2010	28.76	100-55111-355
4998	ADVANTAGE SAFETY PLUS	1855	GEN BLDG/OPERATING SUPPLI	03/03/2010	86.28	100-51600-340
4998	ADVANTAGE SAFETY PLUS	1896	WATER/PAPER TOWEL ROLLS	03/03/2010	152.46	610-61935-350
Total ADVANTAGE SAFETY PLUS:					450.84	
<b>AIRGAS NORTH CENTRAL</b>						
4760	AIRGAS NORTH CENTRAL	105333891	WASTEWATER/OPERATING SU	03/03/2010	39.19	620-62840-340
4760	AIRGAS NORTH CENTRAL	105334189	STREET/SHOP SUPPLIES	03/03/2010	30.20	100-53230-340
4760	AIRGAS NORTH CENTRAL	105365227	STREET/SHOP SUPPLIES	03/03/2010	272.61	100-53230-340
4760	AIRGAS NORTH CENTRAL	105369226	STREET/SHOP SUPPLIES	03/03/2010	56.30	100-53230-340
Total AIRGAS NORTH CENTRAL:					398.30	
<b>AIRWAY SALES INC</b>						
641	AIRWAY SALES INC	15741	SAFETY BLDG/HEAT & AIR	03/03/2010	384.70	100-51600-244
641	AIRWAY SALES INC	15741	ARMORY/HEAT & AIR	03/03/2010	126.96	100-51600-244
Total AIRWAY SALES INC:					511.66	
<b>ALL PEST CONTROL</b>						
4613	ALL PEST CONTROL	2-14-2010	COMMUNITY BLDG/ PEST CON	03/03/2010	52.00	100-51600-245
Total ALL PEST CONTROL:					52.00	
<b>ALLIANCE FOR INNOVATION</b>						
5679	ALLIANCE FOR INNOVATION	1721382599	GEN ADMN/SOCIAL MEDIA WE	03/03/2010	66.33	100-51400-154
5679	ALLIANCE FOR INNOVATION	1721382599	IT/SOCIAL MEDIA WEBINAR	03/03/2010	66.33	100-51450-154
5679	ALLIANCE FOR INNOVATION	1721382599	CABLE/SOCIAL MEDIA WEBINA	03/03/2010	66.34	200-55110-154
Total ALLIANCE FOR INNOVATION:					199.00	
<b>ALLIANCE GROUP INC</b>						
4204	ALLIANCE GROUP INC	072017	ARMORY/HEAT & AIR	03/03/2010	35.00	100-51600-244
4204	ALLIANCE GROUP INC	072017	LIBRARY/HEAT & AIR	03/03/2010	35.00	100-55111-244
4204	ALLIANCE GROUP INC	072017	GEN BLDG/HEAT & AIR	03/03/2010	35.00	100-51600-244
Total ALLIANCE GROUP INC:					105.00	
<b>ANICH LUMBER &amp; HARDWAR CO, AJ</b>						
1601	ANICH LUMBER & HARDWAR C	12506A	STREET/BARRICADE MATERIA	03/03/2010	270.16	100-53300-354
1601	ANICH LUMBER & HARDWAR C	34217S	STREET/BARRICADE MATERIA	03/03/2010	73.20	100-53300-354
Total ANICH LUMBER & HARDWAR CO, AJ:					343.36	
<b>AROPA DESIGNS</b>						
880	AROPA DESIGNS	29871	REC/STAFF SWEATSHIRTS	03/03/2010	315.50	100-55300-341
880	AROPA DESIGNS	29915	CELEBRATIONS/EMPLOYEE YO	03/03/2010	28.00	100-55320-790

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total AROPA DESIGNS:					343.50	
<b>AT&amp;T</b>						
3917	AT&T	3917-030310	CITY/LOCAL CALLS	03/03/2010	742.68	100-51600-225
3917	AT&T	3917-030310	STREET/INTERNET	03/03/2010	60.00	100-51600-225
3917	AT&T	3917-030310	WATER/INTERNET	03/03/2010	60.00	610-61921-310
Total AT&T:					862.68	
<b>AT&amp;T LONG DISTANCE</b>						
4746	AT&T LONG DISTANCE	4746-030310	SAFETY BLDG/LONG DISTANC	03/03/2010	113.76	100-51600-225
4746	AT&T LONG DISTANCE	4746-030310	CABLE/LONG DISTANCE	03/03/2010	13.49	200-55110-225
Total AT&T LONG DISTANCE:					127.25	
<b>BADGER WELDING SUPPLIES INC</b>						
4990	BADGER WELDING SUPPLIES I	2935664	STREET/WELDING SUPPLIES	03/03/2010	82.73	100-53230-352
4990	BADGER WELDING SUPPLIES I	2936220	STREET/WELDING SUPPLIES	03/03/2010	26.63	100-53230-352
4990	BADGER WELDING SUPPLIES I	2936525	STREET/WELDING SUPPLIES	03/03/2010	165.83	100-53230-352
Total BADGER WELDING SUPPLIES INC:					275.19	
<b>BAIRD &amp; CO, ROBERT W</b>						
3681	BAIRD & CO, ROBERT W	\$1230000	WASTEWATER/REFUNDING BO	03/03/2010	7,500.00	620-62810-670
3681	BAIRD & CO, ROBERT W	\$1230000	WASTEWATER/REFUNDING BO	03/03/2010	1,750.00	620-62810-670
3681	BAIRD & CO, ROBERT W	\$2135000	DEBT SVC/REFUNDING BOND	03/03/2010	5,266.50	300-58000-900
3681	BAIRD & CO, ROBERT W	\$2135000	WATER/REFUNDING BOND FEE	03/03/2010	1,506.75	610-61950-650
3681	BAIRD & CO, ROBERT W	\$2135000	WASTEWATER/REFUNDING BO	03/03/2010	726.75	620-62810-670
3681	BAIRD & CO, ROBERT W	\$2135000	DEBT SVC/REFUNDING BOND	03/03/2010	702.20	300-58000-900
3681	BAIRD & CO, ROBERT W	\$2135000	WATER/REFUNDING BOND STA	03/03/2010	200.90	610-61950-650
3681	BAIRD & CO, ROBERT W	\$2135000	WASTEWATER/REFUNDING BO	03/03/2010	96.90	620-62810-670
3681	BAIRD & CO, ROBERT W	\$3290000	TID 4/BUILD AMERICA BOND FE	03/03/2010	7,500.00	440-57663-670
3681	BAIRD & CO, ROBERT W	\$3290000	TID 4/BUILD AMERICA BOND ST	03/03/2010	1,000.00	440-57663-670
Total BAIRD & CO, ROBERT W:					26,250.00	
<b>BANDT COMMUNICATIONS INC</b>						
858	BANDT COMMUNICATIONS INC	63744	STREET/OFFICE RADIO REPAI	03/03/2010	220.40	100-53300-310
Total BANDT COMMUNICATIONS INC:					220.40	
<b>BATTERIES PLUS</b>						
3069	BATTERIES PLUS	226848	FIRE/OPERATING SUPPLIES	03/03/2010	605.29	100-52200-340
3069	BATTERIES PLUS	226955	FIRE/CREDIT	03/03/2010	197.96	100-52200-340
Total BATTERIES PLUS :					407.33	
<b>BEST TEST AUTO ELECTRIC</b>						
457	BEST TEST AUTO ELECTRIC	C20793	STREET/REPAIR PARTS	03/03/2010	75.00	100-53230-352
457	BEST TEST AUTO ELECTRIC	C20805	STREET/REPAIR PARTS	03/03/2010	55.00	100-53230-352
Total BEST TEST AUTO ELECTRIC:					130.00	
<b>BILLER PRESS</b>						
895	BILLER PRESS	BP-5346	POLICE CSO/PARKING SVC	03/03/2010	736.82	100-52140-360

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total BILLER PRESS:					736.82	
<b>BOBCAT OF JANESVILLE</b>						
5314	BOBCAT OF JANESVILLE	19539	STREET/REPAIR PARTS.	03/03/2010	956.66	100-53230-352
5314	BOBCAT OF JANESVILLE	35115	STREET/REPAIR PARTS.	03/03/2010	220.97	100-53230-352
Total BOBCAT OF JANESVILLE:					1,177.63	
<b>BROVOLD REFRIGERATION SVC</b>						
5766	BROVOLD REFRIGERATION SV	13193	STREET/SHOP REPAIR	03/03/2010	539.00	100-53230-340
Total BROVOLD REFRIGERATION SVC:					539.00	
<b>BURNS INDUSTRIAL</b>						
28	BURNS INDUSTRIAL	350141	STREET/REPAIR PARTS	03/03/2010	112.53	100-53230-352
28	BURNS INDUSTRIAL	350175	WASTEWATER/REPAIRS & SUP	03/03/2010	19.52	620-62850-357
28	BURNS INDUSTRIAL	350672	STREET/REPAIR PARTS	03/03/2010	8.79	100-53230-352
Total BURNS INDUSTRIAL:					140.84	
<b>COACH S LOCKER, THE</b>						
495	COACH S LOCKER, THE	204853	REC/EQUIPMENT	03/03/2010	732.00	100-55300-341
495	COACH S LOCKER, THE	525712	REC/BASEBALL & SOFTBALL E	03/03/2010	1,598.60	100-23104
495	COACH S LOCKER, THE	525712	REC/BASEBALL & SOFTBALL E	03/03/2010	220.35	100-55300-341
Total COACH S LOCKER, THE:					2,550.95	
<b>COBURN CO INC</b>						
210	COBURN CO INC	238082	PARKS/MAINTENANCE SUPPLI	03/03/2010	30.00	100-53270-359
Total COBURN CO INC:					30.00	
<b>CONNORS SUPPLY INC</b>						
5651	CONNORS SUPPLY INC	24372	GEN BLDG/HEAT & AIR	03/03/2010	153.33	100-51600-244
Total CONNORS SUPPLY INC:					153.33	
<b>DALEE WATER CONDITIONING</b>						
208	DALEE WATER CONDITIONING	208-030310	STREET/OPERATING SUPPLIE	03/03/2010	25.00	100-53230-340
Total DALEE WATER CONDITIONING:					25.00	
<b>DIESEL SPECIALIST OF MADISON</b>						
482	DIESEL SPECIALIST OF MADIS	1844	STREET/VEHICLE REPAIRS	03/03/2010	2,042.96	100-53230-352
Total DIESEL SPECIALIST OF MADISON:					2,042.96	
<b>DIVERSIFIED BENEFIT SVC INC</b>						
4192	DIVERSIFIED BENEFIT SVC INC	107934	FINANCE/FEB SVC	03/03/2010	488.76	100-51500-217
Total DIVERSIFIED BENEFIT SVC INC:					488.76	
<b>EAGLE ENGRAVING</b>						
3467	EAGLE ENGRAVING	2010-331	CRASH CREW/OPERATING SU	03/03/2010	29.10	100-52210-340
Total EAGLE ENGRAVING:					29.10	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
<b>EGGIMANN MOTOR &amp; EQUIP SALES</b>						
576	EGGIMANN MOTOR & EQUIP S	1200290080	STREET/PLOW REPAIR PARTS	03/03/2010	450.14	100-53320-353
576	EGGIMANN MOTOR & EQUIP S	1200330026	STREET/PLOW REPAIR PARTS	03/03/2010	182.52	100-53320-353
576	EGGIMANN MOTOR & EQUIP S	1200430025	STREET/PLOW REPAIR PARTS	03/03/2010	15.31	100-53320-353
576	EGGIMANN MOTOR & EQUIP S	1200430029	STREET/PLOW REPAIR PARTS	03/03/2010	74.59	100-53320-353
576	EGGIMANN MOTOR & EQUIP S	1293070007	STREET/PLOW REPAIR PARTS	03/03/2010	299.50	100-53320-353
576	EGGIMANN MOTOR & EQUIP S	1293140017	STREET/PLOW REPAIR PARTS	03/03/2010	36.44	100-53320-353
Total EGGIMANN MOTOR & EQUIP SALES:					1,058.50	
<b>EHLERS &amp; ASSOCIATES INC</b>						
3442	EHLERS & ASSOCIATES INC	FEB 4, 2010	GEN ADMN/SEMINAR	03/03/2010	185.00	100-51400-154
Total EHLERS & ASSOCIATES INC:					185.00	
<b>EMERGENCY MEDICAL PRODUCTS</b>						
115	EMERGENCY MEDICAL PRODU	1250232	RESCUE/OPERATING SUPPLIE	03/03/2010	640.78	100-52300-340
115	EMERGENCY MEDICAL PRODU	1251198	RESCUE/OPERATING SUPPLIE	03/03/2010	247.00	100-52300-340
115	EMERGENCY MEDICAL PRODU	RGA023870	RESCUE/CREDIT	03/03/2010	83.72-	100-52300-340
Total EMERGENCY MEDICAL PRODUCTS:					804.06	
<b>EPPSTEIN UHEN ARCHITECTS</b>						
5549	EPPSTEIN UHEN ARCHITECTS	54573	INNOVATION CTR/LEED #2	03/03/2010	2,636.59	440-57663-830
5549	EPPSTEIN UHEN ARCHITECTS	54574	INNOVATION CTR/CENTER DE	03/03/2010	42,079.84	440-57663-830
Total EPPSTEIN UHEN ARCHITECTS:					44,716.43	
<b>FARM PLAN CORPORATION</b>						
17	FARM PLAN CORPORATION	040139	PARKS/REPAIR PARTS	03/03/2010	24.00	100-53270-242
17	FARM PLAN CORPORATION	040180	PARKS/REPAIR MATERIALS	03/03/2010	18.98	100-53270-242
17	FARM PLAN CORPORATION	323783	PARKS/REPAIR PARTS	03/03/2010	54.81	100-53270-242
Total FARM PLAN CORPORATION:					97.79	
<b>FORT HEALTHCARE</b>						
151	FORT HEALTHCARE	02-25-10	POLICE PATROL/PROFESSION	03/03/2010	134.70	100-52110-219
Total FORT HEALTHCARE:					134.70	
<b>FORT HEALTHCARE EAP</b>						
3437	FORT HEALTHCARE EAP	2010 EAP	COURT/EMPLOYEE ASSISTAN	03/03/2010	5.25	100-51200-153
3437	FORT HEALTHCARE EAP	2010 EAP	GEN ADMN/EMPLOYEE ASSIST	03/03/2010	26.25	100-51400-153
3437	FORT HEALTHCARE EAP	2010 EAP	FINANCE/EMPLOYEE ASSISTA	03/03/2010	26.25	100-51500-153
3437	FORT HEALTHCARE EAP	2010 EAP	GEN BLDG/EMPLOYEE ASSIST	03/03/2010	15.75	100-51600-153
3437	FORT HEALTHCARE EAP	2010 EAP	POLICE ADMN/EMPLOYEE ASSI	03/03/2010	31.50	100-52100-153
3437	FORT HEALTHCARE EAP	2010 EAP	POLICE PATROL/EMPLOYEE A	03/03/2010	89.25	100-52110-153
3437	FORT HEALTHCARE EAP	2010 EAP	POLICE INV/EMPLOYEE ASSIST	03/03/2010	21.00	100-52120-153
3437	FORT HEALTHCARE EAP	2010 EAP	NEIGHBORHOOD SVC/EMPLOY	03/03/2010	5.25	100-52400-153
3437	FORT HEALTHCARE EAP	2010 EAP	DISPATCH/EMPLOYEE ASSIST	03/03/2010	47.25	100-52600-153
3437	FORT HEALTHCARE EAP	2010 EAP	DPW/EMPLOYEE ASSISTANCE	03/03/2010	10.50	100-53100-153
3437	FORT HEALTHCARE EAP	2010 EAP	PARKS/EMPLOYEE ASSISTANC	03/03/2010	10.50	100-53270-153
3437	FORT HEALTHCARE EAP	2010 EAP	STREET/EMPLOYEE ASSISTAN	03/03/2010	42.00	100-53300-153
3437	FORT HEALTHCARE EAP	2010 EAP	LIBRARY/EMPLOYEE ASSISTA	03/03/2010	68.25	100-55110-153
3437	FORT HEALTHCARE EAP	2010 EAP	REC/EMPLOYEE ASSISTANCE	03/03/2010	10.50	100-55210-153
3437	FORT HEALTHCARE EAP	2010 EAP	SENIORS/EMPLOYEE ASSISTA	03/03/2010	5.25	100-55310-153
3437	FORT HEALTHCARE EAP	2010 EAP	PLANNING/EMPLOYEES ASSIS	03/03/2010	5.25	100-56300-153
3437	FORT HEALTHCARE EAP	2010 EAP	CDA/EMPLOYEE ASSISTANCE	03/03/2010	5.25	900-56500-151

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
3437	FORT HEALTHCARE EAP	2010 EAP	CABLE/EMPLOYEE ASSISTANC	03/03/2010	5.25	200-55110-153
3437	FORT HEALTHCARE EAP	2010 EAP	ER/EMPLOYEE ASSISTANCE P	03/03/2010	21.00	610-61926-150
3437	FORT HEALTHCARE EAP	2010 EAP	WASTEWATER/EMPLOYEE ASS	03/03/2010	42.00	620-62820-120
Total FORT HEALTHCARE EAP :					493.50	
<b>GEN COMMUNICATIONS INC</b>						
119	GEN COMMUNICATIONS INC	179189	RESCUE/BATTERIES	03/03/2010	160.00	100-52300-340
Total GEN COMMUNICATIONS INC:					160.00	
<b>GMA PRINTING INC</b>						
1920	GMA PRINTING INC	R035051	CDA/FLASH DRIVES	03/03/2010	1,545.89	900-56500-223
Total GMA PRINTING INC:					1,545.89	
<b>GRAINGER</b>						
367	GRAINGER	9183817239	SAFETY BLDG/BLDG MAINTEN	03/03/2010	60.12	100-51600-355
367	GRAINGER	9183817239	LIBRARY/BLDG MAINTENANCE	03/03/2010	128.52	100-55111-355
367	GRAINGER	9186041191	GEN BLDG/BLDG MAINTENANC	03/03/2010	54.92	100-51600-355
Total GRAINGER:					243.56	
<b>HACH CO</b>						
211	HACH CO	6600260	WATER/TESTING REAGENTS	03/03/2010	58.73	610-61630-341
Total HACH CO:					58.73	
<b>HD SUPPLY WATERWORKS LTD</b>						
2459	HD SUPPLY WATERWORKS LT	0099117	WATER/CHEMICAL BARRELS	03/03/2010	381.32	610-61630-350
2459	HD SUPPLY WATERWORKS LT	9989294	WATER/CHLORINE SCALES	03/03/2010	11,734.05	610-61936-810
Total HD SUPPLY WATERWORKS LTD:					12,115.37	
<b>HOTSY CLEANING SYSTEMS INC</b>						
1049	HOTSY CLEANING SYSTEMS IN	0069761	STREET/WASHER REPAIR	03/03/2010	174.50	100-53230-352
Total HOTSY CLEANING SYSTEMS INC:					174.50	
<b>JAMES IMAGING SYSTEMS INC</b>						
4617	JAMES IMAGING SYSTEMS INC	9371036	GEN ADMN/COPIER	03/03/2010	383.13	100-51450-244
4617	JAMES IMAGING SYSTEMS INC	9371036	GEN ADMN/COPIES	03/03/2010	83.00	100-51400-310
4617	JAMES IMAGING SYSTEMS INC	9371036	COUNCIL/COPIES	03/03/2010	124.50	100-51100-310
Total JAMES IMAGING SYSTEMS INC:					590.63	
<b>JOHNSON BLOCK &amp; CO INC</b>						
4258	JOHNSON BLOCK & CO INC	00112209	FINANCE/09 AUDIT	03/03/2010	1,200.00	100-51500-214
4258	JOHNSON BLOCK & CO INC	00112209	WATER/09 AUDIT	03/03/2010	450.00	610-61923-210
4258	JOHNSON BLOCK & CO INC	00112209	WASTEWATER/09 AUDIT	03/03/2010	450.00	620-62810-219
4258	JOHNSON BLOCK & CO INC	00112209	STORMWATER/09 AUDIT	03/03/2010	200.00	630-63300-214
Total JOHNSON BLOCK & CO INC:					2,300.00	
<b>KB SHARPENING SERVICES</b>						
110	KB SHARPENING SERVICES	55549	PARKS/BLADE SHARPENING	03/03/2010	46.40	100-53270-242

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total KB SHARPENING SERVICES:					46.40	
<b>KETTERHAGEN MOTORS INC</b>						
111	KETTERHAGEN MOTORS INC	C78967	RESCUE/2009 FORD	03/03/2010	96.90	100-52300-241
111	KETTERHAGEN MOTORS INC	T17733	WATER/TRUCK #11 MIRROR	03/03/2010	185.60	610-61933-340
111	KETTERHAGEN MOTORS INC	W78578	RESCUE/2005 FORD	03/03/2010	100.00	100-52300-241
Total KETTERHAGEN MOTORS INC:					382.50	
<b>KUTZ DRAINAGE LLC</b>						
5761	KUTZ DRAINAGE LLC	30	STARIN RD/LOCATE TILE KUTZ	03/03/2010	126.60	440-57663-840
Total KUTZ DRAINAGE LLC:					126.60	
<b>LAB SAFETY SUPPLY INC</b>						
368	LAB SAFETY SUPPLY INC	1014835886	STREET/SHOP OPERATAING S	03/03/2010	264.64	100-53230-340
368	LAB SAFETY SUPPLY INC	1014863698	WATER/BOOTS & TRAFFIC CO	03/03/2010	319.34	610-61651-350
Total LAB SAFETY SUPPLY INC:					583.98	
<b>LAKESIDE INTERNATIONAL TRUCKS</b>						
3670	LAKESIDE INTERNATIONAL TR	72537	STREET/REPAIR PARTS	03/03/2010	308.96	100-53230-352
3670	LAKESIDE INTERNATIONAL TR	72746	STREET/REPAIR PARTS	03/03/2010	116.48	100-53230-352
3670	LAKESIDE INTERNATIONAL TR	CM71362	STREET/CREDIT	03/03/2010	117.21	100-53230-352
3670	LAKESIDE INTERNATIONAL TR	CM72746	STREET/CREDIT	03/03/2010	116.48	100-53230-352
Total LAKESIDE INTERNATIONAL TRUCKS:					191.75	
<b>LAWSON PRODUCTS INC</b>						
289	LAWSON PRODUCTS INC	8884066	WASTEWATER/OPERATING SU	03/03/2010	45.17	620-62840-340
Total LAWSON PRODUCTS INC:					45.17	
<b>LEXIPOL LLC</b>						
5682	LEXIPOL LLC	3956	POLICE PATROL/TRAINING	03/03/2010	2,900.00	100-52110-154
Total LEXIPOL LLC:					2,900.00	
<b>LINCOLN CONTRACTORS SUPP INC</b>						
165	LINCOLN CONTRACTORS SUP	1148580	STREET/REPAIR PARTS	03/03/2010	187.18	100-53230-352
165	LINCOLN CONTRACTORS SUP	1149150	STREET/REPAIR PARTS	03/03/2010	48.51	100-53230-352
Total LINCOLN CONTRACTORS SUPP INC:					235.69	
<b>LINDNER &amp; MARSACK SC</b>						
79	LINDNER & MARSACK SC	53566	LEGAL/JAN SVC	03/03/2010	61.50	100-51300-219
Total LINDNER & MARSACK SC:					61.50	
<b>LOWRICH PROPERTY MAINTENANCE</b>						
5708	LOWRICH PROPERTY MAINTEN	1072	NEIGHBORHOOD SVC/SHOVEL	03/03/2010	470.00	100-52400-219
5708	LOWRICH PROPERTY MAINTEN	1073	NEIGHBORHOOD SVC/SHOVEL	03/03/2010	367.50	100-52400-219
5708	LOWRICH PROPERTY MAINTEN	1074	NEIGHBORHOOD SVC/SHOVEL	03/03/2010	315.00	100-52400-219
5708	LOWRICH PROPERTY MAINTEN	1075	NEIGHBORHOOD SVC/SNOW R	03/03/2010	402.50	100-52400-219
Total LOWRICH PROPERTY MAINTENANCE:					1,555.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
<b>LYCON INC</b>						
55	LYCON INC	0644217-IN	TID 4/BRIDGE & NORTH ST	03/03/2010	75.00	440-57663-832
Total LYCON INC:					75.00	
<b>MACTEK SYSTEMS INC</b>						
4227	MACTEK SYSTEMS INC	1274	POLICE DISPATCH/CONTRACT	03/03/2010	2,272.00	100-52600-295
Total MACTEK SYSTEMS INC:					2,272.00	
<b>MENARDS - JOHNSON CREEK</b>						
2534	MENARDS - JOHNSON CREEK	92219	WATER/BLDG IMPROVEMENTS	03/03/2010	165.70	610-61935-350
2534	MENARDS - JOHNSON CREEK	97229	WATER/BLDG IMPROVEMENTS	03/03/2010	349.32	610-61935-350
Total MENARDS - JOHNSON CREEK:					515.02	
<b>METAFIN SUPPLY CO</b>						
5762	METAFIN SUPPLY CO	23022	WATER/TRANSFER PUMP PAR	03/03/2010	54.97	610-61630-350
Total METAFIN SUPPLY CO:					54.97	
<b>MILPORT ENTERPRISES INC</b>						
1408	MILPORT ENTERPRISES INC	193931	WATER/CHEMICALS	03/03/2010	627.00	610-61630-341
1408	MILPORT ENTERPRISES INC	194035	WASTEWATER/CHEMICALS	03/03/2010	5,217.73	620-62840-341
1408	MILPORT ENTERPRISES INC	194387	WATER/CHEMICALS	03/03/2010	1,498.57	610-61630-341
Total MILPORT ENTERPRISES INC:					7,343.30	
<b>MOODY'S INVESTORS SERVICE</b>						
824	MOODY'S INVESTORS SERVIC	F1736697-000	TID 4/BUILD AMERICA BOND	03/03/2010	3,350.00	440-57663-670
824	MOODY'S INVESTORS SERVIC	F1736697-000	DEBT SVC/GEN REFUNDING B	03/03/2010	2,352.37	300-58000-900
824	MOODY'S INVESTORS SERVIC	F1736697-000	WATER/GEN REFUNDING BON	03/03/2010	673.02	610-61950-650
824	MOODY'S INVESTORS SERVIC	F1736697-000	WASTEWATER/GEN REFUNDIN	03/03/2010	324.61	620-62810-670
Total MOODY'S INVESTORS SERVICE:					6,700.00	
<b>MORGAN BIRGE &amp; ASSOCIATES INC</b>						
4591	MORGAN BIRGE & ASSOCIATE	MC0023976	WASTEWATER/PHONE	03/03/2010	75.00	620-62820-225
Total MORGAN BIRGE & ASSOCIATES INC:					75.00	
<b>MUNICIPAL CODE CORPORATION</b>						
5550	MUNICIPAL CODE CORPORATI	120239	LEGAL/CODES ON INTERNET	03/03/2010	500.00	100-51100-295
Total MUNICIPAL CODE CORPORATION:					500.00	
<b>NASCO</b>						
148	NASCO	458833	WASTEWATER/OPERATAING S	03/03/2010	92.86	620-62840-340
Total NASCO:					92.86	
<b>NATIONAL BUSINESS FURNITURE LLC</b>						
1052	NATIONAL BUSINESS FURNITU	ZJ718845-INW	POLICE DONATIONS/VISUAL B	03/03/2010	1,077.00	295-48500-52
1052	NATIONAL BUSINESS FURNITU	ZJ718845-LUD	POLICE DONATIONS/LOBBY M	03/03/2010	106.59	295-48500-52
Total NATIONAL BUSINESS FURNITURE LLC:					1,183.59	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
<b>NCL OF WISCONSIN</b>						
369	NCL OF WISCONSIN	265044	WASTEWATER/LAB SUPPLIES	03/03/2010	1,142.19	620-62870-340
Total NCL OF WISCONSIN:					1,142.19	
<b>NORTH WOODS SUPERIOR CHEMICAL</b>						
1947	NORTH WOODS SUPERIOR CH	18741	GEN BLDG/OPERATING SUPPLI	03/03/2010	56.92	100-51600-340
Total NORTH WOODS SUPERIOR CHEMICAL:					56.92	
<b>OFFICE DEPOT</b>						
4146	OFFICE DEPOT	507430343001	POLICE ADMN/OFFICE SUPPLI	03/03/2010	446.98	100-52100-310
4146	OFFICE DEPOT	507480614001	WASTEWATER/OFFICE SUPPLI	03/03/2010	85.01	620-62820-310
4146	OFFICE DEPOT	507480982001	WASTEWATER/OFFICE SUPPLI	03/03/2010	9.99	620-62820-310
4146	OFFICE DEPOT	507594492001	POLICE ADMN/OFFICE SUPPLI	03/03/2010	33.76	100-52100-310
4146	OFFICE DEPOT	509117982001	POLICE DONATIONS/CABINET	03/03/2010	211.98	295-46500-52
Total OFFICE DEPOT:					787.72	
<b>OPPORTUNITIES INC</b>						
5162	OPPORTUNITIES INC	02-105	POLICE PATROL/TRAINING	03/03/2010	7.00	100-52110-154
Total OPPORTUNITIES INC:					7.00	
<b>PETE'S TIRE SERVICE</b>						
727	PETE'S TIRE SERVICE	43429	WATER/TRUCK #12 REPAIRS	03/03/2010	563.84	610-61933-340
Total PETE'S TIRE SERVICE:					563.84	
<b>PIONEER PRODUCTS INC</b>						
4674	PIONEER PRODUCTS INC	SI-56084	FIRE/OPERATING SUPPLIES	03/03/2010	444.82	100-52200-340
Total PIONEER PRODUCTS INC:					444.82	
<b>PMI</b>						
5492	PMI	0215231	RESCUE/OPERATING SUPPLIE	03/03/2010	311.84	100-52300-340
5492	PMI	0216166	RESCUE/OPERATING SUPPLIE	03/03/2010	939.14	100-52300-340
5492	PMI	0216406	RESCUE/OPERATING SUPPLIE	03/03/2010	86.00	100-52300-340
Total PMI:					1,336.98	
<b>PROPERTY SERVICES INC</b>						
232	PROPERTY SERVICES INC	3645	NEIGHBORHOOD SVC/SNOW R	03/03/2010	166.25	100-52400-219
Total PROPERTY SERVICES INC:					166.25	
<b>QUARLES &amp; BRADY</b>						
529	QUARLES & BRADY	1557931	WASTEWATER/SEWER REVEN	03/03/2010	10,000.00	620-62810-670
529	QUARLES & BRADY	1557933	TID 4/BUILD AMERICA BOND FE	03/03/2010	12,000.00	440-57663-670
529	QUARLES & BRADY	1557934	DEBT SVC/212.135 GEN OB RE	03/03/2010	3,862.10	300-58000-900
529	QUARLES & BRADY	1557934	WATER/2.135 GEN OB REFUND	03/03/2010	1,104.95	610-61950-650
529	QUARLES & BRADY	1557934	WASTEWATER/GEN OB REFUN	03/03/2010	532.95	620-62810-670
Total QUARLES & BRADY:					27,500.00	
<b>QUILL CORPORATION</b>						
445	QUILL CORPORATION	3388320	GEN ADMN/OFFICE SUPPLIES	03/03/2010	6.27	100-51400-310
445	QUILL CORPORATION	3388320	DPW/OFFICE SUPPLIES	03/03/2010	6.27	100-53100-310

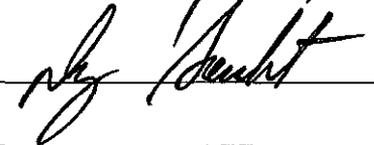
Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
445	QUILL CORPORATION	3388320	REC/OFFICE SUPPLIES	03/03/2010	5.37	100-55210-310
445	QUILL CORPORATION	3388320	REC/COLORED PAPER	03/03/2010	132.60	100-55210-310
445	QUILL CORPORATION	3388320	DPW/OFFICE SUPPLIES	03/03/2010	88.05	100-53100-310
445	QUILL CORPORATION	3418654	FINANCE/OFFICE SUPPLIES	03/03/2010	43.19	100-51500-310
445	QUILL CORPORATION	3471313	DPW/GIS PAPER	03/03/2010	80.20	100-53100-215
Total QUILL CORPORATION:					361.95	
<b>R &amp; R INSURANCE SERVICES INC</b>						
1492	R & R INSURANCE SERVICES I	899450	GEN/GEN LIABILITY	03/03/2010	2,628.75	100-51540-513
1492	R & R INSURANCE SERVICES I	899450	GEN/PUBLIC OFFICE LIABILITY	03/03/2010	1,003.50	100-51540-513
1492	R & R INSURANCE SERVICES I	899450	GEN/POLICE PROFESSIONAL	03/03/2010	1,310.00	100-51540-514
1492	R & R INSURANCE SERVICES I	899450	GEN/AUTO LIABILITY	03/03/2010	1,207.35	100-51540-512
1492	R & R INSURANCE SERVICES I	899450	GEN/AUTO PHYSICAL DAMAGE	03/03/2010	1,609.91	100-51540-512
1492	R & R INSURANCE SERVICES I	899450	CABLE/AUTO LIABILITY	03/03/2010	17.51	200-55110-341
1492	R & R INSURANCE SERVICES I	899450	CABLE/AUTO PHYSICAL DAMA	03/03/2010	39.60	200-55110-341
1492	R & R INSURANCE SERVICES I	899450	STORMWATER/GEN LIABILITY	03/03/2010	175.25	630-63300-519
1492	R & R INSURANCE SERVICES I	899450	STORMWATER/PUBLIC OFFICE	03/03/2010	66.90	630-63300-519
1492	R & R INSURANCE SERVICES I	899450	STORMWATER/AUTO LIABILITY	03/03/2010	52.53	630-63300-519
1492	R & R INSURANCE SERVICES I	899450	STORMWATER/AUTO PHYSICA	03/03/2010	5.11	630-63300-519
1492	R & R INSURANCE SERVICES I	899450	WATER/GEN LIABILITY	03/03/2010	350.50	610-61924-510
1492	R & R INSURANCE SERVICES I	899450	WATER/PUBLIC OFFICE LIABILI	03/03/2010	133.80	610-61924-510
1492	R & R INSURANCE SERVICES I	899450	WATER/AUTO LIABILITY	03/03/2010	87.55	610-61924-510
1492	R & R INSURANCE SERVICES I	899450	WATER/AUTO PHYSICAL DAMA	03/03/2010	23.00	610-61924-510
1492	R & R INSURANCE SERVICES I	899450	WASTEWATER/GEN LIABILITY	03/03/2010	350.50	620-62810-519
1492	R & R INSURANCE SERVICES I	899450	WASTEWATER/PUBLIC OFFICE	03/03/2010	133.80	620-62810-519
1492	R & R INSURANCE SERVICES I	899450	WASTEWATER/AUTO LIABILITY	03/03/2010	106.06	620-62810-519
1492	R & R INSURANCE SERVICES I	899450	WASTEWATER/AUTO PHYSICA	03/03/2010	72.38	620-62810-519
1492	R & R INSURANCE SERVICES I	899450	WASTEWATER/SEWER BACKU	03/03/2010	1,088.00	620-62810-519
Total R & R INSURANCE SERVICES INC:					10,462.00	
<b>RADICOM BUSINESS COMMUNICATION</b>						
795	RADICOM BUSINESS COMMUNI	96043	POLICE DISPATCH/OPERATING	03/03/2010	11.50	100-52600-340
Total RADICOM BUSINESS COMMUNICATION:					11.50	
<b>RICOH AMERICAS CORP</b>						
90	RICOH AMERICAS CORP	11116130	RESCUE/COPIER	03/03/2010	60.61	100-52300-310
90	RICOH AMERICAS CORP	11116131	FIRE/COPIER	03/03/2010	27.39	100-52200-310
90	RICOH AMERICAS CORP	11142393	WATER/COPIER	03/03/2010	25.91	610-61903-310
90	RICOH AMERICAS CORP	505464736	FIRE/CREDIT	03/03/2010	20.73	100-52200-310
Total RICOH AMERICAS CORP:					93.18	
<b>ROCK RIVER STORMWATER GROUP</b>						
5387	ROCK RIVER STORMWATER G	9	STORMWATER/2010 MEMBERS	03/03/2010	5,000.00	630-63440-320
Total ROCK RIVER STORMWATER GROUP:					5,000.00	
<b>SENTRY OF WHITEWATER, DANIELS</b>						
2	SENTRY OF WHITEWATER, DA	02/15/2010	RESCUE/OPERATING SUPPLIE	03/03/2010	67.40	100-52300-340
2	SENTRY OF WHITEWATER, DA	02/24/2010	RESCUE/OPERATING SUPPLIE	03/03/2010	184.83	100-52300-340
Total SENTRY OF WHITEWATER, DANIELS:					252.23	
<b>SOUTHERN LAKES NEWSPAPERS</b>						
1844	SOUTHERN LAKES NEWSPAPE	VW REGISTE	WATER/1 YR SUBSCRIPTION	03/03/2010	31.00	610-61921-310

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total SOUTHERN LAKES NEWSPAPERS:					31.00	
<b>SPORT SUPPLY GROUP INC</b>						
4830	SPORT SUPPLY GROUP INC	93401336	REC/SPORTING GOODS	03/03/2010	633.09	100-55300-341
Total SPORT SUPPLY GROUP INC:					633.09	
<b>ST MARY'S DEAN VENTURES INC</b>						
2068	ST MARY'S DEAN VENTURES I	543797260	RESCUE/STRENG	03/03/2010	428.00	100-52300-340
Total ST MARY'S DEAN VENTURES INC:					428.00	
<b>STAPLES BUSINESS ADVANTAGE</b>						
2393	STAPLES BUSINESS ADVANTA	8014675496	POLICE ADMN/OFFICE SUPPLI	03/03/2010	410.94	100-52100-310
Total STAPLES BUSINESS ADVANTAGE:					410.94	
<b>STRAND ASSOCIATES INC</b>						
358	STRAND ASSOCIATES INC	0076888	WASTEWATER/IMPROVEMENT	03/03/2010	26,155.77	620-62820-219
358	STRAND ASSOCIATES INC	0076889	FIVE POINTS/INTERSECTION S	03/03/2010	1,040.33	446-57663-840
358	STRAND ASSOCIATES INC	0076889	PLANNING/MYLARS 2009 PROJ	03/03/2010	489.05	100-56300-219
358	STRAND ASSOCIATES INC	0076889	PLANNING/STORMWATER MG	03/03/2010	261.32	100-56300-219
358	STRAND ASSOCIATES INC	0076889	PLANNING/STORMWWATER UT	03/03/2010	111.30	100-56300-219
358	STRAND ASSOCIATES INC	0077161	TID 4/STARIN RD	03/03/2010	19,800.77	440-57663-840
358	STRAND ASSOCIATES INC	077160	TECH PARK/BASIC SVC	03/03/2010	17,692.72	440-57663-841
Total STRAND ASSOCIATES INC:					65,551.26	
<b>THERMA-STOR LLC</b>						
5738	THERMA-STOR LLC	2396703RI	WATER/WELL #6 DEHUMIDIFIE	03/03/2010	144.00	610-61935-350
Total THERMA-STOR LLC:					144.00	
<b>TRAFFIC &amp; PARK CONTROL INC</b>						
96	TRAFFIC & PARK CONTROL IN	334538	STREET/TRAFFIC CONTROL S	03/03/2010	70.26	100-53300-354
96	TRAFFIC & PARK CONTROL IN	335472	STREET/TRAFFIC CONTROL S	03/03/2010	314.22	100-53300-354
Total TRAFFIC & PARK CONTROL INC:					384.48	
<b>USA BLUE BOOK</b>						
1062	USA BLUE BOOK	989646	WATER/CHEMICAL PUMP STO	03/03/2010	1,017.28	610-61630-350
Total USA BLUE BOOK:					1,017.28	
<b>UW WHITEWATER</b>						
8	UW WHITEWATER	12477	GEN BLDG/BLDG MAINTENANC	03/03/2010	342.57	100-51600-355
8	UW WHITEWATER	12477	GEN BLDG/OPERATING SUPPLI	03/03/2010	152.38	100-51600-340
8	UW WHITEWATER	12477	GEN BLDG/BLDG MAINTENANC	03/03/2010	91.31	100-51600-355
8	UW WHITEWATER	12477	LIBRARY/BLDG MAINTENANCE	03/03/2010	79.92	100-55111-355
8	UW WHITEWATER	12477	PARKS/REPAIR MATERIALS	03/03/2010	1.92	100-53270-245
8	UW WHITEWATER	12477	PARKS/REPAIR MATERIALS	03/03/2010	57.65	100-53270-245
Total UW WHITEWATER:					725.75	
<b>VIERBICHER ASSOCIATES INC</b>						
3028	VIERBICHER ASSOCIATES INC	015097015.00	TID 4/WW INNOVATION CTR	03/03/2010	646.00	440-57663-839

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total VIERBICHER ASSOCIATES INC:					646.00	
<b>VORPAGEL SERVICE INC</b>						
41	VORPAGEL SERVICE INC	26833	ARMORY/BLDG HEAT & AIR	03/03/2010	694.85	100-51600-244
Total VORPAGEL SERVICE INC:					694.85	
<b>WAL CO-SHERIFF'S DEPT</b>						
125	WAL CO-SHERIFF'S DEPT	JANUARY 201	COURT/PRISON CONFINEMENT	03/03/2010	465.00	100-51200-295
Total WAL CO-SHERIFF'S DEPT:					465.00	
<b>WALMART COMMUNITY</b>						
1507	WALMART COMMUNITY	1507-030310	SENIORS/WEIGHT CRATES	03/03/2010	10.00	100-46733-55
1507	WALMART COMMUNITY	1507-030310	POLICE ADMN/OPERATING SU	03/03/2010	60.20	100-52100-340
1507	WALMART COMMUNITY	1507-030310	POLICE INV/OPERATING SUPP	03/03/2010	23.76	100-52120-340
1507	WALMART COMMUNITY	1507-030310	RESCUE/OPERATING SUPPLIE	03/03/2010	180.24	100-52300-340
1507	WALMART COMMUNITY	1507-030310	DPW/KEYS	03/03/2010	1.77	100-53100-340
1507	WALMART COMMUNITY	1507-030310	SENIORS/LABELS	03/03/2010	4.00	100-55310-340
1507	WALMART COMMUNITY	1507-030310	CABLE/OFFICE SUPPLIES	03/03/2010	39.96	200-55110-310
1507	WALMART COMMUNITY	1507-030310	CABLE/OPERATING SUPPLIES	03/03/2010	77.81	200-55110-340
1507	WALMART COMMUNITY	1507-030310	CABLE/CAPITAL EQUIPMENT	03/03/2010	557.96	200-55110-810
1507	WALMART COMMUNITY	1507-030310	LIBRARY/OFFICE SUPPLIES	03/03/2010	19.54	220-55110-310
1507	WALMART COMMUNITY	1507-030310	LIBRARY/JUVENILE PROGRAM	03/03/2010	45.36	220-55110-342
1507	WALMART COMMUNITY	1507-030310	CDA/FLASH DRIVE	03/03/2010	59.28	900-56500-323
1507	WALMART COMMUNITY	1507-030310	WATER/CLEANING SUPPLIES	03/03/2010	89.96	610-61935-350
1507	WALMART COMMUNITY	1507-030310	WASTEWATER/LAB SUPPLIES	03/03/2010	49.80	620-62870-340
Total WALMART COMMUNITY :					1,219.64	
<b>WASC</b>						
1175	WASC	WHITEWATER	SENIORS/BUS TO CONFERENC	03/03/2010	25.00	100-55310-154
Total WASC:					25.00	
<b>WATER WELL SOLUTIONS SVC GROUP</b>						
4323	WATER WELL SOLUTIONS SVC	09-11-116	WATER/WELL #6 WIRING	03/03/2010	1,858.00	610-61620-350
Total WATER WELL SOLUTIONS SVC GROUP:					1,858.00	
<b>WE ENERGIES</b>						
25	WE ENERGIES	25-030310	CITY/ELECTRIC	03/03/2010	4,461.80	100-51600-222
25	WE ENERGIES	25-030310	CITY/GAS	03/03/2010	757.56	100-51600-224
25	WE ENERGIES	25-030310	WASTEWATER/LIFT STATIONS	03/03/2010	518.17	620-62830-222
25	WE ENERGIES	25-030310	WASTEWATER/ELECTRIC	03/03/2010	10,648.96	620-62840-222
25	WE ENERGIES	25-030310	WASTEWATER/GAS	03/03/2010	10,070.95	620-62840-224
Total WE ENERGIES:					26,457.44	
<b>WELDERS SUPPLY CO BELOIT INC</b>						
49	WELDERS SUPPLY CO BELOIT	467136	RESCUE/OXYGEN	03/03/2010	53.11	100-52300-340
Total WELDERS SUPPLY CO BELOIT INC:					53.11	
<b>WHITEWATER CHAMBER OF COMMERCE</b>						
628	WHITEWATER CHAMBER OF C	CITY OF WHIT	LEGISLATIVE/2010 MEMBERSHI	03/03/2010	3,600.00	100-51100-710

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	GL Account Number
Total WHITEWATER CHAMBER OF COMMERCE:					3,600.00	
<b>WHITEWATER FIRE DEPT</b>						
284	WHITEWATER FIRE DEPT	284-030310	FIRE/OFFICE SUPPLIES	03/03/2010	59.98	100-52200-310
Total WHITEWATER FIRE DEPT:					59.98	
<b>WHITEWATER REGISTER</b>						
1705	WHITEWATER REGISTER	811554	POLICE ADMN/OPERATIANG S	03/03/2010	50.00	100-52100-340
Total WHITEWATER REGISTER:					50.00	
<b>WI ALLIANCE OF CITIES</b>						
1003	WI ALLIANCE OF CITIES	MILWAUKEE 1	FINANCE/SAUBERT	03/03/2010	15.00	100-51500-154
1003	WI ALLIANCE OF CITIES	MILWAUKEE 1	GEN ADMN/BRUNNER	03/03/2010	15.00	100-51400-154
Total WI ALLIANCE OF CITIES:					30.00	
<b>WI EMERGENCY MGMT ASSOC</b>						
1526	WI EMERGENCY MGMT ASSOC	2010 FEE	RESCUE/EMS HOT SHEETS	03/03/2010	25.00	100-52300-340
Total WI EMERGENCY MGMT ASSOC:					25.00	
<b>WI STATE LABORATORY OF HYGIENE</b>						
1899	WI STATE LABORATORY OF HY	4891311	WATER/FLUORIDE SAMPLING	03/03/2010	40.00	610-61630-340
Total WI STATE LABORATORY OF HYGIENE:					40.00	
<b>YES EQUIPMENT SERVICES INC</b>						
5765	YES EQUIPMENT SERVICES IN	00115242	STREET/REPAIR PARTS	03/03/2010	27.95	100-53230-352
Total YES EQUIPMENT SERVICES INC:					27.95	
<b>ZARNOTH BRUSH WORKS INC</b>						
419	ZARNOTH BRUSH WORKS INC	0126232	STORMWATER/SWEEPER REP	03/03/2010	378.00	630-63310-353
419	ZARNOTH BRUSH WORKS INC	0126233	STORMWATER/ST SWEEPER P	03/03/2010	624.00	630-63310-353
419	ZARNOTH BRUSH WORKS INC	0126234	STORMWATER/SWEEPER REP	03/03/2010	624.00	630-63310-353
419	ZARNOTH BRUSH WORKS INC	0126498	STORMWATER/SWEEPER REP	03/03/2010	75.00	630-63310-353
Total ZARNOTH BRUSH WORKS INC:					1,701.00	
Grand Totals:					282,675.24	

Dated: February 25, 2010

Finance Director: 

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Paid and unpaid invoices included.



## 90<sup>TH</sup> ANNIVERSARY LEAGUE OF WOMEN VOTERS PROCLAMATION

**WHEREAS**, the League of Women Voters (LMV) of the Whitewater Area is the organization where hands-on work to safeguard democracy leads to civic improvement; and

**WHEREAS**, the LWV is a nonpartisan political organization, that has sought since 1920 to improve our system of government and impact public policies through citizen education and advocacy; and

**WHEREAS**, League members are constantly striving to serve their communities to make strong, safe, fair and vibrant places to live; and

**WHEREAS**, the LWV of the Whitewater Area believes in representative government and in the individual liberties established in the Constitution of the United States; and

**WHEREAS**, the LWV of the Whitewater Area has always worked to promote the values and processes of representative government; and

**WHEREAS**, the LWV of the Whitewater Area collaborates with other organizations to achieve mutual goals, increase civic participation, create lasting change in the community and to *Make Democracy Work*; and

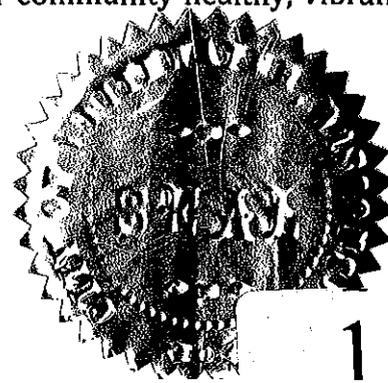
**WHEREAS**, the League, for 90 years, has held the public trust by respectfully bringing elected leaders and the public together through non-partisan, civil means and through thoughtfully advancing solutions; and

**WHEREAS**, the City of Whitewater, Wisconsin has benefited tremendously from the countless volunteer hours donated by League members over its 90-year history of enhancing our democracy and since 1964 in particular when the LWV of the Whitewater-Area was founded.

**NOW, THEREFORE**, I, Kevin Brunner, City Manager of the City of Whitewater, Wisconsin, do hereby proclaim the 1st day of March 2010, as “LWV *Making Democracy Work* Day” in honor of the League of Women Voters for all they do to make our community healthy, vibrant and strong.

Dated this 1st Day of March 2010.

  
 \_\_\_\_\_  
 Kevin M Brunner, City Manager



## Community Task Force on Race Relations

Mr.	Lynn	Binnie	City Council
Mr.	Kevin	Brunner	City Manager
Ms.	Stephanie	Bukowski	Teacher - Elem
Mr.	Jim	Coan	City - WWPD
Miss	Ana Rosa	Cortez	Student - HS
Mr.	Rick	Daniels	UWW
Miss	Malaika	Gage	Student - MS
Mr.	Jorge	Islas	Adult ESL Teacher
Mr.	Jacob	Maas	Student - MS
Miss	Elizabeth	McComb	Student - HS
Mr.	Thomas	McManaway	Student - LV
Ms.	Bonnie	Miller	Community
Miss	Chelsea	Niemuth	Student - MS
Dr.	Elizabeth	Ogunsola	UWW
Dr.	Aneneosa	Okocha	UWW
Ms.	Mary Sue	Reutebuch	Parent
Miss	Ariana	Rodriguez	Student- HS
Mr.	Eric	Runez	WUSD Administrator
Mr.	Ryan	Saylor	Student - MS
Dr.	Lauren	Smith	UWW
Miss	Miriam	Smith-Traore	Student - WA
Mr.	Gregory	Stewart	Teacher - HS
Dr.	Richard	Telfer	UWW Chancellor
Mr.	Bashkin	Veliu	Student - WA
Rev.	Jerald	Wendt	Retired pastor
Ms.	Caroline	Wieman	School Board
Dr.	James	Winship	UWW
Mr.	Peter	Zaballos	Community
Dr.	Suzanne	Zentner	WUSD Superintendent

From WWUSD

# Suggestions from Task Force

## *Short term*

Action Steps	Person Responsible	Timeline	Evidence of Effectiveness
Develop a high school survey	Mr. Gregg Stewart, Ms. Caroline Wieman	Develop a focus group to review questions (mid-October, 2009 ) and then administer the survey (November, 2009)	
Develop a middle school survey	Mr. Eric Runez, Ms. Chelsea Niemuth, Mr. Rick Daniels	Administer late Oct-early Nov, 2009	
Develop a parent survey	Mr. Jorge Islas, Ms. Caroline Wieman	TBD	
Develop a structure to get students to have an opportunity to discuss race and ethnicity in small groups	Rev. Jerald Wendt, Dr. Richard Telfer	All students involved, in a classroom setting and discuss questions (staffed homeroom). SZ will contact principals to determine time.	
Elementary snack time (small group discussions)	??		
Develop guiding questions for small group discussions (K-12)	Dr. Lauren Smith, Dr. Elizabeth Ogunsola, Dr. Aneneosa Okocha, Miss Miriam Smith-Traore, Mr. Bashkin Veliu		
Develop a draft communiqué to send to households on our work and its importance	Mr. Lynn Binnie, Mr. Peter Zaballos		

From WWUS & T

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# Suggestions from Task Force

## *Medium and long term*

Develop a plan to encourage participation in extracurricular activities other than athletics (i.e. drama, music)	Mr. Gregg Stewart	Meeting in Oct, 2009 to develop an action plan and proceed as follows after that (will meet with all advisors)	
Develop a plan of how to get middle and high school students involved in building the new community plan	Mr. Jim Coan, Mr. Kevin Brunner	Use results from the Citizen Survey and will meet with Mr. Stewart's classes to obtain student perspective (Sept, 2009)	
Commit to interaction with students of different racial and ethnic backgrounds	Ms. Chelsea Niemuth, Dr. Suzanne Zentner	To principals for approval (back at next meeting)	
On-line training for all staff (similar to BBP) at staff meetings?			
Staff meetings to train (small group discussions with a specific agenda set)	??		

From

WWUSD

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12/1/2009

Memo

To: Whitewater Unified School District Board Members  
From: Diversity Task Force  
Date: December 1, 2009  
Re: Follow-up as Outlined in 9/1/09 Charge Statement

As noted in the Charge Statement approved by the School Board last spring, the Diversity Task Force hereby presents our recommendations on how to best move forward on or before February, 2010. These recommendations are grounded and informed by the Task Force's observation that the environment within which our response is shaped and implemented is comprised of the following:

1. The response to the initial incident was reactive and the District needs to focus our efforts to become more proactive;
2. As a result of the racial incident, diversity is now a visible facet of our community and can and should serve as an asset, not a liability;
3. Diversity is not a district issue, but rather encompasses our entire community;
4. Ensuring support of diversity requires outreach, persistent attention and ongoing as well as rigorous participation by all community members;
5. The Community's and the District's response can be the basis to build on the district's ability to ensure every student can succeed.

After a series of facilitated discussions during task force meetings as well as research and outreach between meetings, the following recommendations are being submitted to the school board. It is the expectation of the task force that these will be embraced, and integrated into the district's objectives, processes, and ongoing operations:

- That the district perform an assessment of how initial incident's response could have been improved, with a focus on:
  - Roles, responsibilities, organizational structure
  - Processes, communications
  - Drawing on existing best practices within the district and the community
    - Within the district: Health threat response well documented, practiced, routinized
    - Within the community: H1N1 response plan (District, City, UWW)
  - Developing a specific set of changes to policies, procedures, roles incorporating what is learned from this assessment.
- Specify a three year planning, operational horizon to fully develop and integrate an improved ability to respond to diversity threats:
  - Specifying measurable objectives, by year
    - Ensure objectives are generalized, address racism, discrimination in general
    - Articulate measurable outcomes and annual assessment to identify areas of improvement
  - Enabling the development of substantive changes, additions to organization, processes, training
  - Ensuring feedback, review incorporated to create continuous improvement Implement an open, accessible communications plan
    - Including an annual review of performance against goals.

From WWUSD  
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- Identify and quantify “gaps” between three year objectives and current capabilities
  - Create specific plans to close the gaps, which should include:
    - Integration of diversity/awareness training and education of both staff and students
    - Take advantage of task force’s initial collaboration, solutions, ideas
    - Seek input from students and the community on needs, concerns, priorities
- Create ongoing diversity communications plans, program, which should include:
  - Create a website to centralize information, solicit input
  - Email communication to provide updates
- Stress the permanence of the changes resulting from the recommendations

Further, it is our recommendation that the Task Force be an active participant at the District's annual review of performance against goals, but otherwise suspend active meetings and serve in a watch dog capacity from this point forward, as well as being in place for any emergencies that may arise.

Sincerely,

*Mr. Lynn Binnie  
 Mr. Kevin Brunner  
 Ms. Stephanie Bukowski  
 Mr. Jim Coan  
 Miss Ana Rosa Cortez  
 Mr. Rick Daniels  
 Miss Malaika Gage  
 Mr. Jorge Islas  
 Mr. Jacob Maas  
 Miss Elizabeth McComb*

*Mr. Thomas McManaway  
 Ms. Bonnie Miller  
 Miss Chelsea Niemuth  
 Dr. Elizabeth Ogunsola  
 Dr. Aneneosa Okocha  
 Ms. Mary Sue Reutebuch  
 Miss Ariana Rodriguez  
 Mr. Eric Runez  
 Mr. Ryan Saylor  
 Dr. Lauren Smith*

*Miss Miriam Smith-Traore  
 Mr. Gregory Stewart  
 Dr. Richard Telfer  
 Mr. Bashkin Veliu  
 Rev. Jerald Wendt  
 Ms. Caroline Wieman  
 Dr. James Winship  
 Mr. Peter Zaballos  
 Dr. Suzanne Zentner*

Attachments (2) – Suggestions from Task Force

*From WWUSD*

**RESOLUTION AUTHORIZING THE CITY OF WHITEWATER TO ENTER INTO AN AGREEMENT FOR THE PAYMENT OF FUNDS TO THE WHITEWATER FIRE DEPARTMENT AND RESCUE SQUAD FOR THE STARIN ROAD EXTENSION RIGHT-OF-WAY**

**WHEREAS**, the City of Whitewater was deeded approximately 13 acres of land, which is commonly referred to as Hospital Hill, which by Court order was to be used for the benefit of the City of Whitewater Fire Department and Rescue Squad, and

**WHEREAS**, the City is extending Starin Road from its current terminus easterly to State Highway 59 and the route for said extension traverses the above-referenced 13 acres, and

**WHEREAS**, it is appropriate for the City of Whitewater to compensate the City of Whitewater Fire Department and Rescue Squad for the fair market value of the land to be used for said extension.

Now, therefore, **BE IT RESOLVED** that the City Manager and the City Clerk are hereby authorized to sign the attached agreement between the City of Whitewater and the City of Whitewater Fire Department and Rescue Squad compensating the Fire Department and Rescue Squad for the use of said land.

Resolution introduced by Councilmember \_\_\_\_\_, who moved its adoption.  
Seconded by Councilmember \_\_\_\_\_.

AYES:

\_\_\_\_\_  
Kevin Brunner, City Manager

NOES:

ABSENT:

\_\_\_\_\_  
Michele R. Smith, City Clerk

ADOPTED:

**AGREEMENT BETWEEN THE CITY OF WHITEWATER  
AND THE CITY OF WHITEWATER FIRE DEPARTMENT  
AND RESCUE SQUAD  
(02/23/2010 – 4:00 p.m. final)**

This agreement is made by and between the City of Whitewater and the Community Development Authority of the City of Whitewater, hereinafter at times referred to as the City and the City of Whitewater Fire Department and Rescue Squad, at times hereinafter referred to as the Department;

**RECITALS**

**WHEREAS**, the City was deeded approximately 13 acres of land, which is commonly referred to as Hospital Hill, and is shown on the attached Exhibit A, which by court order was to be used for the benefit of the Department, for the purpose of purchasing technologically advanced equipment for life-saving purposes, and for the purpose of educating Whitewater Rescue Squad members and Whitewater citizens; and

**WHEREAS**, the City is extending Starin Road from its current terminus easterly to State Highway 59 and the route for said extension is shown on Exhibit A; and

**WHEREAS**, it is appropriate for the City to compensate the Department for the fair market value of the land to be used for the Starin Road extension;

**NOW, THEREFORE**, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this agreement hereto agree as follows:

1. The City shall have the right to extend Starin Road across the land shown on Exhibit A in the approximate location as shown on said Exhibit.
2. The City shall pay the Department Fourteen Thousand Seven Hundred Sixty Dollars (\$14,760.00) on or before March 31, 2010, to compensate the Department for the land used for the Starin Road extension shown on Exhibit A.
3. The Department shall use the funds for the purpose of purchasing technologically advanced equipment for life-saving purposes, and for the purpose of educating Whitewater Rescue Squad members and Whitewater citizens.
4. The City shall be responsible for necessary weed control and other site maintenance of the lot that will be created to the north of the Starin Road extension in the event that this parcel of land is not leased by the department.

5. This Agreement is contingent upon the approval of the Agreement by the City of  
Whitewater Common Council on or before March 2, 2010.

**IN WITNESS WHEREOF** the parties have executed this Agreement.

CITY OF WHITEWATER

CITY OF WHITWATER FIRE  
DEPARTMENT & RESCUE SQUAD

By: \_\_\_\_\_  
Kevin Brunner, City Manager      Date

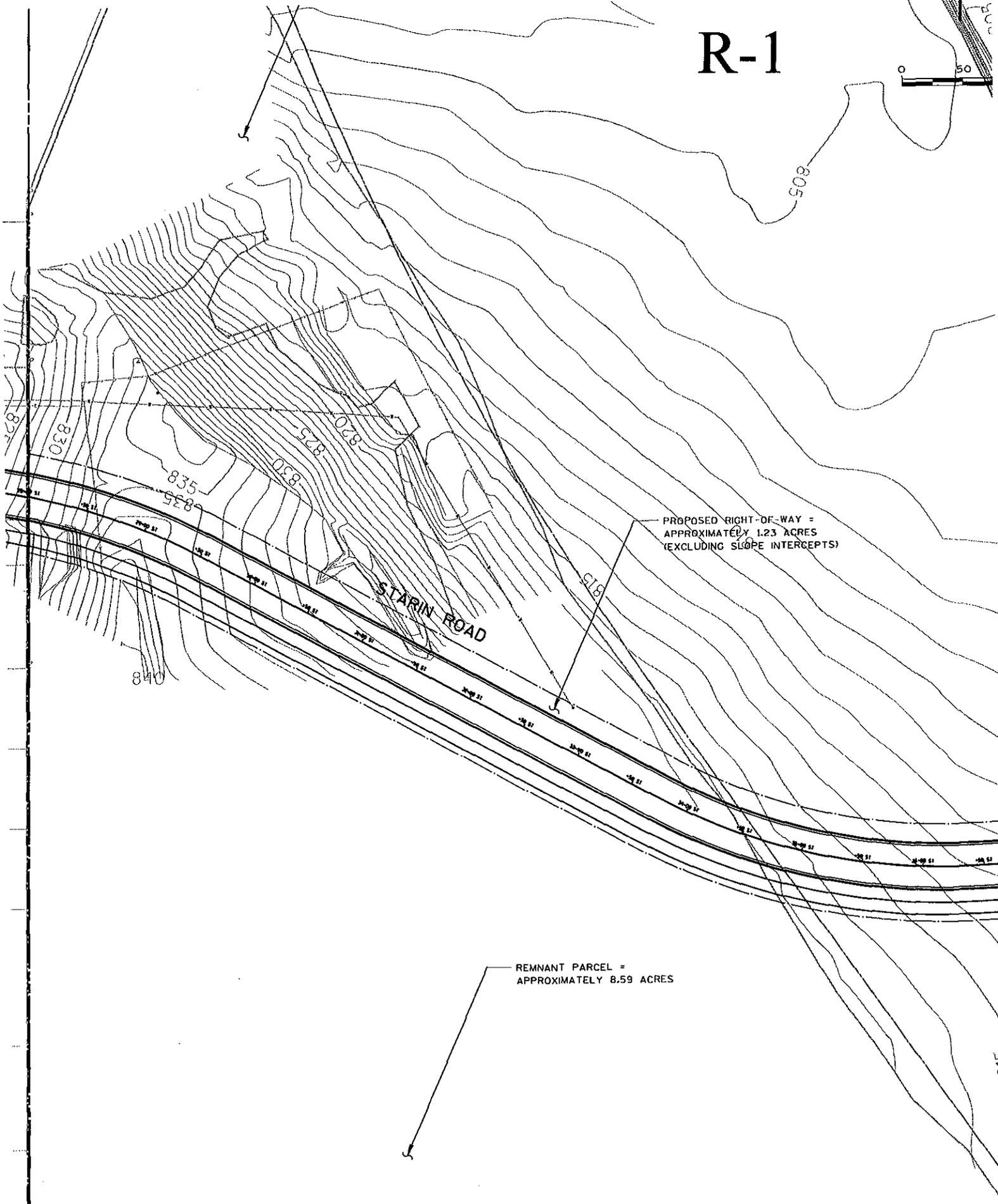
By: \_\_\_\_\_  
Don Gregoire, Chief      Date

By: \_\_\_\_\_  
Michele Smith, City Clerk      Date

By: \_\_\_\_\_  
Dave Haberman, Secretary      Date  
Whitewater Fire Department

By: \_\_\_\_\_  
Thomas Schopen, Captain      Date  
Whitewater Rescue Squad

R-1



PROPOSED RIGHT-OF-WAY =  
APPROXIMATELY 1.23 ACRES  
(EXCLUDING SLOPE INTERCEPTS)

REMNANT PARCEL =  
APPROXIMATELY 8.59 ACRES



# AIA<sup>®</sup> Document A121<sup>™</sup> CMc – 2003 and AGC Document 565

## ***Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor***

**AGREEMENT** made as of the 20<sup>th</sup> day of October in the year 2009.  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

City of Whitewater  
Michele R. Smith, City Clerk  
312 W. Whitewater Street  
Whitewater, WI 53190

and the Construction Manager:  
(Name, legal status and address)

J.P. Cullen & Sons, Inc.  
David J. Cullen, President  
330 East Delavan Drive  
Janesville, WI 53545

The Project is:  
(Name, address and brief description)

Whitewater Innovation Center  
1221 Innovation Drive  
Whitewater, WI 53190  
Two-story steel framed building with a masonry veneer and metal panel exterior (anticipated).

The Architect is:  
(Name, legal status and address)

Eppstein Uhen Architects  
Cliff Goodhart  
222 West Washington Avenue, Suite 650  
Madison, WI 53703

The Owner and Construction Manager agree as set forth below:

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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**ARTICLE 1 GENERAL PROVISIONS****§ 1.1 RELATIONSHIP OF PARTIES**

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project. The Community Development Authority of the City of Whitewater shall have the right to assign the contract in accordance with Article 9.2.5.

**§ 1.2 GENERAL CONDITIONS**

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™-1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™-1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™-1997 shall mean the Construction Manager.

**ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

**§ 2.1 PRECONSTRUCTION PHASE****§ 2.1.1 PRELIMINARY EVALUATION**

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

**§ 2.1.2 CONSULTATION**

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

**§ 2.1.3 PRELIMINARY PROJECT SCHEDULE**

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

**§ 2.1.4 PHASED CONSTRUCTION**

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

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**§ 2.1.5 PRELIMINARY COST ESTIMATES**

**§ 2.1.5.1** When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

**§ 2.1.5.2** When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

**§ 2.1.5.3** When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

**§ 2.1.5.4** If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

**§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS**

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

**§ 2.1.7 LONG-LEAD-TIME ITEMS**

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

**§ 2.1.8 EXTENT OF RESPONSIBILITY**

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

**§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

**§ 2.2.1** When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

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**§ 2.2.2** As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

**§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

**§ 2.2.7** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

**§ 2.2.8** Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 2.2.9** The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

**§ 2.2.10** The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

**§ 2.3 CONSTRUCTION PHASE**

**§ 2.3.1 GENERAL**

**§ 2.3.1.1** The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
  - (a) award a subcontract, or
  - (b) undertake construction Work with the Construction Manager's own forces, or
  - (c) issue a purchase order for materials or equipment required for the Work.

### § 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™-1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

### § 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

### § 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

**ARTICLE 3 OWNER'S RESPONSIBILITIES****§ 3.1 INFORMATION AND SERVICES**

**§ 3.1.1** The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

**§ 3.1.2** The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

**§ 3.1.3** The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

**§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS**

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

**§ 3.1.4.1** Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

**§ 3.1.4.2** Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

**§ 3.1.4.3** The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

**§ 3.1.4.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

**§ 3.1.4.5** The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

**§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE**

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™-1997, the Architect does not have such authority.

**§ 3.3 ARCHITECT**

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B101-2007, *Standard Form of Agreement Between Owner and Architect* current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in B101-2007,

requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

### § 3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

### § 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

*(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)*

NO COST

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond One hundred and eighty (180) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### § 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon.)*

Four percent (4 %) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

### § 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

*(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)*

| 1.75% of the cost of the Work

**§ 5.2 GUARANTEED MAXIMUM PRICE**

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.3 CHANGES IN THE WORK**

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™-1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™-1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™-1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

**ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 6.1 COSTS TO BE REIMBURSED**

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

**§ 6.1.2 LABOR COSTS**

.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.) PER EXHIBIT "A"*

**Classification**

**Name**

- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

### § 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be at actual cost if rented from an outside firm or at 80% of AED rates if owned by Construction Manager..
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .6 Other costs as outlined in Exhibit "A".

### § 6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.  
*(If charges for self-insurance are to be included, specify the basis of reimbursement.)*
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits

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User Notes:

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or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™-1997 or other provisions of the Contract Documents.

- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

#### § 6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

#### § 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™-1997.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of A201™-1997 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

#### § 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

**§ 6.3 DISCOUNTS, REBATES AND REFUNDS**

**§ 6.3.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

**§ 6.3.2** Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.4 ACCOUNTING RECORDS**

**§ 6.4.1** The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

**ARTICLE 7 CONSTRUCTION PHASE PAYMENTS****§ 7.1 PROGRESS PAYMENTS**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 7.1.3** Provided an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Construction Manager not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™-1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %) to 50% completion. No further retainage after 50%. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™-1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5 %). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

## § 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™-1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

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- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™-1997 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

**§ 7.2.3** The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™-1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™-1997.

**§ 7.2.4** If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.5** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

### § 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

**§ 8.1.1** Workers' Compensation and Employers Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

**§ 8.1.2** Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

- \$ 1,000,000 Each Occurrence
- \$ 2,000,000 General Aggregate
- \$ 1,000,000 Personal and Advertising Injury
- \$ 2,000,000 Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.

- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™-1997.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:  
\$ 1,000,000 Each Accident

§ 8.1.4 Other coverage:

*(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)*

## § 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

### § 8.2.1 Property insurance:

\$ To be determined by Owner Deductible Per Occurrence  
\$ To be determined by Owner Aggregate Deductible

§ 8.2.2 Boiler and Machinery insurance with a limit of: \$ .  
*(If not a blanket policy, list the objects to be insured.)*

## § 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall not furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to percent ( %) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

### § 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™-1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

### § 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™-1997, *General Conditions of the Contract for Construction*.

### § 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written

instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

#### § 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

#### § 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

#### § 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™-1997, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### ARTICLE 10 TERMINATION OR SUSPENSION

#### § 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™-1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager.
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall

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terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

**§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™-1997.

**§ 10.2.1** In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.3 SUSPENSION**

The Work may be suspended by the Owner as provided in Article 14 of A201™-1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™-1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

**ARTICLE 11 OTHER CONDITIONS AND SERVICES**

Addendum to Contract dated 11/23/09 – 8:50 am draft (Exhibit B) is incorporated as part of this Agreement.

This Agreement entered into as of the day and year first written above.

**OWNER**

*(Signature)*

Michele R. Smith, City Clerk

*(Printed name and title)*

**Date**

**ATTEST**

**CONSTRUCTION MANAGER**

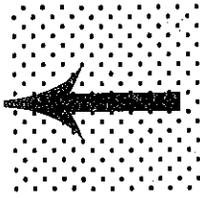
*(Signature)*

David J. Cullen, President

*(Printed name and title)*

**Date**

**ATTEST**



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**Additions and Deletions Report for**  
**AIA<sup>®</sup> Document A121<sup>™</sup>CMc – 2003 and AGC Document 565**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:57:15 on 02/16/2010.

**PAGE 1**

**AGREEMENT** made as of the 20<sup>th</sup> day of October in the year 2009.

...

*(Name, legal status and address)*

City of Whitewater  
Michele R. Smith, City Clerk  
312 W. Whitewater Street  
Whitewater, WI 53190

...

J.P. Cullen & Sons, Inc.  
David J. Cullen, President  
330 East Delavan Drive  
Janesville, WI 53545

...

Whitewater Innovation Center  
1221 Innovation Drive  
Whitewater, WI 53190  
Two-story steel framed building with a masonry veneer and metal panel exterior (anticipated).

...

Eppstein Uhen Architects  
Cliff Goodhart  
222 West Washington Avenue, Suite 650  
Madison, WI 53703

**PAGE 3**

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other

persons or entities employed by the Owner for the Project. The Community Development Authority of the City of Whitewater shall have the right to assign the contract in accordance with Article 9.2.5.

**PAGE 7**

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document ~~B151™ 1997, Abbreviated B101-2007,~~ Standard Form of Agreement Between Owner and Architect current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in ~~B151™ 1997, B101-2007,~~ requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

**PAGE 8**

NO COST

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond ~~(~~ One hundred and eighty (180) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

...

§ 4.2.2 Payments are due and payable ~~(←)~~ Thirty (30) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

...

~~%~~ Four percent (4 %) per annum

**PAGE 9**

1.75% of the cost of the Work

...

- ~~.1~~ Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off site workshops.
- ~~.2~~ Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.  
*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)* PER EXHIBIT "A"

**PAGE 10**

- ~~.2~~ Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval at actual cost if rented from an outside firm or at 80% of AED rates if owned by Construction Manager..

...

- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .6 Other costs as outlined in Exhibit "A".

## PAGE 12

§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Construction Manager not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (~~—fifteen (15)~~) days after the Architect receives the Application for Payment.

## PAGE 13

- .3 Add the Construction Manager's Fee, less retainage of percent (~~—~~%) five percent (5%) to 50% completion. No further retainage after 50%. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

...

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than percent (~~—five percent (5%)~~). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

## PAGE 14

- \$ 1,000,000 Each Occurrence  
 \$ 2,000,000 General Aggregate  
 \$ 1,000,000 Personal and Advertising Injury  
 \$ 2,000,000 Products-Completed Operations Aggregate

## PAGE 15

- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least (one (1)) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.

...

\$ 1,000,000 Each Accident

...

\$ To be determined by Owner Deductible Per Occurrence  
 \$ To be determined by Owner Aggregate Deductible

...

§ 8.3.1 The Construction Manager (~~insert "shall" or "shall not"~~) shall not furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to percent ( %) of the Contract Sum.

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Addendum to Contract dated 11/23/09 -- 8:50 am draft (Exhibit B) is incorporated as part of this Agreement.

...

Michele R. Smith, City Clerk

David J. Cullen, President