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**VIA E-MAIL:** jweidl@whitewater-wi.gov

Dear John:

This letter provides an update as to the status of the contract with WUSD pertaining to the WAFC (the "Agreement"). As you know, the Common Council previously authorized you to enter into the Agreement as drafted, subject to minor changes. You have recently provided me with WUSD's revisions to the Agreement. While most of the of WUSD's proposed changes are minor, two are substantive. Due to this, it is my opinion that the Agreement must come back to the Common Council. Incorporating WUSD's proposed modifications would change the Agreement to the point that executing it would be beyond the scope of the authority granted by the Common Council. Those substantive modifications are described below.

First, WUSD inserted language that would give it broad discretion over WAFC scheduling. This insertion, coupled with their addition of separate language that would require the City to pay for any excesses in operation costs, presents a problem. Practically, this arrangement would allow WUSD to schedule use of the WAFC, which could increase operation costs beyond what WUSD has agreed to contribute, leaving the City to pay for those costs. My recommendation is to come to a fair agreement regarding the scheduling and use of the WAFC, with either party paying for any operational cost overruns it may cause.

Second, WUSD has removed practically all authority of the joint oversight committee (referred to as the "ACC") contemplated in the Agreement. I do not have a problem with this, because this oversight would then shift to the City. My recommendation is to remove the committee altogether, because as it stands I believe that it would operate as a committee without a purpose.

Going forward, I believe allowing me to directly engage WUSD's attorney to negotiate the remaining issues is the best path towards a final agreement.

Very truly yours,

von BRIESEN & ROPER, s.c.

*Christopher Smith*