

MILWAUKEE COUNTY RESEARCH PARK CORPORATION

DATE: November 23, 2015

TO: Supervisor Theodore Lipscomb, Chair, County Board of Supervisors

FROM: Guy T. Mascari, Executive Director

SUBJECT: **Approval of Amendment to the Amended and Restated Articles of Incorporation and Second Amendment to the Second Amended and Restated By-Laws of Milwaukee County Research Park Corporation**

POLICY

The Executive Director of the Milwaukee County Research Park Corporation (“MCRPC”) requests that the Milwaukee County Board of Supervisors approve (a) the Amendment to the Amended and Restated Articles of Incorporation and (b) the Second Amendment to the Second Amended and Restated By-Laws of MCRPC (collectively, the “Amendments”) adopted by the MCRPC Board of Directors on November 10, 2015 as evidenced by Authorization Resolution 2015-15 attached hereto as Exhibit A, which includes copies of the Amendments.

The Amendments provide that upon dissolution or other termination of MCRPC, all remaining assets of MCRPC shall be distributed to Milwaukee Regional Innovation Center, Inc. (“MRIC”), a Wisconsin non-stock corporation recognized by the IRS as tax-exempt under Code section 501(c)(3). In the event of the dissolution of MRIC, under its to be amended articles of incorporation and by-laws, all remaining assets of MRIC shall be transferred to Milwaukee County for the benefit of the public at large.

BACKGROUND

As a result of the adoption of File # 15-203: From the Director, Department of Administrative Services, requesting authorization to enter into a Fifth Amendment to the Lease Agreement between Milwaukee County and the Milwaukee County Research Park Corporation (MCRPC) for the Technology Innovation Center Building located at 10437 Innovation Drive in Wauwatosa, Wisconsin, and authorization to enter into a Vacant Land Offer to Purchase with MCRPC for Lots 1, 10, and 21 of Certified Survey Map 7908 in Wauwatosa, Wisconsin, on March 26, 2015 by the County Board, in addition to executing the forgoing, MCRPC commenced studying the transition of the corporate structure operating the Milwaukee County Research Park (the “Research Park”) and its high-tech business incubator the Technology Innovation Center (the “TIC”) from a 501(c)(6) tax-exempt entity to a 501(c)(3) (the “Transition”). A comprehensive report regarding the actions contemplated by File # 15-203 and the desirability of the Transition can be found in the County of Milwaukee Inter Office Communication dated March 16, 2015 from the Director, Department of Administrative Services (DAS) and the TIC Director (the “Inter Office Communication”) which is attached hereto as

Exhibit B. A Comparison of 501(c)(3) and 501(c)(6) Tax-exempt Organizations is attached hereto as Exhibit C. An outline of the Transition Sequence is attached hereto as Exhibit D.

1. Amending the TIC Lease Agreement

The Fifth Amendment to Lease Between Milwaukee County and MCRPC for the TIC Building was entered into as of April 15, 2015 (as amended, the "Lease"), with the new term of the Lease commencing on July 1, 2015. The Lease now provides for three one-year options to extend the Lease commencing on January 1 and ending on December 31 of each calendar year of 2016, 2017, and 2018. Therefore, the Lease remains in full force and effect until December 31, 2018.

In accordance with the terms of the Lease, MCRPC assumed all obligations for all costs and responsibilities associated with the maintenance, capital improvements, repairs, replacements, utilities and operation of the TIC that were formerly the responsibility of Milwaukee County. In return, MCRPC will pay Milwaukee County \$1.00 per year in rent. In general, this transition has gone very smoothly and the Facilities Management Division of Milwaukee County has been very cooperative. However, several unexpected maintenance and repair issues (such as the repair of the boiler condensate pump and condensate return lines) have surfaced and necessitated emergency repairs.

The Lease also granted MCRPC the option to purchase the TIC building at anytime on or before June 30, 2016 with the closing on or before December 31, 2016 (the "Option"). The Transition Sequence anticipates that upon an assignment of the Lease and Option by MCRPC to MRIC on February 9, 2016, a subsidiary of MRIC, Technology Innovation Center LLC, would exercise the Option with a closing date of March 31, 2015.

2. Purchase of Lots 1, 10 and 21 and the M-10 Building.

MCRPC purchased Research Park Lots 1, 10, and 21 from the County for \$317,281 on August 14, 2015. In addition, after lengthy, complex and costly (in legal fees, title, appraisal, and survey costs and administrative time) negotiations, MCRPC purchased the historic M-10 building from WE Energies for \$78,000 on September 14, 2015. Another factor complicating the acquisition of M-10, was that WE Energies had assigned certain rights to the M-10 building to Milwaukee Regional Medical Center Thermal, LLC ("MRMC Thermal"), the entity that plans to acquire the former Milwaukee County power plant on Watertown Plank Road from WE Energies. As part of the M-10 purchase, MRMC Thermal became part of the negotiations and was very co-operative in releasing their rights.

The M-10 building used to house several boilers, and steam distribution lines that serviced many of the original structures located at the County Grounds encumbered Lots 10 and 21. In addition, multiple storm sewer, communication, water, and electrical lines of the County and WE Energies also encumbered the property. Again after lengthy, complex and costly efforts, MCRPC was able to remove all of the easements that encumbered the property and made it "development" ready. However, MCRPC was also required to assume certain liabilities regarding removal of steam tunnels and any contamination in the future.

Subsequent to the purchase of Lots 10 and 21 and the M-10 building (the “M-10 Property”) and the extensive actions required to make the site developable, MCRPC issued a Request for Proposals (the “RFP”) on September 3, 2015 for the re-development of the site. On November 2, 2015, MCRPC received three proposals in response to the RFP. On November 10, 2015, the MCRPC board of directors accepted a proposal from VJS Development Group (“VJS”). The VJS proposal was for a nationally branded limited service hotel, brew pub (or other restaurant), nationally branded coffee shop, and other retail uses that would serve the needs of Research Park occupants. VJS is will to pay \$2,600,000 for the M-10 Property. The VJS offer contains several contingencies that will require considerable due diligence and expense to complete on their part. Moreover, closing on the VJS offer is not certain at this time.

SUPPLEMENTAL INFORMATION

The following supplemental information addresses the governance of the Research Park; the governance, operation, and renovation of the TIC; the organizational structure of MRIC; use of the Contract Fees, as hereinafter defined, paid by Milwaukee County to MCRPC; and use of the proceeds from the sale of the M-10 Property. The 2014 MCRPC Annual Report and Statistical Summary is attached hereto as Exhibit E and provides evidence of the progress and success MCRPC has achieved in recent years.

1. Governance of the Research Park

Since October 2006, the Milwaukee County Research Park Occupants’ Association, Inc. (MCRPOA) has governed the operation of the Research Park (subject to the Declaration of Covenants, Conditions and Restrictions and various development agreements between MCRPC and the occupants), with MCRPOA’s primary responsibility being the management of the common areas of the park. A five member board of directors, elected annually by the occupants (defined as owners or leasees of land) based on ownership units, governs MCRPOA. The Executive Director of MCRPC sits on the MCRPOA board and is its treasurer. MCRPOA has hired MCRPC to administer the operation and maintenance of the common areas of the Research Park. Currently, MCRPC has 3 units of ownership (a number that has consistently diminished as more land has been sold) out of a total of 27 ownership units.

2. Organizational Structure of MRIC as the Successor Organization to MCRPC

In response to the adoption of File # 15-203, the Board of Directors of MCRPC at its June 9, 2015 meeting appointed a Transition Study Group to make recommendations regarding the transition of the Research Park/TIC organizational structure from a 501(c)(6) to a 501(c)(3). The following section from the Inter Office Communication of March 16, 2015 is pertinent:

“MCRPC is currently studying the desirability of changing the not-for-profit status of MCRPC from a 501(c)(6) (commercially oriented organization - initially required because of MCRPC’s land development operations) to a 501(c)(3) (educational, scientific, religious, or charitable organization – which is suitable for a business incubation operation or other activities that assist entrepreneurship, among other things). It is likely that rather than change MCRPC’s status, this would be accomplished by transferring assets and TIC/Research Park governance to an existing entity. Also, under

consideration is transferring current board members in such a way that eventually control of board appointments would shift from the County to a self-perpetuating board, similar in some ways but not all ways to the boards of the cultural organizations associated with the County. *Shifting from a 501(c)(6) to a 501(c)(3) would give MCRPC significant advantages in fund raising, especially grants from foundations, corporations, and individuals, plus other tax benefits* (emphasis added).

“This endeavor is complex and the MCRPC board is expected to take this under consideration as the organization absorbs the new operational aspects of the TIC building. MCRPC expects to return for the required County approvals later this year, including approval of changes to the MCRPC By-Laws to allow the transfer of the Reserves to a successor entity. MCRPC expects to have at that time a detailed “development” plan and agreement (*this is set forth by the Transition Sequence and this memorandum*). In addition to the Reserves, the assignment of the obligations and rights of the County and MCRPC under the Declaration of Covenants, Conditions and Restrictions of the Milwaukee County Research Park, the Design Guidelines and several other documents will require mutual approval. One last point, regarding the Reserves, if a successor entity that the Reserves are transferred to ceases operation, it would be appropriate that they be given to the County for similar purposes (mirroring the current requirement).

“As these issues are worked out by MCRPC, it is important the timeline established . . . be met in order for MCRPC to proceed in an orderly fashion while assuming the new maintenance and repair obligations and give necessary assurances to TIC tenant businesses (many doing important scientific research and expanding) that the future of the TIC is in the hands of MCRPC and will be around for a long time.”

After numerous meetings throughout the summer of 2015 and extensive work by MCRPC’s staff and legal counsel, the clear way forward, as proposed in March, is to use an entity created by MCRPC on May 20, 2008, the Milwaukee Regional Innovation Center, Inc. that has already received 501(c)(3) status from the IRS.

The objective, from an operational standpoint for the benefit of TIC tenants among other reasons, was to make MRIC “look” as much as possible like MCRPC. This has been accomplished by draft amendments to the MRIC articles of incorporation and by-laws. The current five member board of MRIC (which consists of the same members as the Executive Committee of MCRPC: David Dull, Supervisor James “Luigi” Schmitt, DeVona Wright Cottrell, Mayor Kathleen Ehley, and Marvin Bynum II) desires to adopt all necessary Transition documents at a meeting on February 9, 2016.

The new board of MRIC would consist of seventeen (17) members: four (4) Government Members from Milwaukee County, the City of Wauwatosa, and possibly the State of Wisconsin; four (4) Academic Members from the University of Wisconsin-Milwaukee, the Medical College of Wisconsin, Marquette University, and the Milwaukee Area Technical College; and nine (9) at-large members chosen from a diverse group of professions, organizations, the labor community, and industry.

As mentioned previously, MRIC by-laws would provide that in the event of the dissolution of MRIC all remaining assets of MRIC would be transferred to Milwaukee County for the benefit of the public at large. The assets contributed by MCRPC to MRIC, especially the Board Designated Investment Fund (the name used by MCRPC for the reserves built up by Contract Fees Paid by Milwaukee County, also sometimes called the “endowment”) would be heavily restricted to use by MRIC for its operational and capital needs. While the goal of the Transition is independence from Milwaukee County control, the new MRIC by-laws, in the spirit of co-operation, would specify that any changes to: (a) the make-up its board, (b) the restrictions on the Board Designated Investment Fund, and (c) the distribution of assets upon dissolution would require approval from Milwaukee County.

3. Use of MCRPC Assets and Proceeds from the Sale of the M-10 Property

An agreement between the Milwaukee County and MCRPC executed in 1996 requires Milwaukee County pay 35% of land sales proceeds to MCRPC for its services (a) creating a development plan for the Research Park, including street and lot configurations, (b) removing impediments to development, and (c) working with developers to increase land value and achieve successful complex deals that result in land sales (the “Contract Fees”). Thus, the Contract Fees were earned by MCRPC. Currently the value of the Board Designated Investment Fund, the reserve that MCRPC has built up from these Contract Fees and the return on prudent investing of these funds (previously stated at about 27%, but subject to investment market swings and the addition of new funds), stands at approximately \$4,285,000.

The Contract Fees have also been used by MCRPC for other purposes. Of the approximately \$5.5 million received by MCRPC out of the total land sales of about \$16.8 million, \$1.4 million was used to renovate the fourth and fifth floors of the TIC building and build state-of-the-art laboratory space. This resulted to a significant increase in rents paid to Milwaukee County prior to July 1 of this year. \$800,000 has been used as operating capital, replacing tax levy that was previously given to MCRPC. As the “safety net” that has been provided by the Milwaukee County is removed by virtue of the TIC lease amendment and MCRPC’s assumption of all TIC maintenance responsibilities, it is critical that MCRPC retain enough reserves (that can and have been impacted by investment market changes) to sustain occupancy swings due to tenant graduations, economic downturns, and meet unexpected maintenance and repair issues.

Regarding sale of the M-10 Property - this complex transaction has a long way to go and putting together a project of this complexity is never guaranteed. It is anticipated by MCRPC that it will be necessary to spend significantly more funds on legal fees before closing as well as require much more staff effort. A major hurdle will be obtaining the necessary commitments from a hotel, brew pub, coffee shop, and other users by VJS, and City of Wauwatosa approvals.

If MCRPC is able to close on the M-10 Property, most of the sale proceeds need to go immediately into the TIC. Since MCRPC took over the building, MCRPC has identified three categories of costs related to TIC: (a) emergency repairs and maintenance that must be done now (e.g. condensate pump, condensate return lines, parking lot repairs, fire hydrant repairs), (b) immediate repairs, within about 12-18 months (e.g. painting, remaining parking lot repairs, new roof over the lab wing), and (c) long term capital improvements (e.g. central A/C, new windows

and entries). The last category, estimated to cost between \$6 million and \$8 million, may be commenced with funds on hand, but its completion will require significant fund raising efforts.

REQUEST FOR APPROVAL

The Executive Director of MCRPC, respectfully requests approval of the Amendments, in order that time line set forth in the Inter Office Communication and modified by the Transition Sequence attached hereto as Exhibit D, be met.

MILWAUKEE COUNTY RESEARCH PARK CORPORATION



Guy T. Mascari, Executive Director

Attachments

- Exhibit A – MCRPC Authorization Resolution 2015-15
- Exhibit B – Inter Office Communication dated March 16, 2015 (w/o Exhibits)
- Exhibit C – Comparison of 501(c)(3) and 501(c)(6) Tax Exempt Organizations
- Exhibit D – Transition Sequence
- Exhibit E – 2014 MCRPC Annual Report and Statistical Summary

- cc: Chris Abele, County Executive
Milwaukee County Board of Supervisors
Teig Whaley-Smith, Director, Department of Administrative Services
John Dargle, Director, Parks Department
Brian Dranzik, Director, Department of Transit
Scott Manske, Comptroller
Julie Esch, Director of Operations, Department of Administrative Services
_____, Chief of Staff, Office of the County Executive
_____, Chief of Staff, County Board of Supervisors
_____, Economic and Community Development Research & Policy Analyst
David Cialdini, Economic Development Project Manager
_____, Economic and Community Development Committee Clerk

EXHIBIT A

AUTHORIZATION RESOLUTION 2015-15

APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION AND SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED BYLAWS OF MILWAUKEE COUNTY RESEARCH PARK CORPORATION (THIS "RESOLUTION")

A. WHEREAS, the Milwaukee County Research Park Corporation (the "Corporation") and its Board of Directors (the "Board"), at its September 8, 2015 Board meeting, a quorum being present, reviewed an amendment to the Amended and Restated Articles of Incorporation of the Corporation ("Amendment to Articles"), and an amendment to the Second Amended and Restated By-Laws of the Corporation ("Amendment to Bylaws").

B. WHEREAS, the Board has determined that it is in the best interest of the Corporation to, upon dissolution of the Corporation, transfer the assets to Milwaukee Regional Innovation Center, Inc. The approval of Milwaukee County will be necessary in order to effectuate the change.

C. WHEREAS, the Corporation has determined that the approval of the Amendment to the Articles and Amendment to the Bylaws in the form attached hereto is in the best interests of the Corporation.

D. WHEREAS, the Corporation desires to approve the final form of the Amendment to the Articles, in the form attached hereto and incorporated herein as Exhibit A, and authorize and direct the Corporation's Executive Director and/or Chairman of the Board of Directors, acting alone or together, to execute the Amendment to the Articles, and enter into such other agreements and documents as are necessary and appropriate to effectuate such amendment, including but not limited to approval by Milwaukee County.

E. WHEREAS, the Corporation desires to approve the final form of the Amendment to the Bylaws, in the form attached hereto and incorporated herein as Exhibit B, and authorize and direct the Corporation's Executive Director and/or Chairman of the Board of Directors, acting alone or together, to enter into such agreements and documents as are necessary and appropriate to effectuate such amendment, including but not limited to approval by Milwaukee County.

NOW, THEREFORE, be it resolved, by the Corporation, at its duly noticed meeting of its Board of Directors on November 10, 2015, a quorum being present, as follows:

1. The Corporation hereby approves the Amendment to the Articles and the Amendment to the Bylaws, and hereby authorizes and directs the Corporation's Executive Director and/or Chairman of the Board, acting alone or together, to execute the Amendment to the Articles and such other agreements and documents which they, in their sole discretion, deem appropriate to effectuate the intent of this Resolution, thereby binding the Corporation to their terms, including but not limited to approval by Milwaukee County; and

2. The Corporation hereby authorizes and directs the Executive Director and/or the Chairman of the Board, acting alone or together, to take such other actions and enter into such other agreements and documentation as they, in their sole discretion, deem appropriate to effectuate the intent of this Resolution. The signature of the Executive Director and/or Chairman of the Board upon such documentation and/or agreement shall be deemed to constitute the Corporation's approval of the terms and conditions of such documentation or agreement, regardless of the terms and conditions provided for therein.

CERTIFICATION

I hereby state that I am the Executive Director of the Corporation and that the foregoing is a true and accurate description and copy of the Resolution passed by the Corporation at its Board meeting on November 10, 2015.

Dated this 10th day of November, 2015.

MILWAUKEE COUNTY RESEARCH
PARK CORPORATION

BY 
Guy T. Mascari, Executive Director

EXHIBIT A

Amendment to
the Articles of Incorporation of
Milwaukee County Research Park Corporation

See attached.

ARTICLES OF AMENDMENT TO THE
AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
MILWAUKEE COUNTY RESEARCH PARK CORPORATION

1. The name of the Corporation is Milwaukee County Research Park Corporation.
2. This amendment replaces in its entirety, Article IX of the Amended and Restated Articles of Incorporation of the Corporation (the "Articles of Incorporation"). After amendment, Article IX of the Articles of Incorporation shall read in its entirety as follows:

ARTICLE IX. DISSOLUTION

Upon the dissolution or other termination of the Corporation, all remaining assets of the Corporation, after payment in full of all of its debts, obligations, and necessary final expenses, or after the making of adequate provision therefore, shall be distributed to Milwaukee Regional Innovation Center, Inc., a Wisconsin nonstock corporation recognized by the IRS as exempt under Code section 501(c)(3). In the event that Milwaukee Regional Innovation Center, Inc. is no longer in existence at the time of dissolution, the assets of the Corporation shall be disposed of exclusively for the purposes of the Corporation to the County of Milwaukee, State of Wisconsin for the benefit of the public at large.

3. The foregoing amendment to the Articles of Incorporation of the Corporation was adopted by the Board of Directors in accordance with section 181.1002 of the Wisconsin Statutes on November 10, 2015.

Executed on behalf of the Corporation on November 10, 2015.

MILWAUKEE COUNTY
RESEARCH PARK CORPORATION

BY 
Guy T. Mascari, Executive Director

This document was drafted by Sara Stellpflug, Esq.

Please return this document to:

Lauran Vetuschi, Paralegal
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

EXHIBIT B

Amendment to
the Second Amended and Restated By-Laws of
Milwaukee County Research Park Corporation

See attached.

SECOND AMENDMENT TO SECOND AMENDED AND RESTATED
BY-LAWS OF MILWAUKEE COUNTY RESEARCH
PARK CORPORATION EFFECTIVE NOVEMBER 10, 2015 (the "By-Laws")

The Milwaukee County Research Park Corporation (the "Corporation") hereby amends the By-Laws as follows:

Article VIII GENERAL Section 8.03 is hereby deleted in its entirety and the following is inserted in its place:

Upon the dissolution or other termination of the Corporation, all remaining assets of the Corporation, after payment in full of all of its debts, obligations, and necessary final expenses, or after the making of adequate provision therefore, shall be distributed to Milwaukee Regional Innovation Center, Inc., a Wisconsin nonstock corporation recognized by the IRS as exempt under Code section 501(c)(3). In the event that Milwaukee Regional Innovation Center, Inc. is no longer in existence at the time of dissolution, the assets of the Corporation shall be disposed of exclusively for the purposes of the Corporation to the County of Milwaukee, State of Wisconsin for the benefit of the public at large.

Except as specifically amended above, the By-Laws shall remain unmodified and in full force and effect.

The above-described Amendment of the By-Laws was approved by the Milwaukee County Board of Supervisors pursuant to Resolution No. _____ dated _____, 2015 (a copy of which is attached hereto and incorporated herein as Exhibit A). The above-described Amendment was approved and adopted by the Corporation at its Board meeting on November 10, 2015, thereby binding the Corporation to its terms and conditions.

CERTIFICATION

I hereby state that I am the Executive Director of the Corporation and that the foregoing is a true and accurate description of the amendment adopted by the Resolution passed by the Board of Directors of the Corporation on November 10, 2015.

Dated this 10th day of November, 2015.

MILWAUKEE COUNTY RESEARCH
PARK CORPORATION

BY 
Guy T. Mascari, Executive Director

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

DATE: March 16, 2015

TO: Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Teig Whaley-Smith, DAS Director
Guy T. Mascari, Technology Innovation Center Director

SUBJECT: **Amendment to County Lease with Milwaukee County Research Park Corporation (MCRPC) and Acceptance of Vacant Land Offer to Purchase**

POLICY

The Director, Department of Administrative Services (DAS) and the Milwaukee County Research Park Corporation (“MCRPC”) are requesting that the County Board approve (a) an amendment to the Lease between the County and MCRPC for the Technology Innovation Center (the “TIC”) building located at 10437 Innovation Drive, Wauwatosa, Wisconsin and (b) an offer to purchase from MCRPC for vacant Lots 1, 10, and 21 located within the Milwaukee County Research Park (the “Research Park”).

BACKGROUND

In the early 1990s Milwaukee County entered into several agreements with MCRPC. These agreements have been amended over time and include a Conveyance Agreement that gives the authority to MCRPC to sell the vacant land at the Research Park and a TIC Lease Agreement that allows MCRPC to operate the TIC building.

As the Research Park has matured, there are only about 4.5 acres of developable land left at the Research Park, or about 3.8% of the initial 120 buildable acres. Also, the TIC Lease Agreement is set to expire in 2018. Consequently, the County Board recognized the need to develop a strategy for what happens with the remaining land and the TIC building at the Research Park. At the July 15, 2013 meeting of the Economic and Community Development Committee a request was made for the Economic Development Division (the “ED Division”) to work with MCRPC to develop a strategy for the TIC building. After several monthly meetings it became apparent that a strategy was also needed for the remaining vacant land at the Research Park.

After several months of strategizing and negotiations, MCRPC and the ED Division recommended a three prong strategy: (1) amend the TIC Lease Agreement to allow MCRPC to control its own destiny; (2) of the remaining land that is immediately developable, identify a developer to buy and develop the land; and (3) of the remaining land that is not immediately

developable, sell the land to MCRPC so that they can assemble the land and remove barriers to development. A map of the remaining land and the ultimate strategy for each is attached as Exhibit A. MCRPC Board actions are contained in resolutions attached hereto as Exhibit B.

1. Amend the TIC Lease Agreement

In March of 1993, Milwaukee County entered into a Lease agreement with MCRPC for a building at 10437 Innovation Drive in Wauwatosa, WI. The building, formerly known as the Muridale Tuberculous Sanitarium (M-1), is located adjacent to the Research Park and was to be used as an incubator facility for businesses in the technology field. The M-1 building was renamed the Technology Innovation Center. The original lease agreement stated that MCRPC's rent to the County would be a percentage of the base rent collected for that month. In return, Milwaukee County would be responsible for all mechanical and structural (including the roof) maintenance and repairs to the building.

This amendment to the lease alters the rental agreement, where MCRPC will be paying \$1.00/year for 2015 with additional options of \$1.00/year for 2016, 2017, and 2018. The amendment would also remove the County from its obligation to cover all mechanical and structural maintenance and repair costs associated with the TIC building. Finally, the Lease Amendment calls for MCRPC to have a 12-month option to purchase the TIC building and land from the County for \$1.00, to commence upon the effective date of the amendment, attached hereto as Exhibit C.

2. Sale of Developable Land

Pursuant to the Conveyance Agreement, MCRPC accepted an offer to purchase lots 8, 9, 12 and 22. No County Board approval was needed for the sale. There were, however, several abandoned utility easements that needed to be removed by the County. A release of these easements was approved pursuant to County Board Resolution #14-936. Subsequently, the sale of all four (4) parcels closed on January 7, 2015. Out of the sale proceeds of about \$2,130,000 the County netted approximately \$1,271,000.

3. Transfer of Undevelopable Land to MCRPC to Remove Barriers

Lots 1, 10 and 21 will be difficult to develop because the buildable area of each lot is a little over one acre (partly because of setback requirements) which is not large enough to attract the highest and best use of the land. Furthermore, Lot 21 is in the middle of these three lots and currently has a large area covered by WE Energies utility infrastructure under a series of easements and a structure known as the M-10 building, which is owned by WE Energies. Intense work will be needed to remove the WE Energies easements and assemble the land. MCRPC is most familiar with the challenges of this site and has also had great success in negotiating past development. Consequently, it is recommended that these lots be sold directly to MCRPC.

MCRPC has submitted an offer to purchase Research Park Lots 1, 10, and 21 for \$317,281.00, attached hereto as Exhibit D. MCRPC would hold and maintain the lots for possible future

development. The M-10 building used to house several boilers and steam distribution lines that serviced many of the original structures located at the County Grounds. Since the Zoo Interchange reconstruction resulted in the elimination of steam service to land west of the U.S. Highway 45, the M-10 does not fulfil its original purpose. WE Energies has the easements in place and still owns the M-10 building that housed the boilers. In order for MCRPC to proceed with any development, an agreement would need to be made with WE Energies to release the easements and dispose of the building in some way.

SUPPLEMENTAL INFORMATION

In response to a series of questions raised at the Economic and Community Development Committee meeting held on January 26, 2015, the following supplemental information is provided.

1. Distribution of Land Sale Proceeds to MCRPC and build up of Reserves

At the committee hearing there was mention of a "\$4 Million Endowment." The correct description of these funds, however, is "Contract Fees paid by Milwaukee County." The Conveyance Agreement executed in 1996 requires Milwaukee County pay 35% of land sales proceeds to MCRPC for its services in working with developers to achieve successful complex deals that result in land sales (the "Contract Fees") [See Conveyance Agreement, 3rd Amendment, 2(e)]. As testified by Guy Mascari from MCRPC, the \$4 million is the reserve that MCRPC has built up from these Contract Fees and the return on prudent investing of these funds is estimated to be about 27%.

The Contract Fees have also been used by MCRPC for other purposes. Of the approximately \$5.5 million received by MCRPC out of the total land sales of about \$16.5 million, \$1.4 million was used to build-out the fourth and fifth floors of the TIC building and build state-of-the-art laboratory space. \$800,000 has been used as operating capital, replacing tax levy that was previously given to MCRPC. With the land sale closing previously described the reserves now total approximately \$4.5 million (the "Reserves").

As the "safety net" that has been provided by the County is removed by virtue of the TIC lease amendment under consideration, it is critical that MCRPC retain the Reserves. This will allow MCRPC to sustain occupancy swings due to tenant graduations and economic downturns, and meet unexpected maintenance and repair issues.

The Conveyance Agreement which was summarized in the report for File 15-101, is summarized again below. Nothing in the previous File 15-101, or this file, amends the Conveyance Agreement. Only the TIC lease will be amended. Consequently, the County and MCRPC continue to control their respective rights as listed above.

2. Make-up of MCRPC Board and Transition to a Successor Organization

MCRPC controls its own budget and resources; consequently the County does not control MCRPC's expenditures, other than through the appointments that it makes to the MCRPC Board. The exception is that if MCRPC ceases operations, in which case the By-Laws require that those funds be given to Milwaukee County for the purposes that MCRPC was set up (By-Laws 8.03).

MCRPC currently has fifteen (15) Board members, which includes the following:

- a. (1) County Executive's Representative (No Confirmation by County Board Required).
- b. (5) County Board Members appointed by County Board Chair (No Confirmation by County Board Required). Although no longer required, most of these board members have been members of the ECD Committee.
- c. (9) County Executive's Appointees, eight of which shall be private citizens or representatives of institutions of higher learning and one shall be an official of the City of Wauwatosa (County Board Confirmation Required).

Concerning the question of whether there needs to be a development agreement to specify the relationship of the County and MCRPC going forward, the following is pertinent. As summarized below there are already documents in place that currently define this relationship. It is anticipated that MCRPC, through its strategic planning, may later request changes to its By-Laws and/or incorporate its By-Laws in part and/or assign other documents to a successor organization. Such changes would require County approval as stated below in the summary of documents. In any future requests, however, it is important to note that MCRPC has long ago agreed to not request any future County funds for its operations: "MCRPC shall agree not to request tax levy to support its operations" (1998 Amendment to Conveyance Agreement).

MCRPC is currently studying the desirability of changing the not-for-profit status of MCRPC from a 501(c)6 (commercially oriented organization - initially required because of MCRPC's land development operations) to a 501(c)3 (educational, scientific, religious, or charitable organization - which is suitable for a business incubation operation or other activities that assist entrepreneurship, among other things). It is likely that rather than change MCRPC's status, this would be accomplished by transferring assets and TIC/Research Park governance to an existing entity. Also, under consideration is transferring current board members in such a way that eventually control of board appointments would shift from the County to a self-perpetuating board, similar in some ways but not all ways to the boards of the cultural organizations associated with the County. Shifting from a 501(c)6 to a 501(c)3 would give MCRPC significant advantages in fund raising, especially grants from foundations, corporations, and individuals, plus other tax benefits.

This endeavor is complex and the MCRPC board is expected to take this under consideration as the organization absorbs the new operational aspects of the TIC building. MCRPC expects to return for the required County approvals later this year, including approval of changes to the

MCRPC By-Laws to allow the transfer of the Reserves to a successor entity. MCRPC expects to have at that time a detailed “development” plan and agreement. In addition to the Reserves, the assignment of the obligations and rights of the County and MCRPC under the Declaration of Covenants, Conditions and Restrictions of the Milwaukee County Research Park, the Design Guidelines and several other documents will require mutual approval. One last point, regarding the Reserves, if a successor entity that the Reserves are transferred to ceases operation, it would be appropriate that they be given to the County for similar purposes (mirroring the current requirement).

As these issues are worked out by MCRPC, it is important the timeline established below be met in order for MCRPC to proceed in an orderly fashion while assuming the new maintenance and repair obligations and give necessary assurances to TIC tenant businesses (many doing important scientific research and expanding) that the future of the TIC is in the hands of MCRPC and will be around for a long time.

The MCRPC By-Laws were not initially discussed in the previous File 15-101 report because nothing in file 15-101, or this file, amends the By-Laws and the County and MCRPC would continue to control their respective rights. Furthermore, By-Laws section 8.02 specifically states that they cannot be amended without County Board approval. The By-Laws are attached hereto for informational purposes.

3. Timeline

As stated in the exhibits to the report for file 15-101 the timeline is three (3) months of due diligence on the offer for the vacant land and twelve (12) months due diligence for the option on the TIC building. The initial timeline was submitted as file 14-936 on November 24, 2014. Given the delay, these timelines are no longer valid. The current timeline is as follows:

a. Fifth Amendment to TIC Lease (the “Lease”)

- Wednesday April 15, 2015: Target date for execution of the Lease
- Wednesday July 1, 2015: Effective date of the Lease
- Thursday December 31, 2015: End of the first term of the Lease. Automatically renews for three (3) one-year terms until the end of 2016, 2017, and 2018.
- Thursday June 30, 2016: Termination of MCRPC option to purchase the TIC building for \$1.00.
- Friday December 31, 2016: On or before – County and MCRPC close on the purchase of the TIC building, if the option is exercised.

b. Offer to Purchase Lots 1, 10 and 21 (M-10 Lot) (the “Lots”)

- Wednesday April 15, 2015: Date by which County must accept MCRPC's offer to purchase.
- Wednesday July 15, 2015: End of MCRPC 90-day due diligence period.
- Friday August 15, 2015: On or before – County and MCRPC close on purchase of the Lots.

4. Summary of Documents.

There are five (5) primary documents that define the relationship between the County and MCRPC. Here is a summary of the documents (document titles abbreviated):

- Conveyance Agreement (1996)**. This agreement essentially gives all the authority to market and sell fee interest in research park land to MCRPC, provided that the requirements set forth in the Declaration are met. This is the agreement that splits the net land sale proceeds 65% to the County and 35% to MCRPC. The County has no rights to the 35% collected by MCRPC as Contract Fees or the Reserves built-up by prudent investment of them (except in the event of dissolution). As with any contract, it cannot be amended without the consent of both parties.
- Declaration (1994)**. This document is a binding and enforceable restriction on the use of Research Park land for research and other purposes and “runs with the land.” It cannot be changed without the consent of the County (Declaration Article VIII) or in the case of material adverse impact by research park occupants. The Declaration is incorporated into every development agreement between MCRPC and land buyers. There is a Supplement to the Declaration that obligates park occupants to pay common area charges to the MCRP Occupants' Association and a research development fund fee to MCRPC, among other things. Research Park Design Guides are incorporated into the Declaration.
- MCRPC By-Laws as amended (2003 and 2009)**. This cannot be amended without County approval (Section 8.02) and specifies among other things board appointments and terms.
- TIC Lease (1992)**. This document leases the TIC Building to MCRPC through September 30, 2018. This is the document that establishes the current base rent at \$7.50 (with exceptions approved in the past by the DAS Director for “rough space in the basement”) with 2/3 paid to the County. This is the only document that MCRPC is requesting a change to. The changes are specified in Report 15-101 and can be summarized as: (i) adding Outlot 1 to lease premises, (ii) reducing rent to \$1.00 in exchange for MCRPC taking on capital costs and mechanical and structural maintenance and repair costs and (iii) giving MCRPC an option to purchase the building for \$1.00. These are all changes that are mutually beneficial to MCRPC and the County. It is beneficial to MCRPC in that their rent is reduced and they can

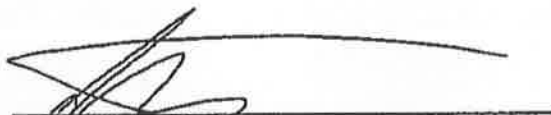
control maintenance and other costs. It is beneficial to the County in that it can redirect much needed resources (that otherwise would be used to maintain the TIC building and its systems) now that MCRPC is a stable entity with significant cash flow and nearly \$4.5 million in Reserves.

- e. **Ground Lease (1992).** Agreement between the County and MCRPC that governs the development of land at the research park. As land is sold to third party developers, it is removed from the Ground Lease. The same thing will happen upon the sale of Lots 1, 10, and 21 to MCRPC. Once all land is sold this document will terminate by virtue of its terms and conditions, although formal action may be required.


Please note that all these documents, originally negotiated in the 1990s, include significant decision making authority given to MCRPC, including final determination on uses and users. Nothing in the previous file 15-101, or this file, changes these original documents, except the Lease as stated above.

RECOMMENDATION

The Director, Department of Administrative Services (DAS) recommends approval of the Fifth Amendment to the TIC Lease and Acceptance of the Offer to Purchase for Lots 1, 10, and 21.



Teig Whaley-Smith
Director, Department of Administrative
Services (DAS)



Guy T. Mascari
Milwaukee County Research Park Corp.
Technology Innovation Center Director

Attachments

- Exhibit A – Remaining Parcels at Milwaukee County Research Park
- Exhibit B – MCRPC Resolutions
- Exhibit C – Fifth Amendment to the TIC Lease
- Exhibit D – MCRPC Offer to Purchase Lots 1, 10, and 21
- Exhibit E – Conveyance Agreement (1996)
- Exhibit F – Declaration (1994)
- Exhibit G – MCRPC By-Laws as Amended
- Exhibit H – TIC Lease (1992)
- Exhibit I – Ground Lease (1992)

cc: Chris Abele, County Executive
Milwaukee County Board of Supervisors
Don Tyler, Director, Department of Administrative Services
John Dargle, Director, Parks Department
Brian Dranzik, Director, Department of Transit

Scott Manske, Comptroller
Julie Esch, Director of Operations, Department of Administrative Services
Raisa Koltun, Chief of Staff, Office of the County Executive
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jill Suurmeyer, Economic and Community Development Research & Policy Analyst
David Cialdini, Economic Development Project Manager
Shanin Brown, Economic and Community Development Committee Clerk

EXHIBIT C
Comparison of 501(c)3 and 501(c)6 Tax-exempt Organizations

Item	501(c)3	501(c)6
Purpose	Charitable, religious, scientific, literary, or educational	Betterment of business conditions for a particular trade, industry, or community
Examples	Churches, March of Dines, art museums, universities, business incubators, YWCA	Business leagues, chambers of commerce, boards of trade, and the like (e.g. MCRPC and Rotary)
Inurement	No inurement or benefit to private individuals	No inurement or benefit to private individuals
Dissolution	All assets must be distributed to another 501(c)3 or a government entity	All assets must be distributed to another 501(c) organization or a government entity
Activities	Must serve a public purpose	Can serve the business purposes of its members or constituency
Tax deductible donations allowed	Yes	No
Tax exempt – Federal income tax	Yes	Yes
Tax exempt – State or local sales tax	Yes	No
Tax exempt – Local property/real estate taxes	Maybe. Depends on sources of funds and activities (e.g. a nursing home may need to pay)	No
Income	Contributions, fund raisers, program activities, operating revenue (e.g. nursing home, hospital, or incubator)	Membership dues, program activities, publication fees (these fees or dues are usually tax deductible as business expenses)
Membership	Optional	Usually required, exception for government controlled entities
Annual reporting to IRS	Form 990N, 990, 99EZ	Form 990N, 990, 99EZ
Legislative lobbying	Legislative activity must be insubstantial	Yes, as long as it furthers the exempt purpose
Endorsement of political candidates	Absolutely prohibited	Political activity permitted but taxed
Eligible for low-cost bulk mailing rate	Yes	No

EXHIBIT D

**MILWAUKEE COUNTY RESEARCH PARK CORPORATION ("MCRPC")/
MILWAUKEE REGIONAL INNOVATION CENTER ("MRIC")**

TRANSITION SEQUENCE

Date	Approving Entity	Approval/Action
November 10, 2015	MCRPC Board	<ol style="list-style-type: none">1. Approval of Amended Articles of Incorporation for MCRPC (as previously presented to MCRPC's Board).2. Approval of Amended and Restated By-laws for MCRPC (as previously presented to MCRPC's Board).3. Approval of Resolution authorizing 1 and 2 above (as previously presented to MCRPC's Board).4. Informational review and discussions of Contribution/Transition Agreement.5. Informational review and discussions regarding MRIC's following 3 documents: (i) Amended Articles of Incorporation; (ii) Amended and Restated By-laws; (iii) Authorization Resolution Approving (i) and (ii) above.6. Informational review and discussions of proposed MCRPC Dissolution Resolution and Plan of Liquidation.
November 10, 2015	MRIC Board	Board of Directors execute a consent resolution approving and ratifying the action taken by MCRPC forming a special purpose entity (SPE) LLC to eventually own the TIC building and to authorize the Chairman and Executive Director of MCRPC to draft documents for MRIC Board approval and to take such other actions that would further the stated goal of MRIC to fully take over the operations of MCRPC.

November 23, 2015	Milwaukee County Board and MCRPC Staff	Submit draft of Milwaukee County Board Resolution Approving Changes to MCRPC's By-Laws and Articles of Incorporation, Report, and Fiscal Note.
December 7, 2015	Milwaukee County Economic and Community Development Committee (ECDC)	<p>Presentation to ECDC of the following:</p> <ul style="list-style-type: none"> • Transition Sequence Timeline • Comparison of 501(c)(3) and 501(c)(6) Tax-exempt Organizations • Amended Articles of Incorporation of MCRPC (all formally passed by MCRPC) • Amended and Restated By-laws of MCRPC (all formally passed by MCRPC) • Resolution of MCRPC (all formally passed by MCRPC)
December 17, 2015	Milwaukee County Board of Supervisors	Grant Milwaukee County approval of changes to MCRPC Articles of Incorporation and By-Laws
February 9, 2016 (Annual Meeting)	MCRPC Board	<ol style="list-style-type: none"> 1. Elect slate of Officers and Executive Committee for MCRPC. 2. Determination by the MCRPC Board of Directors to enter into the Contribution/Transition Agreement (with transfer of all assets, including the Board Designated Investment Fund, from MCRPC to MRIC effective as of April 1, 2016). 3. In addition to the other conveyance and assignment obligations described in the Contribution/Transition Agreement, assign the lease and option to purchase the TIC directly to MRIC wholly-owned subsidiary, Technology Innovation Center LLC (assign all TIC subleases as well).

		<ol style="list-style-type: none"> 4. Approve MCRPC Dissolution Resolution and Plan of Liquidation (to be implemented by MCRPC's Executive Director and/or it Chairman of the Board, with an effective Dissolution of on or before 12-31-15 with no further Board meeting of MCRPC being necessary). 5. MCRPC to cease active operations as of March 31, 2016.
<p>February 9, 2016 (Annual Meeting)</p>	<p>MRIC Board (with existing board members - currently the executive committee of MCRPC)</p>	<ol style="list-style-type: none"> 1. Elect slate of Officers and Executive Committee for MRIC. 2. Approval of MRIC Amended and Restated Articles of Incorporation. 3. Approval of MRIC Amended and Restated By-laws. 4. Resolution of MRIC approving items 2 and 3 above, with the new Board of Directors to become effective as of April 1, 2016. Notify the Government and Academic appointing authorities of this action. 5. MRIC Resolution authorizing approval of Contributions/Transition Agreement. 6. MRIC Resolution authorizing its wholly-owned subsidiary, Technology Innovation Center LLC, to exercise its option to purchase the TIC building and surrounding lands from Milwaukee County, with an anticipated closing date of March 31, 2016, and assign the existing TIC Lease to Technology Innovation Center LLC. 7. MRIC Resolution authorizing itself and its wholly-owned subsidiary, Technology Innovation Center LLC to adopt and enter into the Operating Agreement and the Management Agreement in the form presented at the MRIC board meeting.

February 9, 2016 (Annual Meeting), continued	MRIC Board (with existing board members - currently the executive committee of MCRPC)	8. MRIC to start active operations as of April 1, 2016.
February 9, 2016	Technology Innovation Center LLC	Exercise its Option to Purchase the TIC building, as authorized by the MRIC Board of Directors, by sending letter to Milwaukee County
March 31, 2016	Technology Innovation Center LLC	Close on acquisition of the TIC and surrounding lands, and assign the existing TIC Leases to Technology Innovation Center LLC.
March 31, 2016	MCRPC and MRIC	The final financial statements for MCRPC shall be issued as of March 31, 2016 (end of first quarter). Thereafter, MCRPC will cease all financial activity upon transfer of all assets to MRIC. Financial statements and all financial activity of MRIC will commence April 1, 2016.
December 31, 2016	MCRPC Chairman and Executive Director	Formally dissolve the Milwaukee County Research Park Corporation, on or before this date.